

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 1. RULES OF PRACTICE AND PROCEDURE
ARTICLE 2. PROCEEDINGS
SECTIONS 29100, 29101

ARTICLE 3. DATA COLLECTION, DATA ACCESS, AND CONFIDENTIALITY
SECTION 29200

E-FILING, FORMATTING REQUIREMENTS, SUBMISSION OF CONFIDENTIAL
INFORMATION

OAL Notice File No. Z-2022-0418-05

JULY 2022

Updated Informative Digest

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.

15-Day Modifications

Following the June 6 hearing and the close of the 45-day public comment period, Energy Safety made changes to the text of the proposed regulation in response to comments received regarding the proposed regulation. Energy Safety published and made all regulation text changes, which were all sufficiently related to the original text, available to the public for comment from July 1 through July 15, 2022.

Changes to the originally proposed text were made primarily for the purposes of clarity. Energy Safety made modifications to section 29200 subdivisions (a); (a)(3); (b)(2), (b)(3), and (b)(4); (c); (d) and (e). An Update to the Initial Statement of Reasons was produced to more thoroughly describe the necessity for the amendments.

Energy Safety received public comments on the modified text of regulations. Following the close of the 15-day comment period, there were no further modifications or comment periods and the record was closed.

Summary and Response to Comments Following 45-Day Publication

Energy Safety accepted public comments from April 29, 2022 through June 13, 2022. A public hearing was requested, and Energy Safety received oral comments from members of the public at the hearing on June 6, 2022.

Comments 1 through 4 address the document accessibility requirements in proposed section 29100(c) 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 1 was submitted by Peter Van Mieghem on behalf of Southern California Edison Company at the hearing on June 6, 2022, and related to proposed section 29100(c).

Comment 1:

Under this provision, Energy Safety will reject e-filing information not meeting accessibility requirements of government code Section 7405. SCE supports Energy Safety's policy goal to make information accessible to people with disabilities who request it.

However, it is unclear how widespread demand is to make all the filed documents accessible to people with disabilities. Accessibility requirements require significant effort to implement, particularly under tight response timelines. So, to ensure the effort to make documents accessible is responsive to the level of need SC&E proposes that the accessibility requirements be implemented by next business day, upon request, for particular e-filed documents, rather than just as a matter of course.

Comment 2 was submitted by Jonathan Woldemarian on behalf of San Diego Gas & Electric during the hearing on June 6, 2022, and relates to proposed section 29100(c).

Comment 2:

I'm speaking in reference to the ADA compliance in 29100(e). We at SDG&E believe that this is an opportunity to provide some good service for our customers, vulnerable customers.

We are concerned about the formatting requirements that the accessibility submissions that we have to abide by in future. We think that, rather than having vague references and regulations and policies, that specific requirements be made clear with respect to these ADA compliant documents.

And so we would ask that there'll be more process time given and some prudent and consistent compliance be allowed for the best results that are intended, with this regulation. And so the level of requirements could also have timing and cost potential, you know for a fact, so the additional time required for this compliance is to be admitted / made in submissions to meet these requirements. For example, SDG&E has 173 data requests that they submitted and 2022 WMP update.

And the compressed time for response for these data request has benefited many and reviewing and securing approvals for the WMP on a timely basis, and this additional requirement could jeopardize that accelerated process if it's not made very clear and have good process for that.

So with these requirements also cutting across potentially all submittals we have a number of submittals in the year, annually, that we provide, so with a clear process and being able to address concerns from various submittals that we may have as utilities, we would be able to clarify those responses to time and process we're allowed to clarify those requirements and so with the fact that we have so many submittals and requirements that we need to make clear what which ones of those would the ADA compliance apply. And also make clear what those requirements are for those specific documents and so that our submittals could be clear and accessible to vulnerable customers and those that need those requirements for the ADA compliance.

So, finally, the thing that I would like to also ask for clarify is that to the estimates for managing safety seem to be north of the 1.5 million. And, according to the various costs estimates that were made by utilities these costs could vary. And so, clarifying the requirements and having extensive discussion in consideration could set us up better for helping provide the best documents and being able to have those submitted in a timely manner and having the best cost efficient manner so we would like we would welcome any kind of discussion and clarity before setting the regulations and not having set regulations prior to that and then having to comply on the back end of it and trying to meet unclear requirements.

Comment 3 relates to proposed section 29100(c) and was submitted 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. The companies are referred to herein together as the “Joint IOUs.”

Comment 3:

The Joint Utilities share the Energy Safety’s policy goals in favor of promoting access to public information by all interested parties, including those with disabilities. But extending the accessibility requirements of Section 508 of the Federal Rehabilitation Act of 1973 to all documents submitted through the Energy Safety’s e-filing system would result in an unnecessary burden on all parties who participate in proceedings at the agency, is inconsistent with the practice of other state agencies, including the California Public Utilities Commission (Commission) and the courts of California, and could result in significant additional costs for stakeholders participating in Energy Safety proceedings (including the Joint Utilities). Moreover, the vagueness of the regulation leaves all parties without clear direction regarding what constitutes compliance and facing potential rejection of filings.

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

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

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

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

Further, the Proposed Regulation extends accessibility requirements beyond those that exist at most federal and state agencies. The Commission, for instance requires formatting of submissions for readability, but has no similar requirement specifically addressing accessibility. Nor do the California Courts. Rather, under California Rule of Court 1.100, accommodations are provide[d] upon request. To date, the Joint Utilities are not aware that, in the year that Energy Safety has been in operation, such a request has been made. The blanket approach mandated by the Proposed Regulation is overly broad, and ultimately will negatively impact stakeholders to proceedings by imposing unnecessary additional costs on all parties—which in the case of the utilities will be passed onto ratepayers. The Joint Utilities suggest that, to the extent a stakeholder requests additional accessibility, those requests be addressed on a case-by-case basis, rather than a universal requirement for all submissions, similar to the process in place at the Courts.

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

As drafted, the Proposed Regulations impose an unduly burdensome and costly requirement for all participants and stakeholders at Energy Safety. It will take

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

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

In addition to the burden, Energy Safety should reconsider the Proposed Regulations on accessibility because of the unnecessary costs associated with compliance. SDG&E has yet to estimate the costs of creating compliant documentation and has difficulty doing so partially due to the vague nature of the regulation as drafted. In submitted email conversations from Energy Safety, PG&E estimated a potential cost for producing accessible documents would be \$4/page for simple documents, \$5/page for medium documents, and \$6/page for complex documents with complex tables, much like many pages required in the WMPs. PG&E thus conservatively estimated that creating ADA compliant documents would cost \$40,000 to \$60,000 per year, and could increase due to manual corrections. These same costs would also be imposed on non-utility stakeholders submitting their own assessments and analyses. For this reason alone, the Joint Utilities urge Energy Safety to re-evaluate the necessity creating accessible documents on a universal basis.

Comment 4 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates to proposed sections 29100 and 29101.

Comment 4:

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

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. Nevertheless, holding stakeholders to complex, rigorous, and voluminous accessibility standards, including Web Content Accessibility Guidelines (WCAG) 2.0 standards, 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. 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. 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. 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. On its website, the CPUC provides guidance and resources for stakeholders to use to for accessibility purposes, including a link to Adobe Acrobat reader. Nowhere does the CPUC require stakeholders who wish to participate in its proceedings to meet all the WCAG 2.0 requirements. It is worth noting that the CPUC has similar formatting requirements as Energy Safety's section 29101, in its Rules of Practice and Procedure. The CPUC's approach has been certified as providing sufficient levels of accessibility under WCAG, all without imposing WCAG standards on CPUC stakeholders. 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.

Response to Comments 1 through 4

Energy Safety must comply with Government Code section 7405, which requires Energy Safety to ensure that documents published on its website are accessible. In the interest of transparency, and to facilitate participation by members of the public and industry stakeholders, Energy Safety is committed to posting non-confidential documents on its website. As Energy Safety does not have the resources needed to make accessible all the documents it receives, a decision to receive documents that are not accessible is also a decision not to post the documents on its website for public review.

Energy Safety does not intend to amend the proposed regulation to more specifically identify the documents to which the accessibility requirements apply because the regulation indicates that it applies to all documents submitted through the e-filing

system. Although Southern California Edison's Comment 1 requests Energy Safety to make clear which submittals the accessibility requirements apply to, the Joint Utilities comment in Comment 3 (of which Southern California Edison is a party) indicates it is clear which submissions the requirements apply to: "extending the accessibility requirement ... to all documents submitted through the Energy Safety's e-filing system."

Energy Safety does not intend amend the proposed regulation to further clarify the accessibility that Government Code section 7405 requires because the nature of those requirements is sufficiently clear. Section 7405 became effective in 2017 and refers to the applicable standards.

The Joint IOU comments indicate that the regulation makes it impossible to determine what Energy Safety "deems to meet accessibility requirements." In developing this regulation package, Energy Safety asked PG&E, one of the Joint IOUs commenting here, to estimate the costs of complying with this regulation. In providing that estimate, PG&E understood, and was able to provide costs for, ADA accessibility document processing:

"To respond to this request, we requested price quotes by vendors for the cost to convert documents into ADA accessible form. The best price quote we received averaged between \$8 and \$12 per page."

"Thus, a conservative estimate of the cost to ensure the documents submitted to Energy Safety are ADA compliant (based on the previous year's volume of submission) would be between \$40,000 and \$60,000 per year." (Document Relied Upon 4, Wade Greenacre email to Melissa Semcer dated January 7, 2022)

Further, PG&E understood the accessibility requirements well enough to know that none of the documents it submitted during 2021 were in compliance:

"In 2021, PG&E submitted over 5,000 pages of documents to Energy Safety (or its predecessor, the Wildfire Safety Division). None of the documents that PG&E submitted to Energy Safety were ADA compliant at the time of submission." (Document Relied Upon 4, Wade Greenacre email to Melissa Semcer dated January 7, 2022)

One comment asserts that because the costs of making documents accessible can vary with the document type, the accessibility requirements are unclear. Energy Safety notes that the variation in costs was due to differences in the types of documents, not variations in the accessibility requirements. The cost estimate provided by PG&E made this point:

“However, the actual cost to comply with this proposed requirement could be higher since the cost of ensuring documents are ADA compliant is heavily dependent on the contents and complexity of the document and can range as high as \$100 per page.” (Document Relied Upon 4, Wade Greenacre email to Melissa Semcer dated January 7, 2022)

Regarding the comment that if accessibility requirements apply to a given document, the time for submitting that document should be extended, that recommendation is beyond the scope of this proposed regulation. The time in which a given electrical corporation must respond to a particular request varies with the nature of, and reason for, the request from Energy Safety. That timing is not the subject of this proposed regulation.

Energy Safety does not intend to amend the proposed regulation to exempt some, or all, document submitters from the accessibility requirements. It is not possible to make documents accessible “as needed” or upon request and also to publish the document for public review. To accept documents that are not accessible, or that can be made accessible at a later time, would delay public access and limit the participation by those who need accessible documents.

Further, accepting “partially” accessible documents would require Energy Safety to find what, in the document, is not accessible, and then perform the needed accessibility work. That approach would require Energy Safety to specify “partial compliance” in the regulation, something with Energy Safety is unable to do with sufficient clarity.

For members of the public who cannot make documents accessible, the regulation allows for submission of hard copy documents by U.S. mail. The accessibility requirements do not apply to those submissions.

Energy Safety does not intend to amend the proposed regulation to indicate whether the document accessibility requirements are fulfilled by complying with both the proposed section 29101(b)-(e) requirements and the e-filing system user’s guide requirements. The accessibility requirements are separate from, and different from, the proposed section 29101 (and incorporated user’s guide) requirements. The text of the respective provision makes sufficiently clear the nature and scope of each requirement.

