



Erik B. Jacobson
Director
Regulatory Relations

77 Beale Street, Room 2343
San Francisco, CA 94105

Mailing Address:
Pacific Gas and Electric Company
P.O. Box 770000
Mail Code B23A
San Francisco, CA 94177

Tel.: 415/973-4464
Erik.Jacobson@pge.com

May 19, 2020

BY ELECTRONIC MAIL

Stephanie Green
Tribal Liaison
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: PG&E Comments on Proposed Tribal Land Transfer Guidelines

Dear Ms. Green:

Pacific Gas and Electric Company (PG&E) appreciates the opportunity to comment on the Draft Guidelines¹ (Draft Guidelines) to implement the tribal lands policy adopted on December 5, 2019 (Tribal Lands Policy). PG&E looks forward to working with the California Public Utilities Commission (CPUC or Commission), California's Native American Tribes (Tribes) and other stakeholders to finalize the Draft Guidelines.

I. INTRODUCTION

PG&E supports the Tribal Lands Policy and the laudable objectives it is intended to accomplish.² With that support in mind, we recommend a few key changes that will provide clarity and prevent confusion without undermining the overarching goals of the Policy. Specifically, we ask that the Guidelines be revised as follows:

- A. revise the definition of "Disposition" to eliminate the need to send notifications for certain transactions that do not involve land transfers, such as mortgages;
- B. establish a more defined procedure for transactions that the Policy recognizes may qualify for exemption, such as conveyances to achieve IOU operational requirements or comply with law;
- C. explicitly provide an exemption for certain high value transactions involving developed property in urban areas in which tribes may participate in a competitive sale process to acquire these high value properties while still achieving the greatest gain on sale for ratepayers; and

¹ Tribal Lands Draft Policy Guidelines, https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Supplier_Diversity/Tribal%20land%20policy%20draft%20guidelines%203320.pdf

² Among other things, the Policy seeks to "[e]nsure meaningful consideration of Tribal interests and the return of lands within the Tribe's ancestral territory to the appropriate Tribe" and "facilitate notice and Tribal participation in matters before the Commission that involve Real Property transfers."

- D. provide an exemption for certain easements which are for a limited use, such as the placement of utility lines, and do not result in a full transfer of the IOU property.

These changes will ensure that the Policy does not unintentionally complicate a subset of transactions, while staying true to its overarching goals. PG&E's Discussion below provides greater detail regarding the suggested revisions to the Guidelines.

II. DISCUSSION

A. Scope Of The Tribal Lands Policy And Exemptions

1) The Definition Of "Dispositions" Should Be Limited To Conveyances Of Fee Simple Interest And Easements.

The Tribal Lands Policy defines the terms "dispose of" or "disposition" to refer to "the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in surplus real property."³ But Section 1.3(c) of the Draft Guidelines broadens the definition of "Disposition" to mean "the transfer, sale, donation, encumbrance, or disposition by any other means of an estate in real property" (emphasis added). Adding the reference to an "encumbrance" of IOU real property would expand the scope of the Tribal Lands Policy to include transactions associated with utility financing, such as a mortgage or other financial instrument used in connection with the securitization of utility financing or restructuring of corporate debt.

For example, a mortgage would typically entail a financial lien placed on IOU real property to secure the indebtedness. Indeed, a critical element of PG&E's bankruptcy exit financing involves first mortgage bonds, where the bonds will be secured by the bulk of the utility's property. A mortgage or similar financial instrument that encumbers utility property requires Commission approval under Public Utilities Code Section 851.4 These financing arrangements, however, do not implicate a transfer of IOU property, and including them in the scope of the Tribal Lands Policy would not further its objectives. In fact, requiring notifications to tribes of utility mortgages would impede the IOUs' ability to timely secure financing. To avoid these unintended consequences, the Draft Guidelines should not expand the definition of a Disposition to include an "encumbrance" of IOU property.

The definition of "Disposition" in the Draft Guidelines also includes a catchall phrase -- "disposition by any other means of an estate in real property."⁵ This phrase is overbroad and includes transactions that were not intended to be subject to the Tribal Lands Policy, such as short term lease transactions.⁶ This catchall phrase should be removed from the definition of a "Disposition," or other revisions be made to expressly exclude lease transactions.

