



October 25, 2022

VIA ELECTRONIC FILING

Caroline Thomas Jacobs, Director
Office of Energy Infrastructure Safety
California Natural Resources Agency
Sacramento, CA 95184

**Subject: Public Advocates Office Comments on
Second Amended Proposed Process Regulations
Published October 7, 2022
Docket Number: 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 regulations¹ amended and published by the Office of Energy Infrastructure Safety (Energy Safety) on October 7, 2022, pursuant to Energy Safety's *Notice of Availability of Modified Text or Proposed Regulations, Second 15-Day Comment Period*. We respectfully urge Energy Safety to adopt the recommendations discussed herein.

I. INTRODUCTION

On June 13, 2022, and July 15, 2022, Cal Advocates provided comments on these process regulations.² In the instant comments, Cal Advocates incorporates its previous comments by reference and provides additional comment on the regulations pertaining to submitting confidential information.³

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 *Comments of the Public Advocates Office on Proposed Rulemakings on Process and Investigation Regulations, dated April 27, 2022, Docket #: 2022-RM, June 13, 2022; Comments of the Public Advocates Office on 15-Day Noticed Amended Proposed Process Regulations, dated June 30, 2022, Docket #: 2022-RM, July 15, 2022.*

³ Second Amended (2nd Amend.) Cal. Code of Regs., tit. 14, § 29200 (Title 14. Natural Resources, Division 17. Office of Energy Infrastructure Safety, Chapter 1. Rules of Practice and Procedure), published October 7, 2022 (second amended process regulations or second revised process regulations).

II. PROCESS REGULATIONS

A. Confidentiality (Section 29200)⁴

Cal Advocates continues to have concerns with the regulations in Section 29200, regarding the process for stakeholders who are not the proponent of designating information as confidential. Cal Advocates hereby incorporates by reference its June 13, 2022 and July 15, 2022 comments on this issue, and provides the following additional comments and recommendations.

The proposed regulations provide that a person or entity submitting information to Energy Safety may request a confidential designation by submitting an application including the following:

- the statutory basis for the confidential treatment,
- the reason why each basis for confidential treatment claimed applies to the information,
- the length of time the confidential treatment should last and the reasons for the length of time, and
- a certification that the information presented in the application for the confidential designation, is true to the best of the submitter's knowledge.⁵

Cal Advocates occasionally includes confidentially-designated information in filings but is rarely, if ever, the source of that information or proponent of confidentiality of that information. Rather, Cal Advocates typically receives confidentially-designated information from utilities, accompanied by a declaration from the utility providing the basis for confidential treatment. Cal Advocates then incorporates this information into its comments to Energy Safety.⁶

In many cases, Cal Advocates has little or no direct knowledge of the reasons and basis for confidential designation. However, consistent with its obligation under Public Utilities Code section 583 and General Order 66-D, Cal Advocates will maintain the confidentiality of the material designated as confidential by the utility (proponent of confidentiality), and in some

⁴ 2nd Amend. Cal. Code Regs., tit. 14, § 29200.

⁵ 2nd Amend. Cal. Code Regs., tit. 14, § 29200(b). The filer is also required to “certify under penalty of perjury” that the application for confidentiality is correct.

⁶ Under statutory law, Cal Advocates is required to treat as confidential any information so designated, unless the California Public Utilities Commission (CPUC) orders the information be disclosed to the public. *See* Public Utilities (P.U.) Code § 583.

cases will reserve the right to challenge the claim of confidentiality. In most cases, Cal Advocates is unable to attest to the requirements of the application in the proposed regulations.⁷ This issue may also apply to other non-utility stakeholders who maintain confidentiality based on non-disclosure agreements.⁸

Thus, Cal Advocates recommends that Energy Safety require that submitters who are not the source of information or proponent of confidentiality need only attach the proponent's confidentiality declaration, in lieu of submitting an application for confidential designation. In other words, where a filer is submitting information produced or proposed as confidential by another entity, and that proponent has declared it confidential, then Energy Safety should not require the application described in Section 29200(b)(3). Instead, Energy Safety should direct that the filer only need provide a copy of the information producer's declaration.

Accordingly, Cal Advocates recommends modifying Section 29200(b)⁹ as follows. The proposed changes are in red, with underlining for added text and strikethroughs for deleted text.

A person or entity submitting information to the Office may request a confidential designation for the information by including the following at the time of submission:

- (1) One unredacted copy of the record containing the information.; and
- (2) One redacted copy of the record if the information claimed to be exempt can reasonably be redacted.; and
- (3) If the person or entity submitting information to the Office is the proponent of confidentiality of the information, the submitter shall provide a~~A~~ statement that:
 - (A) Identifies the statutory basis for the exemption or exemptions claimed;
 - (B) States the reasons why each exemption claimed applies to the information;

⁷ See 2nd Amend. Cal. Code Regs., tit. 14, § 29200(b)(3)(A)-(D).

⁸ The California Public Utilities Commission (CPUC) has a process for determining whether a claim of confidentiality has merit, and Cal Advocates acknowledges that it could request a resolution from the CPUC on the confidentiality claims made by a utility before submitting said information to Energy Safety in order to meet the criteria of an application for confidential designation to Energy Safety. (See CPUC GO 66-D.) However, this process is time consuming and likely infeasible for obtaining a CPUC resolution ruling on confidentiality within the timeframes imposed by the deadlines for Energy Safety filings.

⁹ Cal. Code Regs., tit. 14, § 29200(b).

- (C) States the length of time the exemption or exemptions apply to the information, and explains the basis for the length of time stated; and
 - (D) Includes the following certification, executed by a person authorized to make the certification on behalf of the submitting entity: “I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge.”; or
- (4) If the person or entity submitting information is not the proponent of the claim of confidentiality, the submitter shall provide a copy of the confidentiality declaration provided to the submitter by the proponent of confidentiality. If the Office finds this declaration insufficient, it will request more information from the proponent declarant, per part (d) of this section.

III. 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
CAROLYN CHEN
Attorney
Public Advocates Office

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1980
E-mail: Carolyn.Chen@cpuc.ca.gov

cc: caroline.thomasjacobs@energysafety.ca.gov
info@energysafety.ca.gov
efiling@energysafety.ca.gov