Comments 5 and 6 address the document redaction requirements in proposed section 29200(a)(3) and make substantially 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 5 was submitted by Peter Van Mieghem on behalf of Southern California Edison during the hearing on June 6, 2022, and relates to proposed section 29200(a)(3).

Comment 5:

Section 29200(a)(3) requires confidentiality applicants to provide both redacted and unredacted versions of documents claimed to be exempt from disclosure.

For some documents such as geospatial databases in spreadsheet format and lengthy documents with confidential material dispersed throughout. It is not reasonably possible to redact accomplish material in a timely manner.

Therefore, SC&E requests that section 2900(a)(3) or the actual requirements be limited to the extent reasonably possible, and this is consistent with the same provision in section 29200(a)(2).

Comment 6 was submitted by the Joint IOUs and relates to proposed section 2900(a)(3).

Comment 6:

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

Section 29300(a): Any person who submits information to the office, and who requests that Energy maintain asserts that the information is exempt from disclosure to the public must, at the time of submission: ...

(3) Provide both redacted and unredacted versions of documents claimed to be exempt from disclosure to the extent reasonably possible.

Response to Comments 5 and 6

These comments assert that not all documents containing information that is exempt from disclosure can be redacted either because of the type of document or because of time constraints. In response to these comments, Energy Safety has amended proposed section 29200(a)(3) to clarify Energy Safety's intent that the redaction requirement applies only to the extent the information can be reasonably segregated from the non-confidential information. The amended section 29200(a)(3) was published for public review and comment on July 1 through July 15.

Comments 7 and 8 address the requirements related to submission of confidential information in proposed section 29200(b) and make substantially 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 7 was submitted by Peter Van Meighem on behalf of Southern California Edison during the hearing on June 6, 2022, and relates to proposed section 29200(b).

Comment 7:

SC&E requests that Energy Safety clarify the scope of required information. Section 29200(b) contains new requirements for confidentiality application submitted on the basis of trade secrets or loss of competitive advantage. Edison seeks clarity on the scope of information required for subpart (b)(1) through ((b)(4).

Comment 8 was provided by the Joint IOUs and relates to proposed section 29200(b).

Comment 8:

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

(b) Where a person or entity submits information to the office, and asserts that the information should not be disclosed to the public because the information contains trade secrets or because disclosure would cause a loss of a competitive advantage, then the person must, at the time of submission comply with all the requirements in subsection (a) and also:

- (1) Specifically identify the competitive advantage;
- (2) State how the advantage would be lost through disclosure;
- (3) State the value of the information to the applicant; and
- (4) Describe the ease or difficulty with which others could legitimately acquire or duplicate the information.

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

Response to Comments 7 and 8

In response to these comments, Energy Safety has amended proposed section 29200(b)(2) through (4), to strike the requirement in the original subdivision (b)(3) that the submitter of confidential information indicate the value of the information. Further, Energy Safety made the change to reduce the burden on submitters of confidential information and to remove the source of uncertainty in the original text. The amended text was published for public review and comment from July 1 through July 15, 2022.

Energy Safety does not intend to amend the proposed regulation to adopt the CPUC process or matrix because the proposed regulation language is currently sufficient for Energy Safety’s needs to decide whether the information submitted should be published on Energy Safety’s website. The comment does not cite particular rules or explain why those rules would work better.

Energy Safety does not intend to amend the proposed regulation to explain the meaning of subsections (b)(1) through (b)(3). Energy Safety finds that (b)(1)-(2) and (b)(4) (now (b)(3) in the amended section 29200 published for public review and comment from July 1 through July 15, 2022) provides a clear scope of required information that must be submitted to Energy Safety in the context of the claim that the information contains trade secret or the disclosure of which would result in competitive advantage loss.

Comments 9 through 11 suggest that in implementing a process for submission of confidential information to Energy Safety (in proposed section 29200), that Energy Safety adopt the process used by the California Public Utilities Commission. For that reason, Energy Safety aggregates and responds to those comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 9 was submitted by Laura Fulton on behalf of San Diego Gas & Electric during the hearing on June 6, 2022, and relates to proposed section 29200(a) and (b).

Comment 9:

The requirements in 29200(a) and (b), as proposed, add additional burdensome submission procedure proceeding, and in some place places conflict with the existing precedent at the CPUC. And, given the long history of success with the existing confidentiality requirements under the jurisdiction.

We believe that parity between the two agencies on this issue, especially given the closeness and similarity of the parties to most of those proceedings will eliminate confusion provide more consistency and encourage transparency.

Comment 10 was submitted by the Joint IOUs and relates to proposed section 29200(a) and (b).

Comment 10:

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

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

Comment 11 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates to proposed section 29200(a) and (b).

Comment 11:

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.

Response to Comments 9 through 11

Energy Safety does not intend to amend the proposed regulation to adopt the CPUC process or matrix because the process specified by the proposed regulation language meets Energy Safety's needs in that it will allow Energy Safety to readily to decide whether to publish a given document on Energy Safety's website. The comment does not cite a particular rule or rules or explain why those rules would work better.

Comments 12 and 13 suggest that in providing time for a utility to respond to Energy Safety questions regarding the confidentiality of information submitted to Energy Safety, that the utility be allowed 14 days rather than 7. For that reason, Energy Safety aggregates and responds to those comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 12 was submitted by Peter Van Meighem on behalf of Southern California Edison during the hearing on June 6, 2022 and relates to proposed section 29200(c).

Comment 12:

Moving on to section 29200(c) Southern California Edison request that Energy Safety retain the 14-day response period.

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

Under the current emergency regulation, a party has 14 days to respond. SC&E requests that 14 day response to be retained, given that the seven day period is too short to allow for possible delays and receipt of their request.

Comment 13 was submitted by the Joint IOUs and relates to proposed section 29200(c).

Comment 13:

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

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

Section 22900(c): If a confidential information submission is incomplete or the submitting person has failed to make any reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the information confidential, the Office shall provide to the submitting person a statement of its defects and a request for additional information. If the missing information, or a request for an extension of time to respond, is not submitted within seven fourteen days of receipt of the request, the information shall not receive a confidential designation.

Response to Comments 12 and 13

In response to these comments, Energy Safety has amended proposed section 29200(c) to provide 14 days, rather than 7 days, for the information submitter to respond. The amended regulation was published for public review and comment from July 1 through July 15, 2022.

Comments 14 and 15 both suggest retaining a process for internally reviewing an Energy Safety decision regarding the confidentiality of documents submitted by utilities (in proposed section 29200(c).) For that reason, Energy Safety aggregates and responds to those comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 14 was submitted by Peter Van Meighem on behalf of Southern California Edison during the hearing on June 6, 2022 and relates to proposed section 29200(c).

Comment 14:

Edison request that Energy Safety retain the confidentiality determination review process currently an emergency regulation section 29200(c).

Again, that this would involve some renumbering and the permanent regulation, but under the emergency regulation 29200(c), Energy Safety provides for process and timeframe for Energy Safety determination of applications for confidential designation as well as review of such decisions. Proposed regulation 29200. The permanent version contains no such provision. This provision of review and response should be retained, so that there is due process where Energy Safety does not, at least initially, agree with the application for confidentiality.

Comment 15 was submitted by the Joint IOUs and relates to proposed section 29200(c).

Comment 15:

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

Emergency Regulation Section 29200(c):

Deputy Director's Determination.

(1) The Deputy Director shall determine whether to grant an application for confidential designation. An application shall be granted if the applicant makes a reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the record confidential. The Deputy Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application.

(2) If an application is denied by the Deputy Director, the applicant shall have fourteen days to request a review of that decision by the Director. The Director may request additional information from the applicant. The Director shall issue a written decision within 30 days from receipt of the request for review or from submission of the requested information, whichever is later.

(3) After an application has been denied, the records sought to be designated confidential shall not be made public for a period of fourteen days, after which the records will become public.

Response to Comments 14 and 15

Energy Safety does not intend to amend the proposed regulation to add additional levels of internal Energy Safety review of confidential-handling applications. The proposed regulation does not implicate any due process rights because Energy Safety's decision regarding confidentiality does not affect any protected interests or rights vested by statute.

The confidentiality decision is deciding whether to publish a document or information on the website. Energy Safety is not using the process to conclusively decide whether the information is subject to disclosure under the California Public Records Act or discovery instrument. That process does not affect any protected interests or rights vested by statute.

The second review is not needed because section 29200(c) provides that if the submitter failed to make a reasonable claim, then the Office will provide a "statement of its defects and a request for additional information," giving the submitter another chance to fix any defect and to submit additional information. Removing the second level of review serves the interests of economy and streamlines the process.

Comments 16 and 17 both object to proposed 29200(d). For that reason, Energy Safety aggregates and responds to those comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 16 was submitted by Peter Van Meighem on behalf of Southern California Edison during the hearing on June 6, 2022 and relates to proposed section 29200(d).

Comment 16:

Edison proposes that this provision is not necessary, this is a new provision not contained in the emergency regulation. Indicating that a confidential designation by the Office is not a guarantee that the office will withhold the submission where to subject to lawful subpoena, public records act request, or where disclosures otherwise are required by law rather.

This, in Edison's view, introduces unnecessary ambiguity, given that some material designated by Energy Safety is confidential may be appropriately maintained. Even when requested via subpoena or public records act requests. In fact, many of the occasions where Energy Safety may be called upon to disclose is probably going to be through a PRA request.

Further, the provision that says disclosure otherwise required by law is superfluous therefore Edison does not believe this provision is necessary and recommends striking section 29200(d).

Comment 17 was submitted by the Joint IOUs and relates to proposed section 9200(d).

Comment 17:

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

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

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

Section 29200(d) states Energy Safety "will make an attempt" to notify the submitter before disclosure but if Section 29200(d) is retained, this should be

clarified to require a 14-day period of response consistent with Joint IOU's proposal regarding Section 29200(c).

Response to Comments 16 and 17

In response to this comments, Energy Safety has amended the originally proposed subsection 29200(d) to clarify Energy's Safety's intent regarding the purpose of the confidentiality designation and regarding compliance with laws that could require disclosure of information notwithstanding Energy Safety's original determination.

The amended proposed regulation now explains, in subsection (d) that when Energy Safety agrees that a document is confidential (provides a "confidential designation") then Energy Safety will not publish the document on Energy Safety's website. With subsection (e), Energy Safety makes clear that even if Energy Safety initially agrees not to publish information during the regular course of its document handling, Energy Safety will comply with a law that later requires Energy Safety to produce the information.

Comments 18 and 19 both recommend that Energy Safety adopt a "closed room" view-only procedure with respect to confidential information maintained by electrical corporations. For that reason, Energy Safety aggregates and responds to those comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 18 was submitted by Peter Van Meighem on behalf of Southern California Edison during the hearing on June 6, 2022 and relates to proposed section 29200(d).

Comment 18:

In initial comments to the emergency regulation, Edison proposed that Energy Safety adopt a closed-room approach to temporarily share security sensitive confidential information.

SC&E still believes Energy Safety should adopt regulations permitting us to have a closed room procedure, whether virtual or physical, to view utilities most security sensitive data without that data, leaving the utility's custody.

Finally, Edison recommends that the simplest means of addressing the above issues and avoiding any additional confusion would be for Energy Safety to simply adopt the CPUC's existing confidentiality designation requirements which were developed over a series of Rule makings reflect to consider amount of stakeholder input in public process.

And a process that is familiar to WMP stakeholders. Edison submits that it may be needlessly burdensome to have to similar but distinct designation processes for confidential material submitted to the PUC and energy safety.

Comment 19 was submitted by the Joint IOUs and relates to proposed section 29200(d).

Comment 19:

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

As Joint Utilities have previously proposed (reflected in the Combined Comments on Past Regulation Adoptions as part of this record), Energy Safety should adopt regulations permitting use of closed room procedures – whether virtual or physical – to view a utility’s most “Security Sensitive” data without that data leaving the utility’s custody. For example, should Energy Safety request viewing hard-copy versions of Security Sensitive information, the utility and Energy Safety would meet at a mutually convenient location. The utility would provide the data to Energy Safety for review during a closed-room session. Upon completing that review, the information is returned to the utility.