³ Tribal Lands Policy, p, 1 at fn. 2.

⁴ Public Utilities Code Section 851(a) provides, in relevant part, "A public utility ... shall not sell, lease, assign, *mortgage*, or otherwise dispose of, or *encumber* the whole or any part of its ... plant, system, or other property necessary or useful in the performance of its duties to the public ... without first having either secured an order from the commission authorizing it to do so" (emphasis added). The ALJ's proposed decision on PG&E's Plan of Reorganization (I.19-09-016) includes authorization for the proposed exit financing; however, the Tribal Lands Policy has not been discussed in the proceeding.

⁵ Draft Guidelines, Section 1.3(c).

⁶ California Civil Code Section 761(3) defines estates in real property to include estates for years.

For these reasons, PG&E recommends the Draft Guidelines retain the definition of “Disposition” in the Tribal Lands Policy which properly refers to a fee simple interest or easement in real property.

2) The Guidelines Should Specify A Procedure For Commission Approval Of Transactions That Qualify For Exemption.

The Draft Guidelines should establish a procedure for obtaining Commission approval of transactions that may qualify for exemption based on the criteria set forth in the Tribal Lands Policy. Although the Tribal Lands Policy directs the IOU to provide a tribe with a right of first refusal for a proposed disposition of IOU real property, it also recognizes that there are certain dispositions that should qualify for exemption. The Tribal Lands Policy provides that the Commission will deem a tribe the preferred transferee absent a finding supported by evidence of one of the following circumstances:

- (1) that the Tribe is not interested in acquiring the Real Property (e.g., the Tribe declined consultation or confirmed that it is not interested);
- (2) that the IOU acted in good faith and, after reasonable effort, was unable to agree with the Tribe on reasonable terms to transfer the Real Property consistent with Commission policy;
- (3) that conveyance of the Real Property to another entity is necessary to achieve IOU operational requirements, or to comply with any law, rule, or regulation; or
- (4) that conveyance of Real Property to another entity would be in the public interest.⁷

Items 1 and 2 contemplate that the IOU has followed the tribal notification procedure in Section 2 of the Draft Guidelines but the tribe was not interested or the parties were unable to reach agreement on terms of the disposition. Transactions that meet the criteria specified in Items 3 and 4, however, should not require advance notification and a right of first refusal to the tribes.

The Draft Guidelines should recognize an express procedure for the Commission to make an appropriate finding that the transaction meets this criteria and qualifies for exemption under the Tribal Lands Policy. PG&E recommends that this procedure require the IOU to serve the relevant tribes with its Section 851 application or advice letter for the proposed disposition, which will afford the tribes the full and fair opportunity to provide the Commission any comments on the transaction. An example of the type of transaction that may qualify for such an exemption would be a disposition arising under PG&E’s Land Conservation Commitment (LCC). In order to further the Commission’s objective of specifying detailed procedures to implement the objectives of the Tribal Land Policy, a procedure for these exemptions should be recognized in the Draft Guidelines.

⁷ Tribal Lands Policy, p. 5.

3) The Guidelines Should Recognize An Exception For Certain High Value Transactions Of Developed Property In Urban Areas.

The Policy recognizes that certain transactions may qualify for exemption to achieve IOU operational requirements, to comply with law, or that are in the public interest. The Draft Guidelines should recognize an exemption for circumstances in which a utility initiates a competitive sale process to sell developed property in an urban area and the expected value of the property exceeds a certain threshold. An example would be the sale of a former service center building in a downtown area that is zoned commercial with an expected sales price of over \$25 million dollars. In that case, the IOUs should notify the appropriate tribes of their intent to market the property, and the tribes should have the right to make an offer, though not the right to first offer. The sales price for such high value sales should be determined through a competitive sale process in order to achieve the greatest benefit for customers. This narrow exemption would be in the public interest, because it would provide tribes the opportunity to purchase assets while ensuring the assets are sold for the optimal sale price for customers' benefit.

4) The Guidelines Should Recognize Exceptions for Certain Easement Transactions.