Alternatively, should Energy Safety wish to view this information electronically, then the utility could make this information available to Energy Safety for remote viewing. Although accessible from Energy Safety computers, the information would not leave the utility’s systems and repositories. The same process would apply for other regulated entities providing “Security Sensitive Information” to Energy Safety. Such information may include, but is not limited to, information (i) relating to critical infrastructure, (ii) physical security, and (iii) cybersecurity. In order to proactively mitigate against this regulatory targeting, electric utility regulators have already started authorizing use of temporary, closed door, regulatory review of a utility’s most sensitive data, similar to the approach that has been previously authorized by the North American Electric Reliability Corporation (NERC) and the CPUC’s Safety and Enforcement Division (SED).

Response to Comments 18 and 19

Energy Safety does not intend to amend the proposed regulation to adopt the CPUC process or matrix because the process established by the proposed regulation meets Energy Safety’s need to decide whether to publish the subject information on Energy Safety’s website. Further, the comment does not cite a particular rule or rules or explain why those rules would work better.

Energy Safety does not intend to amend the proposed regulation to replace the proposed confidential submission process with a “closed room” process. Simply viewing data would not allow Energy Safety to analyze the data or discharge any of its oversight responsibilities.

Comment 20 was submitted by Laura Fulton on behalf of San Diego Gas & Electric during the hearing on June 6, 2022, and relates to proposed section 29200(b).

Comment 20:

We are particularly concerned with the addition of 29200(b) which applies additional requirements for commercially sensitive for trade secret information. And SDG&E requests clarity as to why, for instance, the utilities would be asked to assign value to information when there might not be a monetary value to assign.

And oftentimes when SDG&E or other utilities are requesting protected protection of information that indicates trade secrets, we’re concerned that there are potential antitrust or anti-competitive implications of sharing that information, or in the instance of some utility contractors that information may not belong to SDG&E at all.

So inclusion of these additional provisions which are not in the emergency regulation may discourage third parties, such as research institutions and consortiums for working with utilities, and that discourages exactly the kind of innovation and collaboration that is needed to address the risk of climate change and wildfire in this state.

Response to Comment 20

In response to this comment and to comments 7 and 8, Energy Safety has amended proposed section 29200(b)(2) through (4), to strike the requirement in the original subdivision (b)(3) that the submitter of confidential information indicate the value of the information. Further, Energy Safety made the change to reduce the burden on submitters of confidential information and to remove the source of uncertainty in the original text. The amended text was published for public review and comment from July 1 through July 15, 2022.

Comment 21 was submitted by the Mussey Grade Road Alliance and relates to the application for confidential handling in proposed section 29200.

Comment 21:

The Mussey Grade Road Alliances' (MGRA or Alliance) supports the efforts of the Office of Energy Structure safety to build a regulatory framework that will support its mission to prevent utility-related wildfires in California. In general, MGRA supports the draft rules incorporated into the Proposed Action. However, there is a significant and potentially serious omission from the rules regarding the submission of confidential information which needs to be brought to Energy Safety's attention. Specifically, there is no mechanism for public input in the confidentiality review process and no mechanism by which members of the public can challenge a utility claim of confidentiality. This may potentially make Energy Safety a litigant in Public Records Act actions, transferring power to determine reasonableness from Energy Safety to the courts.

The text of Article 3 is comprehensive and it is not necessary to quote it at length here. MGRA has no issues with the existing text, which provides a clear mechanism for submission of and internal review of confidential information.

1.3 Concerns with Confidentiality Claims

The Proposed Resolution for SCE was issued on June 2, 2022 and contains no mention of MGRA's confidentiality recommendations. Neither does the present Proposed Action allow any mechanism for public input or review of utility confidentiality claims. This is a grievous omission especially in light of the potential effects of Article 3 of the new regulations on procedural transparency.

As stated in MGRA's 2022 WMP Comments:

"MGRA strongly prefers to work with public data to ensure that all of our work products can be public, are compliant with the law, and respect legitimate utility property rights and security concerns. To this end MGRA has worked with all utilities to obtain data that has been appropriately filtered to address confidentiality concerns, and the results have been largely satisfactory from our standpoint."

Response to Comment 21

Energy Safety does not intend to amend the proposed regulation to provide for public participation in decisions on applications for the confidential handling of information. The confidentiality decision is deciding whether to publish a document or information on the website. Energy Safety is not using the process to conclusively decide whether the information is subject to disclosure under the California Public Records Act or discovery instrument. That process does not affect any protected interests or rights vested by statute.

Allowing persons other than the submitter of the information to review the information would have the effect of disclosing the information. A process requiring disclosure as a matter of course would ensure that utility companies would refuse to provide confidential information to Energy Safety, with result that Energy Safety would not have access to information it needs to perform its work.

Comment 22 was submitted by the Mussey Grade Road Alliance and relates to the application for confidential handling in proposed section 29200.

Comment 22:

In addition to objecting to SCE’s specific confidentiality claim, MGRA proposed several recommendations to Energy Safety:

- “Energy Safety should find that wildfire risk geographic data cannot be considered critical infrastructure under federal law and should not be classified as confidential based on California Government Code 6255.”

The Proposed Resolution for SCE was issued on June 2, 2022 and contains no mention of MGRA’s confidentiality recommendations. Neither does the present Proposed Action allow any mechanism for public input or review of utility confidentiality claims. This is a grievous omission especially in light of the potential effects of Article 3 of the new regulations on procedural transparency.

Response to Comment 22

The legal analysis request is outside of the scope of the present regulation which is procedural in nature. Energy Safety does not intend to perform a legal analysis based on the question presented in the comment and then memorialize the result of that analysis in an amended regulation.

Comment 23 was submitted by the Mussey Grade Road Alliance and relates to the application for confidential handling in proposed section 29200.

Comment 23:

In addition to objecting to SCE’s specific confidentiality claim, MGRA proposed several recommendations to Energy Safety:

- “Energy Safety should require that in addition to posting all data requests that utilities also be required to post all confidentiality declarations as part of the WMP review process.”

The Proposed Resolution for SCE was issued on June 2, 2022 and contains no mention of MGRA’s confidentiality recommendations. Neither does the present Proposed Action allow any mechanism for public input or review of utility confidentiality claims. This is a grievous omission especially in light of the potential effects of Article 3 of the new regulations on procedural transparency.

Response to Comment 23

Energy Safety does not intend to amend the proposed regulation to provide for publication of data requests and of declarations provided by submitters of confidential information. Regarding declarations supporting applications for confidential handling, the declarations provide information that Energy Safety needs to decide whether confidential handling is appropriate. That decision rests on a legal analysis, which is not served by public input. Regarding Energy Safety’s data requests to utility companies, those declarations are beyond the scope of the requirements imposed by these proposed regulations.

Comment 24 was submitted by the Mussey Grade Road Alliance and relates to the application for confidential handling in proposed section 29200.

Comment 24:

In addition to objecting to SCE’s specific confidentiality claim, MGRA proposed several recommendations to Energy Safety:

- “Energy Safety should accelerate development of a public portal for GIS data, so that stakeholders do not have to request this data from utilities, so that utilities do not have to take extra effort to prepare special versions for stakeholders, and so that appropriate access restrictions can be automatically enforced.”

The Proposed Resolution for SCE was issued on June 2, 2022 and contains no mention of MGRA's confidentiality recommendations. Neither does the present Proposed Action allow any mechanism for public input or review of utility confidentiality claims. This is a grievous omission especially in light of the potential effects of Article 3 of the new regulations on procedural transparency.

Response to Comment 24

Energy Safety acknowledges and appreciates this comment. Energy Safety does not address the substance of the comment 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.

Comment 25 was submitted by the Mussey Grade Road Alliance and recommends that Energy Safety provide several procedures for public participation in Energy Safety's decisions on applications for confidential handling of information.

Comment 25:

In addition to objecting to SCE's specific confidentiality claim, MGRA proposed several recommendations to Energy Safety:

- "Energy Safety should create and publish an administrative process by which stakeholders can challenge and litigate confidentiality claims."

2. PUBLIC INPUT AND PROCESS FOR CONFIDENTIALITY CLAIMS

Public safety is best served by a fully transparent and open process. This interest is recognized in Government Code Section 6250, the California Public Records Act. To the extent that Energy Safety's processes are open to public input, this public input needs to be informed by free and open access to appropriate information. In order to enforce this open access, members of the public need to have a mechanism to ensure due process. While these rights are ensured through the California legal system, it would be far more efficient and less burdensome on both the public and OEIS to provide an internal mechanism that also grants rights to those who may oppose the designation of specific information as confidential, and who may have additional information to that provide Energy Safety regarding an applicant's request for confidentiality.

2.1. Members of the Public or Stakeholders Should be Able to Challenge or Provide Additional Information Regarding a Request for Confidentiality

In the process proposed in Article 3, the applicant requesting a confidentiality designation (Applicant) is required to meet a number of requirements and provide specific information to justify their claim of confidentiality. This information will be evaluated by OEIS, which may at its discretion request additional information. While OEIS is responsible to ensure that the application is complete and correct, it is possible that information that the Applicant provides may not fully or accurately represent the Applicant's claim as perceived by other Stakeholders or members of the public. Stakeholders or other members of the public may:

- have a different interpretation of how the Applicant's information may be interpreted under the California Public Records Act,
- have additional factual information that might change OEIS's determination,
- have a different interpretation of how the Applicant's information relates to conclusions regarding critical infrastructure or competitive advantage, or
- have knowledge that the statements made by the Applicant are false.

Article 3 should have a mechanism by which OEIS can accept additional information from stakeholders and the public, evaluate such information, and if necessary use it to affect its determination of confidentiality.

2.2. Public Input Regarding a Confidentiality Designation Should not be Limited by Time

It should be possible for a stakeholder or member of the public to provide input to OEIS regarding a confidentiality designation after the Deputy Director makes their determination. While a comment period prior to the determination may be useful, it is possible that a stakeholder will not know that a particular piece of information has been designated as confidential until a discovery request is refused long after the determination of confidentiality.

For example, if a stakeholder is reviewing a Wildfire Mitigation Plan and serves a discovery request on a utility, the stakeholder may find out only after the utility responds that the requested information had been previously designated as confidential by OEIS. If the stakeholder examines the grounds for the confidentiality designation and finds that they are flawed, the stakeholder will

need immediate redress at that point in time in order to timely conduct their WMP review.

2.3. Applicants Should be Allowed to Reply to Requests for Review

In order to ensure due process rights, OEIS should provide any request for review or additional information received by third parties to the Applicant and then allow Applicants to reply. The Deputy Director should then review both the new information and the Applicant reply and then deny the request for review, remove or deny the confidentiality designation, or request additional information from the Applicant.

2.4. There Should Be a Process for Expediting a Challenge or Review of a Confidentiality

Designation Many OEIS proceedings have strict limitations on comment periods. For this reason, OEIS (and the Wildfire Safety Division previously) have correctly imposed expedited three day response times for data requests. A stakeholder requiring an expedited response should state the grounds for their request as a part of their request for review. OEIS will respond to the stakeholder within three days accepting or denying their request to expedite. If the request to expedite is accepted, OEIS will set a deadline for Applicant's reply and set a date for the Deputy Director's determination.

In the event that an expedited review results in a revocation of the Applicant's confidentiality claim, the fourteen day period during which confidentiality status remains unchanged under 3(c)(3) should be reduced to a time to be designated by the Deputy Director.

2.5. An Internal Process for Review Will Reduce the Burden on Energy Safety and the Public

Should information be designated as confidential by OEIS, the Applicant will be under no obligation to provide that information to stakeholders or the public in response to discovery requests during OEIS proceedings such as Wildfire Mitigation Plan reviews.

In lieu of an internal confidentiality review process that is controlled and managed by OEIS, the only recourse that a member of the public would have would be to file a Public Records Act request to OEIS. Since OEIS has already designated the information in dispute as confidential, it would therefore be obliged to deny the Public Records Act request. If the stakeholder has additional information that challenges the basis of the confidentiality

determination, they will have to file a lawsuit challenging the determination under California Government Code Sections 6258- 6260. OEIS would be obliged to litigate the suit in order to defend its determination.

Requiring the public to seek legal redress as its first and only recourse puts a substantial burden on stakeholders wanting to contribute to proceedings before the Office of Energy Infrastructure Safety. It would also consume valuable OEIS legal resources and taxpayer money, effectively making the OEIS the legal counsel for the utilities.

Beyond the legal considerations, the structure of the proposed Article 3 defeats the goal of transparency that Energy Safety has pursued since its founding. It sets up a potentially corrupting relationship between OEIS and the utilities with no public oversight, and creates an “us” versus “them” dynamic, with “us” being OEIS and IOUs and “them” being the public. This is an unnecessary dynamic that would create distrust of the process and provide no discernable benefit to the people of California. In the interest of creating an open and public organization, Energy Safety must create a mechanism for public appeal of confidentiality designations.

3. PROPOSED ADDITION TO ARTICLE 3

The following is example language that could be added as Article 3, Section (f) to remedy the aforementioned shortcomings in the Proposed Action.

(f) Public Appeal of Confidentiality Designation

(1) If a member of the public (appealing party) wishes to appeal a determination of confidentiality, they shall file such appeal under the docket under which the information designated confidential was submitted. A public appeal of a confidentiality designation shall:

(A) identify the requesting the party requesting review and their interest in the requested information;

(B) provide a factual basis for the appeal that addresses all bases under which confidentiality was granted by the Deputy Director;

(C) cite and discuss provisions of the California Public Records Act or other law that would disallow the Office to keep the record confidential;

(D) state whether an expedited review is required and if so provide justification and requested timeframe for resolution.

(2) Upon receipt of an appeal request, the Office shall provide this request within one business day to the party who had requested a confidential designation (originating party)

(3) The originating party may reply with additional information supporting their confidentiality request within five business days.

(4) The Deputy Director shall make a determination regarding the appeal after review of the appeal and originating party reply within thirty days of the receipt of the reply.

(5) If the appealing party requests an expedited review, the Office shall respond approving or denying expedited review within three business days. If the expedited review is approved, the Office will provide dates for the originating party reply and determination in its response.

(6) In the event that the Deputy Director revokes the determination of confidentiality in response to the appeal,

(A) The originating party may request a review by the Director as per 3(c)(2)

(B) In the event an expedited review has been approved, the Deputy Director's determination will set dates for review request deadlines and final determination.

Response to Comment 25:

Energy Safety does not intend to amend the proposed regulation to implement the process for stakeholder or public involvement with, and challenges to, decisions on applications for confidential handling.

This comment proposes a number of procedural requirements for giving members of the public the opportunity to determine whether Energy Safety will publish information that utility operators (1) must provide to Energy Safety, and (2) that the utility operators assert is exempt from disclosure. Those proposed requirements include:

Granting third parties a right to challenge and litigate claims of confidentiality.

Granting third parties due process rights.

Requiring Energy Safety to consider information provided by third parties.

Granting third parties the right to challenge Energy Safety decisions to maintain information in confidence, including the right to expedited handling of those challenges.

Energy Safety does not intend to amend the proposed regulation to provide for public participation in decisions on applications for the confidential handling of information..

The confidentiality decision is deciding whether to publish a document or information on the website. Energy Safety is not using the process to conclusively decide whether the information is subject to disclosure under the California Public Records Act or discovery instrument. That process does not affect any protected interests or rights vested by statute.

Allowing persons other than the submitter of the information to review the information would have the effect of disclosing the information. A process requiring disclosure as a matter of course would ensure that utility companies would refuse to provide confidential information to Energy Safety, with the result that Energy Safety would not have access to information it needs to perform its work.

The comment also confuses Energy Safety's decision under this proposed regulation with a decision to withhold information when requested pursuant to the California Public Records Act. In considering a request for confidential status, Energy Safety is deciding whether to immediately publish the information on Energy Safety's website. Energy Safety has clarified this intent in amending proposed section 29200(d), which states,

(d) A "confidential designation" means that the applicant has made a facially reasonable claim that the Office may withhold the information from public disclosure. Consequently, the information will not be published. By granting a confidential designation, the Office is not making a final determination that the information will be withheld from disclosure pursuant to the California Public Records Act or other provisions of law.

Energy Safety published the amendments for public review and comment from July 1 through July 15, 2022.

The proposed regulation does not implicate any due process rights because Energy Safety's decision regarding confidential does not affect any protected interests or rights vested by statute.

Comment 26 was submitted by the Mussey Grade Road Alliance.

Comment 26:

1.4. Another Example of Overbroad Confidentiality Claims

On May 9, 2022, OEIS released version 2.2 of its GIS data standard guidelines. Among the comments received by OEIS, were those of Southern California Edison (SCE or Edison). One of the changes that Edison requests is: “CONFIDENTIALITY SHOULD BE DETERMINED AT THE FEATURE CLASS LEVEL”

The proposed revisions would allow utilities to indicate if an entire feature class or table is considered confidential but still require each specific field in the geodatabase to be marked “Yes” or “No” for confidential treatment. SCE strongly supports basing public dissemination of data at the feature class level as opposed to the individual, specific field because there are millions of records making it difficult to administer and higher risk for improper release of data that should remain confidential. As SCE has previously explained, a feature class should not be made public unless all data fields in in the feature class are non-confidential.”

Edison’s claim is dangerous and spurious. By adding just one field that is confidential to a feature class, say “distribution system”, Edison would effectively render that class inaccessible to the public. Effectively this process would classify swathes of non-confidential as confidential just because they happen to be in the same data structure as confidential data. The information added could be of only internal value, for example the name of the person last updating each record, but yet this addition would be enough to classify the entire data class as inaccessible to the public. The appeal to “millions of records” is also spurious. Modern databases can filter information from millions of records at time – that is what they are built for. No reply comments were allowed in response to the GIS standard, so Edison’s request to OEIS remains unchallenged in the record.

Should OEIS accept SCE’s request, it would allow Edison to permanently block access to vast swathes of its GIS information, and under Article 3 of this proposed Rules, there would be no public recourse to challenge this determination aside from filing a lawsuit against the Office of Energy Infrastructure Safety.

Edison in particular has characteristically stood for a more restrictive approach to data sharing and more aggressive approach to confidentiality claims. It is within its rights to make such claims, and it is the responsibility of Energy Safety

to critically evaluate those claims, but the one missing and critical element in this process is public input.

Response to Comment 26:

Energy Safety understands this comment to be offered in support of a recommendation that Energy Safety allow public input into decisions to treat certain information as confidential and not publish that information on Energy Safety's website.

Energy Safety does not intend to amend the proposed regulation to implement the process for stakeholder or public involvement with, and challenges to, decisions on applications for confidential handling. Providing applications for confidential handling, and the subject information, to members of the public would necessarily disclose the information which the submitter claims is exempt from disclosure. In that event, the information would be disseminated regardless of Energy Safety's decision not to publish it. In those circumstances, utility companies would likely refuse to provide Energy Safety with energy needed to discharge its statutory responsibilities.

Comments 27 and 28 both recommend that Energy Safety adopt different procedures for submission of confidential information depending upon the type of entity or person submitting the information. For that reason, Energy Safety aggregates and responds to those comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 27 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates to proposed section 29200.

Comment 27:

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 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. 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” and government entities, 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 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. 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. 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. 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, this process does not cover filings in public dockets.

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.

Comment 28 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates to proposed section 29200.

Comment 28

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 nongovernment entities that seek to file information provided confidentially by a utility.

Response to Comments 27 and 28

Energy Safety does not intend to amend the proposed regulation to change the requirements that apply to some persons or entities who wish to submit confidential information to Energy Safety. When Energy Safety receives a request to treat information confidentially, Energy Safety makes a preliminary legal analysis of the reasons given for the request. That need arises regardless of the source of the information or the identity of the submitter.

Further, the proposed regulation applies to information submitted through the e-filing system. The proposed regulation does not preclude Energy Safety from entering into an information sharing agreement with other government entities pursuant to the California Public Records Act.

Comments 29 through 33 do 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. For that reason, Energy Safety responds to these comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 29 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates to proposed sections 29100 and 29101.

Comment 29:

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

Comment 30 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 30:

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

Comment 31 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 31:

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.

Comment 32 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 32:

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

Comment 33 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 33:

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

Response to Comments 29 through 33

Energy Safety acknowledges and appreciates these comments provided by Cal Advocates. Because the comments do 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 comments.

Comment 34 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates to proposed section 29200.

Comment 34

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.

Response to Comment 34

Energy Safety does not intend to amend the proposed regulation to implement the process for stakeholder or public involvement with, and challenges to, decisions on applications for confidential handling. Providing applications for confidential handling, and the subject information, to members of the public would necessarily disclose the information which the submitter claims is exempt from disclosure. In that event, the information would be disseminated regardless of Energy Safety’s decision not to publish it. In those circumstances, utility companies would likely refuse to provide Energy Safety with information needed to discharge its statutory responsibilities.

Regarding due process, the proposed regulation does not implicate any due process rights because Energy Safety’s decision regarding confidential does not affect any protected interests or rights vested by statute.

Energy Safety has clarified the intended purpose of a “confidential designation” in the amending proposed section 29200(d), which states,

(d) A “confidential designation” means that the applicant has made a facially reasonable claim that the Office may withhold the information from public disclosure. Consequently, the information will not be published. By granting a confidential designation, the Office is not making a final determination that the information will be withheld from disclosure pursuant to the California Public Records Act or other provisions of law.

Energy Safety published the amendments for public review and comment from July 1 through July 15, 2022.

Comments 35 through 39 do 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. For that reason, Energy Safety responds to these comments as a group pursuant to Government Code section 11346.9(a)(3).

Comment 35 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 35:

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. 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. 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.

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.

Comment 36 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 36:

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. This will promote stakeholder engagement in Energy Safety's proceedings by resolving issues that do not fall within the scope of existing filings.

Comment 37 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 37:

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. The WMP discovery 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.

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.

Comment 38 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 38:

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 communication. 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.

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. By not being subject to scrutiny, ex parte information generally cannot be rebutted or corrected. As a result, an ex parte contact may misinform the decision-making process. 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.” 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 parte discussions between stakeholders and Energy Safety on policy matters, in order to promote transparency and stakeholder engagement in Energy Safety's proceedings.

Comment 39 was submitted by the Public Advocates Office of the California Public Utilities Commission.

Comment 39:

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. 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).

Response to Comments 35 through 39

Energy Safety acknowledges and appreciates these comments provided by Cal Advocates. Because the comments do 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 in proposing the action, Energy Safety does not address here the substance of the comments.

Summary and Response to Comments Following 15-Day Publication

Energy Safety accepted public comments from July 1, 2022 through July 15, 2022.

Comment 40 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates to proposed section 29200.

Comment 40

A. Confidentiality (Section 29200)

Cal Advocates continues to have concerns with the regulations in Section 29000 and the process for stakeholders who are not the proponent of designating information as confidential. In particular, the proposed regulations lack a means to challenge inappropriate or overly broad confidentiality designations. Cal Advocates hereby incorporates by reference its June 13, 2022 comments on these issues.

Response to Comment 40

Energy Safety does not intend to amend the proposed regulation to implement the suggestions made by this comment. This comment does not make objections or recommendations that are specifically directed at the changes to the text published during the 15-day review period. Instead, this comment restates the substance of the comment the Public Advocates Office offered with respect to the original text. That comment is numbered 34, above.