PG&E supports SDG&E's recommendation that the Draft Guidelines exempt certain land exchanges and easement transactions that do not further the Commission's interest in adopting the Tribal Lands Policy.⁸ Specifically, SDG&E proposed clarifications be added to the Draft Guidelines to recognize the Tribal Lands Policy does not extend to grants of easements for utility purposes, the termination of easements that are no longer necessary and useful for utility purposes, or modification or replacement of easements associated with a relocation of utility facilities at the request of an applicant. SDG&E's recommendations are consistent with PG&E's own comments previously submitted to the Tribal Lands Policy recommending exceptions for certain easement transactions.⁹

PG&E recommends adoption of the exemptions proposed by SDG&E for these land exchange and easement transactions which will allow the IOUs to relocate utility facilities, either at the request of applicants or to accommodate the IOU's own productive use of land, such as the reconstruction of a substation that requires a modified footprint. The relocation of utility facilities to a new location with the provision of equivalent land rights is not the type of transaction contemplated by the Policy.

B. Notification Requirements And Laws, Rules And Regulations Governing Operations.

1) The Draft Guidelines Should Clarify The Dispute Resolution Process In The Event More Than One Tribe Is Interested In Acquiring The IOU Real Property.

The identification of both the Tribe(s) with whom IOUs must consult and the definition of tribal territory within which a Real Property is located or adjacent are not always clear or undisputed. Moreover, requiring notification for the disposition of IOU Real Property adjacent to a Tribe's aboriginal territory inherently creates the likelihood that more than one Tribe would have to be

⁸ SDG&E's comments to Draft Guidelines dated March 30, 2020, pp. 3-4. Southern California Edison (SCE) has also supported SDGE's comments on this point. SCE's comments to Draft Guidelines dated April 30, 2020 at p. 2.

⁹ PG&E's comments to draft Tribal Lands Policy dated September 30, 2019, p. 3.

notified of a proposed disposition. It is PG&E's understanding that NAHC (Native American Heritage Commission) will not attempt to resolve claims or disputes resources among and between Tribes regarding connection to specific places or cultural resources. PG&E has proposed revisions to Section 4.3 of the Guidelines to clarify the process for addressing disputes if more than one Tribe is interested in acquiring the Real Property.

2) The Guidelines Should Recognize A Disposition Will Not Conflict With Applicable Laws And Regulation.

PG&E recommends the Guidelines acknowledge any transfer to Tribes must not conflict with applicable laws, regulations, or the LCC requirements in Commission Decisions 03-12-035 and 08-11-043.

3) PG&E Recommends That The Guidelines Include Time Parameters For Good Faith Negotiations.

PG&E supports the creation of reasonable expectations related to good faith negotiations that may be entered into by a utility and interested tribe. PG&E recommends including language that requires a good faith negotiation but allows for the IOU to thereafter submit a request for approval under Section 851 without further need for consultation or negotiation should the parties be unable to reach mutually agreeable terms.

C. Reporting Requirements.

1) PG&E Recommends That The Commission Clarify and Revise The Annual Reporting Requirement.

The Policy and Guidelines require an annual forecast of the IOUs' dispositions of Real Property. Due to the confidential and market sensitive nature, as well as the uncertainty, of the IOUs' Real Property disposition plans, PG&E recommends that the IOUs be required to provide an annual report of the IOUs notifications to Tribes for the prior year on a date certain.

III. CONCLUSION

PG&E looks forward to working with the CPUC, Tribes and stakeholders to finalize the Tribal Land Transfer Guidelines.