Amended section 29200(d) makes clear that in deciding whether to grant the “confidentiality designation,” Energy Safety is deciding whether to publish the information on its website. Energy Safety does not agree that a process by which third parties can challenge that decision is necessary.

Comment 41 was submitted by the Public Advocates Office of the California Public Utilities Commission and relates to proposed section 29200.

Comment 41

B. Accessibility (Sections 29100, 29101)

Section 29100(c) of the revised process regulations states:

Each person who submits information through the [Energy Safety] Office's e-filing system must ensure that the information complies with the accessibility requirements set forth in Government Code section 7405. The office will not accept any information submitted through the e-filing system that does not comply with these requirements.

This regulation requires any person who submits information to Energy Safety's e-filing system to comply with accessibility requirements before Energy Safety will accept the submission. However, Energy Safety's regulation is at odds with the statute it references as setting forth the accessibility requirements. The latter places the obligation on the state agency (in this case, Energy Safety) to make documents it receives and publishes accessible – not on members of the public who wish to provide input. This provision must be removed or revised.

If Energy Safety nonetheless seeks to transfer its accessibility responsibilities onto stakeholders, it should clarify the requirements. Currently, the regulations are unclear as to which accessibility requirements Energy Safety is requiring stakeholders to meet. The statutes setting forth the accessibility requirements contain voluminous and complex requirements for accessibility. It is unclear whether Energy Safety is requiring stakeholders to comply with all these requirements or only some. Requiring stakeholders and members of the public to understand and comply with these complex, rigorous, and voluminous accessibility standards is both contrary to law and unreasonably burdensome.

Section 29100(b) provides that stakeholders can submit filings in hard copy by U.S. mail, in lieu of using Energy Safety's e-filing system and, therefore, bypass accessibility requirements. However, this alternative approach is still unduly burdensome and untenable for stakeholders. Because filing hard-copy documents by U.S. Mail is more burdensome and time-consuming than submitting documents electronically, it will impede the participation of stakeholders.

Energy Safety should aim to make it as easy as possible for stakeholders and members of the public to provide facts and analysis that support its policy decision-making. At a minimum, Energy Safety must explain filers' obligations. Furthermore, once a document has been filed on Energy Safety's e-filing

system, Energy Safety – not the stakeholders – should address any residual needs to fulfill Energy Safety’s statutory accessibility obligations.

Cal Advocates recommends that if Energy Safety continues to require that stakeholders comply with accessibility requirements, it should clarify and if necessary, minimize the specific requirements stakeholders must meet for their electronic documents to be accepted. This will serve to encourage participation by members of the public who do not have the resources to comply with rigorous accessibility requirements.

Energy Safety’s revised section 29101 regulations already set forth the requirements for documents to be accepted onto Energy Safety’s docket system (including formatting and word searchability). Cal Advocates recommends that Energy Safety clarify whether or not meeting the requirements in revised section 29101 and the E-Filing System User’s Guide is sufficient for submissions onto Energy Safety’s e-filing system to be accepted by Energy Safety.

Response to Comment 41

Energy Safety does not intend to amend the proposed regulation to implement the suggestions made by this comment.

This comment does not make objections or recommendations that are specifically directed at the changes to the text published during the 15-day review period. Instead, this comment restates the substance of the comment the Public Advocates Office offered with respect to the original text. That comment is numbered 4, above.

This comment recommends that Energy Safety not adopt the accessibility requirement because Government Code section 7405 requires that Energy Safety perform the work needed to make documents accessible. However, Energy Safety does not agree that the statute imposes that requirement.

Further, this comment recommends that Energy Safety receive documents which might partially comply with Government Code section 7405 and then perform the work needed to make the documents accessible. However, Energy Safety does not have the resources needed to make accessible all the documents it receives. Therefore, a decision to receive documents that are not accessible is also a decision not to post the documents for public review.

Energy Safety does not intend amend the proposed regulation to further clarify the accessibility that Government Code section 7405 requires because the nature of those requirements is sufficiently clear. Section 7405 became effective in 2017 and refers to the applicable standards.

Energy Safety does not agree that this proposed accessibility requirement is unreasonably burdensome. Nor that providing submitters the option of using the U.S. mail as an alternative is insufficient. The comment asserts that using the U.S. mail is “unduly burdensome” and “untenable” because submitting documents electronically is easier. The fact that electronic submission might be more convenient doesn’t itself make U.S. mail “unduly burdensome.” Further, the comment does not address the underlying fact that if Energy Safety agrees to receive electronic documents that are not accessible, then Energy Safety is also deciding not to make those documents available for viewing by the public.

Energy Safety does not intend to amend the proposed regulation to indicate whether the document accessibility requirements are fulfilled by complying with both the proposed section 29101(b)-(e) requirements and the e-filing system user’s guide requirements. The accessibility requirements are separate from, and different from, the proposed section 29101 (and incorporated user’s guide) requirements. The text of the respective provision makes sufficiently clear the nature and scope of each requirement.

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

1

00:00:31.980 --> 00:00:41.010

Devin Blankenship: Good morning, my name is Kevin blankenship and I am a public information officer with the opposite energy infrastructure safety, otherwise known as empty safety.

2

00:00:42.060 --> 00:00:53.100

Devin Blankenship: Is 10am on Monday June 6 2022 and we are in conference room see at the California natural resources agency headquarters at 715 P street sacramento California.

3

00:00:54.570 --> 00:01:14.520

Devin Blankenship: We are here today to see public comments on a proposed rulemaking action by energy safety regulation, we are concerned with today is proposed sections to 910-291-1292 00 Article two of Chapter one position 17 of time 14 of the calculator rather code up regulations.

4

00:01:16.260 --> 00:01:21.270

Devin Blankenship: Under the room, it can provisions of the California administrative procedure act also referred to as the APA.

5

00:01:21.570 --> 00:01:30.570

Devin Blankenship: This is the time in place set for the presentation and statements arguments and contentions or leader in writing for or against this proposed rulemaking.

6

00:01:31.500 --> 00:01:36.000

Devin Blankenship: The purpose of this hearing is only to obtain public comment on energy safeties proposal.

7

00:01:36.540 --> 00:01:47.010

Devin Blankenship: And if you save, you will not respond to comments at this hearing normal energy safety engagement a discussion about regulations at the city, other than that to seek clarification of comments presented if necessary.

8

00:01:48.060 --> 00:01:58.560

Devin Blankenship: Energy savings will take all oral and written comments received at this here and under submission to allow energy safety, thirdly thoughtfully evaluate to determine how energy safety, which has to respond.

9

00:02:07.020 --> 00:02:08.640

Justin Ander: Very you appear to be on mute.

10

00:02:18.780 --> 00:02:19.620

Justin Ander: Yes, thank you.

11

00:02:22.920 --> 00:02:26.520

Devin Blankenship: My name is Devon blankenship public information officer energy sector.

12

00:02:29.640 --> 00:02:44.790

Devin Blankenship: Also energy infrastructure of safety, otherwise known as energy safe it's 1003 on Monday June 6 2022 and we are in conference room see at the California natural resources agency headquarters at 715 P street sacramento California.

13

00:02:46.110 --> 00:03:06.510

Devin Blankenship: We are here today to receive public comments on a proposal proposed rulemaking action by energy sick, the regulation we are concerned with today is proposed sections to

910029101 and 29200 article to Chapter one division 70 of Title 14 of the California regulations.

14

00:03:08.430 --> 00:03:22.530

Devin Blankenship: Under the rulemaking provisions of the California administrative procedure act also referred to as the APA, this is the time in place set for presentations statements arguments and contentions Orly or in writing for or against this proposed rulemaking.

15

00:03:23.730 --> 00:03:27.720

Devin Blankenship: The purpose of this area is only to obtain public comment on energy safeties proposal.

16

00:03:28.440 --> 00:03:39.210

Devin Blankenship: And if you say will not respond to comments at this hearing normal energy safety engage in the discussion about regulations at the city, other than other than to seek clarification of comments presented if necessary.

17

00:03:41.820 --> 00:03:50.760

Devin Blankenship: Energy safety will take all the world and written comments received at this area under submission to allow energy safety, thirdly and thoughtfully evaluate to determine how energy safety wishes to respond.

18

00:03:51.390 --> 00:04:00.210

Devin Blankenship: In accordance with the APA as you save you will respond to all kinds of writing in the final stages of reasons that will be made available to the public, once that is completed.

19

00:04:03.000 --> 00:04:12.480

Devin Blankenship: This sharing is being recorded and transcribed via zoom the transcript of this hearing and all exhibits in evidence presence presented during the hearing and be part of the rulemaking file.

20

00:04:13.470 --> 00:04:22.860

Devin Blankenship: If you're commenting the zoo we asked you the rain virtually raise your hand and justin was running our zoom today will call on you in order.

21

00:04:23.490 --> 00:04:32.040

Devin Blankenship: We also ask you to leave your contact information in the chat if you do speak so that we may keep you informed in the future, regarding any future changes to the regulations.

22

00:04:38.850 --> 00:04:40.770

Devin Blankenship: There is nobody presence.

23

00:04:41.820 --> 00:04:42.510

Devin Blankenship: We will.

24

00:04:45.060 --> 00:04:50.310

Devin Blankenship: Listen bro comments in the world inside the tenants sheeting call each column, to the to the podium.

25

00:04:56.580 --> 00:05:09.150

Devin Blankenship: Alright, we will now to oral comments on proposed regulation in the interest of time, if you agree with comments made by the prior speaker, please simply state that fact and add any new information that is pertinent to the issue.

26

00:05:10.980 --> 00:05:16.650

Devin Blankenship: That will begin, and we ask that you please raise your hand and state your name.

27

00:05:18.870 --> 00:05:19.680

Devin Blankenship: Just don't call me.

28

00:05:22.680 --> 00:05:24.570

Justin Ander: Peter i'm going to lie to speak now.

29

00:05:29.490 --> 00:05:34.950

Peter Van Mieghem : Good morning, my name is Peter van mega senior attorney appearing on behalf of southern California Edison company.

30

00:05:37.590 --> 00:05:47.430

Peter Van Mieghem : And, first of all I wanted to just express my appreciation for energy safety consideration of comments provided from stakeholders throughout the emergency regulation process.

31

00:05:47.880 --> 00:06:00.060

Peter Van Mieghem : The regulations have improved through that process in terms of clarity and scope from addison's perspective now having road tested the emergenece regulations we have some additional put for the regulations are made permanent.

32

00:06:01.170 --> 00:06:13.200

Peter Van Mieghem : For the format of this hearing allowing 10 minutes of oral comments per participant se so callosum will focus on high level comments and will provide more detailed input in written comments on June 13.

33

00:06:14.730 --> 00:06:27.840

Peter Van Mieghem : With that i'd like to start with section 29 100 see submission of documents for filing on this proposed permanent regulation Edison has the following comments with respect to section.

34

00:06:28.890 --> 00:06:29.430

Peter Van Mieghem : See.

35

00:06:30.600 --> 00:06:38.940

Peter Van Mieghem : Under this provision, energy safety will reject EVAL the information not meaning accessibility requirements of government code Section seven or 7.5.

36

00:06:40.170 --> 00:06:46.530

Peter Van Mieghem : SEC supports energy safety policy goal to make information accessible to people with disabilities who requested it.

37

00:06:47.070 --> 00:06:53.610

Peter Van Mieghem : However, it is unclear how widespread demand is to make all the file documents accessible to people with disabilities.

38

00:06:54.450 --> 00:07:00.450

Peter Van Mieghem : Accessibility requirements require significant effort to implement, particularly under tight response timelines.

39

00:07:01.350 --> 00:07:17.070

Peter Van Mieghem : So, to ensure the effort to make documents accessible is responsive to the level of need se and he proposes that the accessibility requirements be implemented by next business day, upon request for particular eat file documents, rather than just as a matter of course.