Sincerely,



Erik B. Jacobson
Director - Regulatory Relations

Enclosure: Proposed Revisions to Draft Tribal Land Transfer Guidelines

cc: Allison Brown, Public Advisor

**PACIFIC GAS AND ELECTRIC COMPANY
PROPOSED MODIFICATIONS TO
DRAFT GUIDELINES**

DRAFT

GUIDELINES TO IMPLEMENT THE CPUC TRIBAL LAND POLICY

1. GENERAL PROVISIONS

1.1. Purpose and Intent

- a. The purpose of these Guidelines is to implement the Commission's Tribal Land Policy, which it adopted on December 5, 2019.
- b. The goals of the Tribal Land Policy are:
 - i. To recognize and respect Tribal sovereignty;
 - ii. To protect Tribal sacred places and cultural resources;
 - iii. To Ensure meaningful consideration of Tribal interests and the return of lands within the Tribe's ancestral territory to the appropriate Tribe; and
 - iv. To encourage and facilitate notice and Tribal participation in matters before the Commission that involve transfers of real property subject to California Public Utilities Code Section 851.
- c. The intent of these Guidelines is therefore to further those goals.

1.2. Construction

- a. These Guidelines shall be liberally construed to further the goals of the Tribal Land Policy. See Rule 1.1(b).
- b. Unless otherwise noted, all statutory references are to the laws of the State of California.
- c. Nothing in these rules prevents an Investor Owned Utility from burdening utility-owned land with an easement before disposing of that land.

1.3. Definitions

For purposes of these Guidelines, unless the context otherwise requires—

- a. "Ancestral territory" means the territory designated by a tribe and submitted to the Native American Heritage Commission (NAHC) to provide to state agencies and local government for notice of projects under Assembly Bill (AB) 52. (2013-2014 Reg. Sess.) Tribes are the primary source for identification of a tribe's ancestral territory. If a tribe has not designated territory under AB 52, "ancestral territory" for that tribe means territory identified in Vols. 8, 10 & 11 Sturtevant, Handbook of North American Indians (1978).

DRAFT

- b. “California Native American tribe” or “tribe” means a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of the Statutes of 2004. (See Pub. Res. Code, § 21073.) This includes both federally-recognized tribes and tribes that are not recognized by the federal government. Nothing in the policy prevents tribes from consulting with other Native American groups that demonstrate an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the Commission.
- c. “Disposition” means the transfer, sale, donation, ~~encumbrance,~~ or disposition by any other means of ~~an estate~~ fee simple interest or easement in real property, except for easements or land exchanges for utility purposes, leases and mortgage or other lending transactions.
- d. “Indian country” means “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” (18 U.S.C. § 1151.)
- e. “Investor-owned utility” (IOU) means “private corporations or persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers.” (Cal. Const., art. XII, § 3.)
- f. “Real property” means any IOU real property whose ~~d~~Disposition is subject to approval under Section 851 of the Public Utilities Code.
- g. “Request for approval” means an IOU’s submission, whether under the formal application process or the informal advice letter process, requesting Commission approval of the disposition of real property under Section 851 of the Public Utilities Code.
- h. “Right of first refusal” means that the IOU disposing of real property must contact the tribe or tribes whose ~~a~~Ancestral territory ~~is on or adjacent to~~ includes the real property, and must provide the tribe or tribes the right to ~~take or refuse purchase~~ the real property, or in the case of a donation, accept the donation, before the IOU can seek third-party purchasers or

DRAFT

donees for the real property.

2. NOTIFICATION

2.1. Notification Generally

When an IOU decides to dispose of real property, before it submits a request for approval to the Commission, the IOU shall notify any relevant tribe or tribes that it intends to dispose of the property.

2.2. IOU to Identify Interested Tribe or Tribes

- a. The IOU shall submit a written request to the NAHC to identify tribes with an interest in the territory on which the real property lies.
- b. If the NAHC fails to respond within ~~90~~ 30 days, or if the NAHC's response is inconclusive:
 - i. The IOU shall use its best judgment and experience to determine whether If the real property is located within ~~or adjacent to~~ a federally-recognized tribe's Indian country, and the IOU shall provide notice to that tribe.
 - ii. If the real property is not located within ~~or adjacent to~~ a federally-recognized tribe's Indian country, the IOU shall provide notice to any tribe or tribes on whose ancestral territory the real property lies using Vols. 8, 10 & 11 Sturtevant, Handbook of North American Indians (1978) as its reference.

~~2.2~~ 2.3 To Whom Notice Directed

The IOU shall notify the tribal chairperson of any interested tribes, or the chairperson's designee.