40

00:07:18.990 --> 00:07:21.540

Peter Van Mieghem : Moving on to section.

41

00:07:23.550 --> 00:07:33.360

Peter Van Mieghem : submission of confidential information se as an additional comments and again, these are high level more detailed written comments will follow a week from today section.

42

00:07:35.520 --> 00:07:42.990

Peter Van Mieghem : requires confidentiality applicants to provide both redacted and unproductive versions of documents claim to be exempt from disclosure.

43

00:07:43.830 --> 00:07:52.260

Peter Van Mieghem : For some documents such as geospatial databases in spreadsheet format and lengthy documents with confidential material dispersed throughout.

44

00:07:52.770 --> 00:08:09.030

Peter Van Mieghem : Is not reasonably possible to redact accomplish material in a timely manner therefore Su a request that section 29 308 three or the actual requirements be limited to the extent reasonably possible, and this is consistent with the same provision in section.

45

00:08:12.900 --> 00:08:31.680

Peter Van Mieghem : Moving on to section 29 200 be SME request that emergency to clarify the scope of required information section 29 200 be contains new requirements for confidentiality application submitted on the basis of trade secrets or loss of competitive advantage.

46

00:08:32.730 --> 00:08:38.880

Peter Van Mieghem : SME s Edison six clarity on the scope of information required for sub Part B one through four.

47

00:08:41.850 --> 00:08:49.890

Peter Van Mieghem : Moving on to section 29 200 see Edison request that energy seek to retain the 14 day response period.

48

00:08:51.150 --> 00:08:59.460

Peter Van Mieghem : under Section 29 200 see where a person request information submitted for confidentiality treatment and energy state to request additional information.

49

00:08:59.970 --> 00:09:13.710

Peter Van Mieghem : If the applicant does not provide the missing information or request an extension within seven days, the information shall not receive a confidential designation under the current emergency regulation, a party has 14 days to respond.

50

00:09:14.730 --> 00:09:23.520

Peter Van Mieghem : Se any request that 14 day response to be retained, given that the seven day period is too short to allow for possible delays and receipt of their request.

51

00:09:25.800 --> 00:09:29.760

Peter Van Mieghem : Moving on to 29 200 Another provision.

52

00:09:30.780 --> 00:09:40.590

Peter Van Mieghem : Edison request that energy to retain the confidentiality determination review process currently an emergency regulation section 29 200 see.

53

00:09:41.250 --> 00:09:48.840

Peter Van Mieghem : Again, that this would this would involve some remembering and the permanent regulation, but under the emergency regulation 29 200 see.

54

00:09:49.560 --> 00:10:01.200

Peter Van Mieghem : Any safety provides for process and timeframe for energy safety determination of applications for confidential designation as well as review of such decisions proposed regulation 29 200.

55

00:10:02.220 --> 00:10:04.830

Peter Van Mieghem : The permanent version contains no such provision.

56

00:10:06.270 --> 00:10:17.700

Peter Van Mieghem : This provision of review and response should be retained, so that there is due process where energy safety does not, at least initially, agree with the application for confidentiality.

57

00:10:21.900 --> 00:10:24.870

Peter Van Mieghem : Further moving on to section 29 200 D.

58

00:10:26.250 --> 00:10:33.240

Peter Van Mieghem : Edison proposes that this provision is not necessary, this is a new provision not contained in the emergency regulation.

59

00:10:33.630 --> 00:10:47.460

Peter Van Mieghem : indicating that a confidential designation by the Office is not a guarantee that the office will withhold

the submission were to subject to lawful subpoena public records act request or were disclosures otherwise requested by law are required by law rather.

60

00:10:48.540 --> 00:10:57.720

Peter Van Mieghem : This in edison's view introduces unnecessary ambiguity, given that some material designated by energy safety is confidential may be appropriately maintained.

61

00:10:58.050 --> 00:11:11.190

Peter Van Mieghem : Even when requested via subpoena or public records act requests, in fact, many of the occasions where energy safety may be called upon to disclose is probably going to be through a PR a request.

62

00:11:12.420 --> 00:11:24.090

Peter Van Mieghem : Further, the provision that says disclosure otherwise required by law is superfluous therefore Edison does not believe this provision is necessary and recommends striking section 29 200 D.

63

00:11:26.310 --> 00:11:39.450

Peter Van Mieghem : Further an initial comments to the emergency regulation Edison proposed that energy safety adopt a closed room approach to temporarily share security sensitive confidential information.

64

00:11:40.470 --> 00:11:53.250

Peter Van Mieghem : That isn't still believes energy safety should adopt regulations permitting us to have a closed room procedure, whether virtual or physical to view utilities most security sensitive data without that data, leaving the utilities cassie.

65

00:11:54.900 --> 00:11:57.330

Peter Van Mieghem : Finally, Edison recommends that.

66

00:11:58.080 --> 00:12:02.310

Peter Van Mieghem : The simplest means of addressing the above issues and avoiding any additional confusion.

67

00:12:02.550 --> 00:12:14.820

Peter Van Mieghem : would be for energy safety to simply adopt the cpu sees existing confidentiality designation requirements which were developed over a series of Rule makings reflect to consider amount of stakeholder input in public process.

68

00:12:15.450 --> 00:12:28.410

Peter Van Mieghem : And a process that is familiar to wp stakeholders Edison submits that it may be needlessly burdensome to have to similar but distinct designation processes for confidential material submitted to the PC and energy safety.

69

00:12:29.610 --> 00:12:34.860

Peter Van Mieghem : And with that I conclude my remarks and think energy safety for the opportunity to comment, thank you.

70

00:12:47.610 --> 00:12:48.180

Justin Ander: speak now.

71

00:12:56.520 --> 00:13:19.530

Jonathan Woldemariam - SDG&E: Thank you, my name is Jonathan or tomorrow i'm director of our family vacation with sandy with gas and electric and i'm speaking in reference to the Ada compliance 29 100 seat and we at sdg&e believe that this is an opportunity to provide some good service for our customers.

72

00:13:20.640 --> 00:13:31.740

Jonathan Woldemariam - SDG&E: vulnerable customers, we do, are we are concerned about the formatting requirements than the accessibility submissions that we have to abide by in future.

73

00:13:32.220 --> 00:13:45.000

Jonathan Woldemariam - SDG&E: We think that, rather than having big references and regulations and policies that specific requirements be made clear, with respect to these a da compliant documents.

74

00:13:45.630 --> 00:14:01.260

Jonathan Woldemariam - SDG&E: And so we would ask that there'll be more process time given and some prudent and consistent compliance be allowed for the best results that are intended, with this regulation.

75

00:14:01.950 --> 00:14:12.990

Jonathan Woldemariam - SDG&E: And so the level of requirements could also have tiny and cost potential, you know for a fact, so the additional time required for these compliance is to.

76

00:14:13.590 --> 00:14:17.520

Jonathan Woldemariam - SDG&E: be made in submissions to to meet these requirements.

77

00:14:18.330 --> 00:14:34.080

Jonathan Woldemariam - SDG&E: With may potentially provide you know more opportunities for lagging of time into two different documents in requirements are made progress, for example, sdg&e has 173 data requests that they submitted and 2022 wi fi update.

78

00:14:34.890 --> 00:14:42.900

Jonathan Woldemariam - SDG&E: And the compressed time for response for these data request has benefited many and reviewing and securing approvals for the wi fi.

79

00:14:43.440 --> 00:14:55.380

Jonathan Woldemariam - SDG&E: On a timely basis, and this excel this additional requirement could jeopardize that accelerated process if it's not made very clear and have good process for that.

80

00:14:56.340 --> 00:15:05.310

Jonathan Woldemariam - SDG&E: So with these requirements also cutting across potentially all subtitles we have a number of signals in the year.

81

00:15:06.210 --> 00:15:17.070

Jonathan Woldemariam - SDG&E: Annually, that we provide right so with a clear process and being able to address concerns from various models that we may have as utilities.

82

00:15:17.460 --> 00:15:24.810

Jonathan Woldemariam - SDG&E: We would be able to clarify those responses to to time and process we're allowed to clarify those requirements and so with.

83

00:15:25.620 --> 00:15:34.410

Jonathan Woldemariam - SDG&E: The fact that we have so many submitted and requirements that we need to make clear what which ones of those would be Ada compliance apply.

84

00:15:34.800 --> 00:15:51.360

Jonathan Woldemariam - SDG&E: And also make clear what those requirements are for those specific documents and so that our Middles could be clear and accessible to vulnerable customers and those that need those requirements, you know for for the Ada compliance.

85

00:15:52.380 --> 00:16:03.030

Jonathan Woldemariam - SDG&E: So, finally, the The thing that I would like to also ask for clarify is that to the estimates for managing safety seem to be north of the 1.5 million.

86

00:16:03.540 --> 00:16:10.710

Jonathan Woldemariam - SDG&E: And, according to the various costs this myth that were made by utilities these costs could vary.

87

00:16:11.130 --> 00:16:17.790

Jonathan Woldemariam - SDG&E: And so, clarifying the requirements and having extensive discussion in consideration could set us up better for helping.

88

00:16:18.120 --> 00:16:27.780

Jonathan Woldemariam - SDG&E: provide the best documents and being able to have those submitted in a timely manner and having the best cost efficient manner so.

89

00:16:28.200 --> 00:16:43.200

Jonathan Woldemariam - SDG&E: We would like we would welcome any kind of discussion and clarity before setting the regulations and not having set regulations prior to that and then having to comply on the back end of it and trying to meet unclear requirements.

90

00:16:44.430 --> 00:16:49.800

Jonathan Woldemariam - SDG&E: So with that i'll stop there, and thank you for the comments period.

91

00:17:03.390 --> 00:17:04.530

Justin Ander: No other hands raised.

92

00:17:25.980 --> 00:17:26.520

Justin Ander: i'm not sure.

93

00:17:28.320 --> 00:17:29.640

Justin Ander: we'll go ahead and speak.

94

00:17:33.840 --> 00:17:43.170

Jonathan Woldemariam - SDG&E: I was going to ask if you could unmute Laura full tips, you would like to speak on the Compliance for the confidentiality requirements.

95

00:17:45.900 --> 00:17:46.380

Justin Ander: Laura.

96

00:18:25.830 --> 00:18:29.820

Justin Ander: reminder if you're calling in by phone pound to to raise your hand.

97

00:18:34.770 --> 00:18:38.010

Justin Ander: Number ending in 1341 i'm going to lie to speak now.

98

00:18:43.380 --> 00:18:52.050

7608461341: Good morning, this is where it fulton on behalf of sdg&e, thank you for the reminder on from because I had some technical difficulties and had to dial and.

99

00:18:52.890 --> 00:19:02.310

7608461341: on behalf of sdg&e I did want to restate and agree with the statement from southern California Edison regarding confidentiality.

100

00:19:03.000 --> 00:19:17.160

7608461341: The requirements in 29 200 A and B, as proposed, add additional burdensome submission procedure proceeding, and in some place places conflict with the existing precedent us at the CPC.

101

00:19:17.880 --> 00:19:23.640

7608461341: And, given the long history of success with the existing confidentiality requirements under the jurisdiction.

102

00:19:24.270 --> 00:19:39.510

7608461341: As you do, and he believes that parody between the two agencies on this issue, especially given the closeness and similarity of the parties to most of those proceedings will eliminate confusion provide more consistency and encourage transparency.

103

00:19:40.920 --> 00:19:48.990

7608461341: We are particularly concerned with the addition of 29 200 be which applies additional requirements for commercially sensitive for trade secret information.

104

00:19:50.040 --> 00:19:59.010

7608461341: And sdg&e request clarity as to why, for instance, the utilities would be asked to assign value to information when there might not be a monetary value to assign.

105

00:19:59.790 --> 00:20:07.830

7608461341: And oftentimes these when sdg&e or other utilities are requesting protected protection of information that indicates trade secrets.

106

00:20:09.150 --> 00:20:16.260

7608461341: were concerned that there are potential antitrust or anti competitive implications of sharing that information.

107

00:20:16.920 --> 00:20:22.650

7608461341: or in the instance of some utility contractors that information may not belong to sdg&e and all.

108

00:20:23.520 --> 00:20:28.440

7608461341: So inclusion of that pursuit of these additional provisions which are not in the emergency regulation.

109

00:20:28.920 --> 00:20:41.820

7608461341: may discourage third parties, such as research institutions and consortiums for working with utilities and that discourages exactly the kind of innovation and collaboration that is needed to address the risk of climate change and wildfire in this state.

110

00:20:43.350 --> 00:20:51.810

7608461341: And given our agreement with southern California Edison on the remaining points we will state our agree, but again and provide additional information and are written comments.

111

00:20:53.610 --> 00:20:54.810

7608461341: Thank you, that concludes my comments.

112

00:20:56.310 --> 00:20:56.610

Devin Blankenship: Thank you.

113

00:21:03.720 --> 00:21:04.950

Devin Blankenship: Any other hands.

114

00:21:08.010 --> 00:21:08.910

Justin Ander: No other hands raised.

115

00:21:44.580 --> 00:21:46.410

Devin Blankenship: we'll just continue right justin goes.

116

00:23:12.540 --> 00:23:19.170

Devin Blankenship: In five minutes or actually seven minutes at 1030 we will take a 10 minute break just a heads up Jason justice right.

117

00:23:20.310 --> 00:23:21.150

Justin Ander: Okay, thank you.

118

00:29:28.350 --> 00:29:36.720

Devin Blankenship: Okay it's not 1031 we're going to take a 10 minute break just and i'll get you back when I get back in the room and see how doing.

119

00:29:36.960 --> 00:29:39.120

Justin Ander: Something sounds good, thank you.

120

00:29:39.420 --> 00:29:39.720

Thanks.

121

00:39:23.700 --> 00:39:26.820

Devin Blankenship: Just a word back from a break.

122

00:39:30.450 --> 00:39:42.810

Devin Blankenship: Here, I believe that the meeting is scheduled to go to noon, we have to keep the room open in case anybody drops in so i'm just going to plan on sit here for the next hour and a half to work on, if you can just remotely monitor it.

123

00:39:43.980 --> 00:39:45.690

Devin Blankenship: Okay, that sounds good.

124

00:39:45.960 --> 00:39:47.040

Justin Ander: yeah that sounds good.

125

00:39:47.550 --> 00:39:49.050

Devin Blankenship: Okay, thank you.

126

00:39:49.380 --> 00:39:49.980

Justin Ander: No problem.

127

01:58:39.360 --> 01:58:41.040

Devin Blankenship: No hands raised justin guessing.

128

01:58:50.670 --> 01:59:03.120

Devin Blankenship: we're done Thank you so when we meet back at one or is it just we just go right into the next was that one right yeah that was me back like 15 minutes to like.

129

01:59:04.230 --> 01:59:05.340

Devin Blankenship: get into your roles to me.

130

01:59:08.610 --> 01:59:10.350

Devin Blankenship: we'll be back probably about 1245.

131

01:59:13.080 --> 01:59:13.410

Justin Ander: Okay.

132

01:59:13.530 --> 01:59:15.750

Justin Ander: sounds good, thank you all right bye.



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June 13, 2022

VIA E-MAIL AND BY OEIS E FILING

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

Docket: 2022-Rulemaking (2022-RM)

Dear Mr. Brooks:

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

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

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

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

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

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

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

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

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

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

² SB 1442, Legislative Counsel’s Digest (Feb. 19, 2016).

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

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

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

If these compliance standards are deemed applicable to discovery responses, the Joint Utilities ask that the three-day response period⁴ for WMP case related data requests be re-addressed to allow sufficient timing to submit these documents in the appropriate format. Alternatively, similar to Southern California Edison's suggestion during the hearing on the Proposed Regulations, if accessibility requirements pertain to discovery, the data request could be submitted in accordance with the current three-day requirement, but an additional ADA compliant document be sent out to the requesting party the following business day. Allowing a slight delay to submit a second, compliant document will allow the utilities to update the document to make it accessible. If accessibility of the documents is required for larger filings, such as Wildfire Mitigation Plans (WMP) and updates, the Joint IOUs ask that Energy Safety provide additional time to transform these documents to be compliant.

In addition to the burden, Energy Safety should reconsider the Proposed Regulations on accessibility because of the unnecessary costs associated with compliance. SDG&E has yet to estimate the costs of creating compliant documentation and has difficulty doing so partially due to the vague nature of the regulation as drafted. In submitted email conversations from Energy Safety⁵, PG&E estimated a potential cost for producing accessible documents would be \$4/page

³ Rule 1.100, 2022 California Rules of Court.

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

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

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

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

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

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

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

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

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

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

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

(b) Where a person or entity submits information to the office, and asserts that the information should not be disclosed to the public because the information contains trade secrets or because disclosure would cause a loss of a competitive advantage, then the person must, at the time of submission comply with all the requirements in subsection (a) and also:

- (1) Specifically identify the competitive advantage;
- (2) State how the advantage would be lost through disclosure;
- (3) State the value of the information to the applicant; and
- (4) Describe the ease or difficulty with which others could legitimately acquire or duplicate the information.

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

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

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

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

Section 22900(c): If a confidential information submission is incomplete or the submitting person has failed to make any reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the information confidential, the Office shall provide to the submitting person a statement of its defects and a request for additional information. If the missing information, or a request for an extension of time to respond, is not submitted within ~~seven~~ fourteen days of receipt of the request, the information shall not receive a confidential designation.

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

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

Emergency Regulation Section 29200(c):
Deputy Director's Determination.

(1) The Deputy Director shall determine whether to grant an application for confidential designation. An application shall be granted if the applicant makes a reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the record confidential. The Deputy Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application.

(2) If an application is denied by the Deputy Director, the applicant shall have fourteen days to request a review of that decision by the Director.

The Director may request additional information from the applicant.

The Director shall issue a written decision within 30 days from receipt of the request for review or from submission of the requested information, whichever is later.

(3) After an application has been denied, the records sought to be designated confidential shall not be made public for a period of fourteen days, after which the records will become public.

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

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

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

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

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

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

As Joint Utilities have previously proposed (reflected in the Combined Comments on Past Regulation Adoptions as part of this record), Energy Safety should adopt regulations permitting use of closed room procedures – whether virtual or physical – to view a utility's most "Security Sensitive" data without that data leaving the utility's custody. For example, should

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

Alternatively, should Energy Safety wish to view this information electronically, then the utility could make this information available to Energy Safety for remote viewing. Although accessible from Energy Safety computers, the information would not leave the utility's systems and repositories. The same process would apply for other regulated entities providing "Security Sensitive Information" to Energy Safety. Such information may include, but is not limited to, information (i) relating to critical infrastructure, (ii) physical security, and (iii) cybersecurity. In order to proactively mitigate against this regulatory targeting, electric utility regulators have already started authorizing use of temporary, closed door, regulatory review of a utility's most sensitive data, similar to the approach that has been previously authorized by the North American Electric Reliability Corporation (NERC) and the CPUC's Safety and Enforcement Division (SED).

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

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

III. CONCLUSION

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

Respectfully submitted,

/s/ Laura M. Fulton

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June 13, 2022

VIA ELECTRONIC FILING

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RE: MUSSEY GRADE ROAD ALLIANCE COMMENTS ON THE PROPOSED ACTION ON E-FILING, FORMATTING REQUIREMENTS, SUBMISSION OF CONFIDENTIAL INFORMATION

The Mussey Grade Road Alliance (MGRA or Alliance) files these comments pursuant to the instructions in the Notice of Proposed Action for Energy Safety's proposed Confidential Information and Process & Procedure regulations,¹ which authorizes replies to stakeholder comments on the Large Utility WMPs (Wildfire Mitigation Plans) by June 13, 2022. Pursuant to Government Code section 11346.5, subdivision (a)(13), the Alliance requests that Energy Safety consider the proposed alternatives, modifications, and supplements herein.

The Alliance has been an active participant in the Wildfire Mitigation Plan reviews both before and after responsibility for overseeing these plans was transferred to the new Office of Energy Infrastructure Safety. Access to non-confidential utility data has been a cornerstone of the Alliance's participation. The Proposed Action, however, fails to adequately safeguard this access and the Alliance respectfully requests that Article 3 be modified to allow public input into the confidentiality determination process.

The Alliance comments are authored by the Alliance expert, Joseph W. Mitchell, Ph.D.

¹ Office of Energy Infrastructure Safety; NOTICE OF PROPOSED RULEMAKING; E-FILING, FORMATTING REQUIREMENTS, SUBMISSION OF CONFIDENTIAL INFORMATION; April 28, 2022.

Respectfully submitted this 13th day of June, 2022,

By: /S/ **Diane Conklin**_____

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MUSSEY GRADE ROAD ALLIANCE COMMENTS ON THE PROPOSED ACTION ON E-FILING, FORMATTING REQUIREMENTS, SUBMISSION OF CONFIDENTIAL INFORMATION

The Mussey Grade Road Alliances' (MGRA or Alliance) supports the efforts of the Office of Energy Structure safety to build a regulatory framework that will support its mission to prevent utility-related wildfires in California. In general, MGRA supports the draft rules incorporated into the Proposed Action. However, there is a significant and potentially serious omission from the rules regarding the submission of confidential information which needs to be brought to Energy Safety's attention. Specifically, there is no mechanism for public input in the confidentiality review process and no mechanism by which members of the public can challenge a utility claim of confidentiality. This may potentially make Energy Safety a litigant in Public Records Act actions, transferring power to determine reasonableness from Energy Safety to the courts.

1. CONFIDENTIALITY REQUIREMENTS

1.1. Applicable Government Code

As described in the Proposed Action,² there are several Government Code sections relevant to public access and confidentiality:

“Government Code section 6250, et seq., the California Public Records Act, requires Energy Safety to provide members of the public with access to documents used to conduct Energy Safety's business.

Public Utilities Code section 583 prohibits the California Public Utilities Commission from disclosing information that a public utility submits to the Commission except for information which the Public Utilities Act (Pub. Util. Code §§ 201 – 2282.5) requires “to be open to the public.” Government Code section 15475(c) provides that Energy Safety will continue to receive information that was submitted to the Public Utility Commission's former Wildfire Safety Division. This subdivision requires Energy Safety to comply with the Public Utilities Code section 583 prohibitions against disclosure of information.

² Proposed Action; pp. 3-4.

Government Code section 15475(c) also requires Energy Safety to (1) maintain the confidentiality of information submitted by public utilities in a manner “consistent with appropriate protections,” and (2) to “provide for the confidentiality of records, the protection of proprietary information, and the protection of the reasonable expectation of customers of public utilities in the privacy of customer-specific records maintained by” the public utility.”

1.2. Article 3. Data Collection, Data Access and Confidentiality

§ 29200. Confidential Information.

The text of Article 3 is comprehensive and it is not necessary to quote it at length here. MGRA has no issues with the existing text, which provides a clear mechanism for submission of and internal review of confidential information.

Subsection (a) of Article 3 details the requirements for an applicant to request confidential designation of a submission.

Subsection (b) of Article 3 describes the process for deficient or incomplete applications.

Subsection (c) describes the process by which the OEIS Deputy Director
“3(c)(1) The Deputy Director shall determine whether to grant an application for confidential designation. An application shall be granted if the applicant makes a reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the record confidential. The Deputy Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application.”

Article 3 as proposed provides no mechanism for public challenge and review of a utility’s confidentiality declaration, or for the public to provide OEIS with supplemental information.

1.3. Concerns with Confidentiality Claims

MGRA has been active in the review of Wildfire Mitigation Plans since their inception, and has responded to overbroad utility claims of confidentiality. In our comments on the 2022 WMPs for example, MGRA took strong issue with SCE’s claim that geographical consequence data should

be considered confidential, even though this is purely a characteristic of the landscape and weather having nothing to do with utility infrastructure.³

As stated in MGRA’s 2022 WMP Comments:

“MGRA strongly prefers to work with public data to ensure that all of our work products can be public, are compliant with the law, and respect legitimate utility property rights and security concerns. To this end MGRA has worked with all utilities to obtain data that has been appropriately filtered to address confidentiality concerns, and the results have been largely satisfactory from our standpoint.”⁴

In addition to objecting to SCE’s specific confidentiality claim, MGRA proposed several recommendations to Energy Safety:

- *“Energy Safety should find that wildfire risk geographic data cannot be considered critical infrastructure under federal law and should not be classified as confidential based on California Government Code 6255.”*
- *“Energy Safety should require that in addition to posting all data requests that utilities also be required to post all confidentiality declarations as part of the WMP review process.”*
- *“Energy Safety should create and publish an administrative process by which stakeholders can challenge and litigate confidentiality claims.”*
- *“Energy Safety should accelerate development of a public portal for GIS data, so that stakeholders do not have to request this data from utilities, so that utilities do not have to take extra effort to prepare special versions for stakeholders, and so that appropriate access restrictions can be automatically enforced.”⁵*

The Proposed Resolution for SCE was issued on June 2, 2022⁶ and contains no mention of MGRA’s confidentiality recommendations. Neither does the present Proposed Action allow any

³ 2022-WMPs; MUSSEY GRADE ROAD ALLIANCE COMMENTS ON 2022 WILDFIRE MITIGATION PLANS OF PG&E, SCE, AND SDG&E; April 11, 2022; p. 61-64. (MGRA 2022 WMP Comments).

⁴ Id; p. 61.

⁵ Id; pp. 63-64

⁶ OFFICE OF ENERGY INFRASTRUCTURE SAFETY; DRAFT EVALUATION OF 2022 WILDFIRE MITIGATION PLAN UPDATE SOUTHERN CALIFORNIA EDISON; June 2, 2022.

mechanism for public input or review of utility confidentiality claims. This is a grievous omission especially in light of the potential effects of Article 3 of the new regulations on procedural transparency.

1.4. Another Example of Overbroad Confidentiality Claims

On May 9, 2022, OEIS released version 2.2 of its GIS data standard guidelines.⁷ Among the comments received by OEIS, were those of Southern California Edison (SCE or Edison).⁸ One of the changes that Edison requests is:

*“CONFIDENTIALITY SHOULD BE DETERMINED AT THE FEATURE CLASS LEVEL
The proposed revisions would allow utilities to indicate if an entire feature class or table is considered confidential but still require each specific field in the geodatabase to be marked “Yes” or “No” for confidential treatment. SCE strongly supports basing public dissemination of data at the feature class level as opposed to the individual, specific field because there are millions of records making it difficult to administer and higher risk for improper release of data that should remain confidential. As SCE has previously explained, a feature class should not be made public unless all data fields in in the feature class are non-confidential.”⁹ (Underline ours)*

Edison’s claim is dangerous and spurious. By adding just one field that is confidential to a feature class, say “distribution system”, Edison would effectively render that class inaccessible to the public. Effectively this process would classify swathes of non-confidential as confidential just because they happen to be in the same data structure as confidential data. The information added could be of only internal value, for example the name of the person last updating each record, but yet this addition would be enough to classify the entire data class as inaccessible to the public. The appeal to “millions of records” is also spurious. Modern databases can filter information from millions of records at time – that is what they are built for. No reply comments were allowed in response to the GIS standard, so Edison’s request to OEIS remains unchallenged in the record.

⁷ OEIS 2022-GIS-DRS; OFFICE OF ENERGY INFRASTRUCTURE SAFETY’S GEOGRAPHIC INFORMATION SYSTEMS DATA STANDARD GUIDELINES; VERSION 2.2; JANUARY 2022; Update May 9, 2022.

⁸ OEIS 2022-GIS-DRS; Southern California Edison Company’s Comments on GIS Data Reporting Standard Version 2.2 Draft Guidelines; June 8; 2022.

⁹ Id; p. 3.

Should OEIS accept SCE's request, it would allow Edison to permanently block access to vast swathes of its GIS information, and under Article 3 of this proposed Rules, there would be no public recourse to challenge this determination aside from filing a lawsuit against the Office of Energy Infrastructure Safety.

Edison in particular has characteristically stood for a more restrictive approach to data sharing and more aggressive approach to confidentiality claims. It is within its rights to make such claims, and it is the responsibility of Energy Safety to critically evaluate those claims, but the one missing and critical element in this process is public input.

2. PUBLIC INPUT AND PROCESS FOR CONFIDENTIALITY CLAIMS

Public safety is best served by a fully transparent and open process. This interest is recognized in Government Code Section 6250, the California Public Records Act. To the extent that Energy Safety's processes are open to public input, this public input needs to be informed by free and open access to appropriate information. In order to enforce this open access, members of the public need to have a mechanism to ensure due process. While these rights are ensured through the California legal system, it would be far more efficient and less burdensome on both the public and OEIS to provide an internal mechanism that also grants rights to those who may oppose the designation of specific information as confidential, and who may have additional information to that provide Energy Safety regarding an applicant's request for confidentiality.

2.1. Members of the Public or Stakeholders Should be Able to Challenge or Provide Additional Information Regarding a Request for Confidentiality

In the process proposed in Article 3, the applicant requesting a confidentiality designation (Applicant) is required to meet a number of requirements and provide specific information to justify their claim of confidentiality. This information will be evaluated by OEIS, which may at its discretion request additional information. While OEIS is responsible to ensure that the application is complete and correct, it is possible that information that the Applicant provides may not fully or accurately represent the Applicant's claim as perceived by other Stakeholders or members of the public. Stakeholders or other members of the public may:

- have a different interpretation of how the Applicant's information may be interpreted under the California Public Records Act,
- have additional factual information that might change OEIS's determination,
- have a different interpretation of how the Applicant's information relates to conclusions regarding critical infrastructure or competitive advantage, or
- have knowledge that the statements made by the Applicant are false.

Article 3 should have a mechanism by which OEIS can accept additional information from stakeholders and the public, evaluate such information, and if necessary use it to affect its determination of confidentiality.

2.2. Public Input Regarding a Confidentiality Designation Should not be Limited by Time

It should be possible for a stakeholder or member of the public to provide input to OEIS regarding a confidentiality designation after the Deputy Director makes their determination. While a comment period prior to the determination may be useful, it is possible that a stakeholder will not know that a particular piece of information has been designated as confidential until a discovery request is refused long after the determination of confidentiality.

For example, if a stakeholder is reviewing a Wildfire Mitigation Plan and serves a discovery request on a utility, the stakeholder may find out only after the utility responds that the requested information had been previously designated as confidential by OEIS. If the stakeholder examines the grounds for the confidentiality designation and finds that they are flawed, the stakeholder will need immediate redress at that point in time in order to timely conduct their WMP review.

2.3. Applicants Should be Allowed to Reply to Requests for Review

In order to ensure due process rights, OEIS should provide any request for review or additional information received by third parties to the Applicant and then allow Applicants to reply. The Deputy Director should then review both the new information and the Applicant reply and then deny the request for review, remove or deny the confidentiality designation, or request additional information from the Applicant.

2.4. There Should Be a Process for Expediting a Challenge or Review of a Confidentiality Designation

Many OEIS proceedings have strict limitations on comment periods. For this reason, OEIS (and the Wildfire Safety Division previously) have correctly imposed expedited three day response times for data requests. A stakeholder requiring an expedited response should state the grounds for their request as a part of their request for review. OEIS will respond to the stakeholder within three days accepting or denying their request to expedite. If the request to expedite is accepted, OEIS will set a deadline for Applicant's reply and set a date for the Deputy Director's determination.

In the event that an expedited review results in a revocation of the Applicant's confidentiality claim, the fourteen day period during which confidentiality status remains unchanged under 3(c)(3) should be reduced to a time to be designated by the Deputy Director.

2.5. An Internal Process for Review Will Reduce the Burden on Energy Safety and the Public

Should information be designated as confidential by OEIS, the Applicant will be under no obligation to provide that information to stakeholders or the public in response to discovery requests during OEIS proceedings such as Wildfire Mitigation Plan reviews.

In lieu of an internal confidentiality review process that is controlled and managed by OEIS, the only recourse that a member of the public would have would be to file a Public Records Act request to OEIS. Since OEIS has already designated the information in dispute as confidential, it would therefore be obliged to deny the Public Records Act request. If the stakeholder has additional information that challenges the basis of the confidentiality determination, they will have to file a lawsuit challenging the determination under California Government Code Sections 6258-6260. OEIS would be obliged to litigate the suit in order to defend its determination.

Requiring the public to seek legal redress as its first and only recourse puts a substantial burden on stakeholders wanting to contribute to proceedings before the Office of Energy

Infrastructure Safety. It would also consume valuable OEIS legal resources and taxpayer money, effectively making the OEIS the legal counsel for the utilities.

Beyond the legal considerations, the structure of the proposed Article 3 defeats the goal of transparency that Energy Safety has pursued since its founding. It sets up a potentially corrupting relationship between OEIS and the utilities with no public oversight, and creates an “us” versus “them” dynamic, with “us” being OEIS and IOUs and “them” being the public. This is an unnecessary dynamic that would create distrust of the process and provide no discernable benefit to the people of California. In the interest of creating an open and public organization, Energy Safety must create a mechanism for public appeal of confidentiality designations.

3. PROPOSED ADDITION TO ARTICLE 3

The following is example language that could be added as Article 3, Section (f) to remedy the aforementioned shortcomings in the Proposed Action.

(f) Public Appeal of Confidentiality Designation

(1) If a member of the public (appealing party) wishes to appeal a determination of confidentiality, they shall file such appeal under the docket under which the information designated confidential was submitted. A public appeal of a confidentiality designation shall:

(A) identify the requesting the party requesting review and their interest in the requested information;

(B) provide a factual basis for the appeal that addresses all bases under which confidentiality was granted by the Deputy Director;

(C) cite and discuss provisions of the California Public Records Act or other law that would disallow the Office to keep the record confidential;

(D) state whether an expedited review is required and if so provide justification and requested timeframe for resolution.

(2) Upon receipt of an appeal request, the Office shall provide this request within one business day to the party who had requested a confidentiality designation (originating party)

(3) The originating party may reply with additional information supporting their confidentiality request within five business days.

- (4) The Deputy Director shall make a determination regarding the appeal after review of the appeal and originating party reply within thirty days of the receipt of the reply.
- (5) If the appealing party requests an expedited review, the Office shall respond approving or denying expedited review within three business days. If the expedited review is approved, the Office will provide dates for the originating party reply and determination in its response.
- (6) In the event that the Deputy Director revokes the determination of confidentiality in response to the appeal,
- (A) The originating party may request a review by the Director as per 3(c)(2)
- (B) In the event an expedited review has been approved, the Deputy Director's determination will set dates for review request deadlines and final determination.

4. CONCLUSION

In the interest of openness, transparency, and efficiency the Office of Energy Infrastructure Safety should adopt a mechanism that allows the public to request a review of a designation of confidentiality within the OEIS framework without having to revert to a formal legal challenge that would be costly in time, resources, and money for both the public and OEIS. These comments offer an example of how such a mechanism might be implemented, and we urge Energy Safety to add language that captures the spirit of these suggestions and creates a robust and flexible review framework for confidentiality designations.

Respectfully submitted this 13th day of June, 2022,

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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,

/s/ CAROLYN CHEN

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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).



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).