~~2.3~~ 2.4 Contents of Notice

The notice shall include, in plain language:

- a. The location and a brief description of the real property at issue;
- b. The reason the IOU is disposing of the real property;
- c. A statement telling the tribe that they have a right of first refusal on the real property before the IOU may put the real property on the market;
- d. An offer to consult with the tribe regarding the tribe's interest in acquiring the real property; and
- e. Contact information of an IOU representative who is sufficiently knowledgeable about the real property to answer any questions the tribe might have, so that the tribe can decide whether it is interested in

DRAFT

acquiring the real property.

2.5 Exercise of Right of First Refusal.

2.5.1. Tribe to Notify IOU

Interested tribes shall have 30 days to respond to the notice provided by the IOU as to the tribe's interest in acquiring the real property. Any interested tribe that elects to exercise the Right of first refusal shall provide the IOU with a written offer to acquire the real property within 90 days of receiving the IOU's notice.

2.5.2. Timing of IOU Consultation.

The tribe electing to exercise the Right of first refusal and the IOU shall conduct good faith negotiations to reach agreement on reasonable terms for the Disposition consistent with Commission policy.¹ In the event the terms cannot be agreed upon following good faith negotiations, the IOU may put the real property on the market, with the sale transaction subject to the Commission's approval under Section 851.

2.4 -2.6. Exception to Notice Requirement

The Notification Requirements set forth in this Section, including the requirement that IOUs provide the relevant tribe(s) with a Right of first refusal, shall not apply under the following circumstances:

- a. If the IOU determines that Disposition of the real property to another entity is necessary to achieve IOU operational requirements, or to comply with any law, rule, or regulation;
- b. If the IOU determines that Disposition of the real property to another entity would be in the public interest; or
- c. If the IOU initiates a competitive sale process to sell developed property in an urban area that is zoned commercial/industrial, and the property has an expected value that exceeds [specify a certain threshold, e.g., \$25 million].

However, in such cases, the IOU must include the relevant tribe(s) on the service list of any Section 851 application or advice filing seeking approval of such Disposition and said Section 851 application or advice filing must include evidence supporting its determination. In addition, if Section 2.6(c)

¹ Such terms may include conditioning the Disposition on compliance with all applicable laws, rules and regulations, and requiring the Tribe(s) to provide a limited and/or partial waiver of its sovereign immunity with respect to the enforceability of Disposition-related agreements between the IOU and Tribe(s).

DRAFT

applies, the relevant tribe(s) must be provided a right to participate in the competitive sale process.

3. REQUESTS FOR APPROVAL

3.1. Filing

- a. If an IOU submits a request for approval under Section 851, the request must show that the IOU provided notice and consultation to the interested tribe or tribes or that it otherwise served notice of the Section 851 application or advice filing as provided in Section 2.4 herein. The required showing shall includes:
 - i. A copy of the IOU's written request to the NAHC to identify interested tribes; and,
 - ii. A copy of the IOU's written notice to any interested tribal chairperson or their designee; and,
 - iii. Documentation of any consultation between the IOU and the tribe or tribes; or, -
 - ~~iii.~~ iv. Satisfactory demonstration in its Section 851 application or advice filing that it is not required to provide a Right of first refusal.
- b. If the IOU does not meet that showing, and if it is unable to cure those deficiencies, the Commission may, in its discretion:
 - i. Identify any interested tribes, provide them with notice of the proceeding and an opportunity to comment;
 - ii. Direct the IOU to identify, notice, and consult with any interested tribes; or
 - iii. Reject the request for approval without prejudice.

3.2. Tribal Participation

- a. The Commission will encourage interested tribes to participate in these proceedings.
- b. Commissioner staff and Administrative Law Judges will ensure that any comment provided by a tribe is submitted into the record of the proceeding, consistent with the confidentiality provisions set forth in the Commission's Tribal Consultation Policy.
- c. If the request for approval is an advice letter filing, any comment submitted by the tribe shall be appended to the ~~draft~~ any Resolution or other authorization disposing of the advice letter filing.

DRAFT

3.3. Presumption in Favor of Tribe

When an IOU requests approval to dispose of real property lying in a tribe's ancestral territory, the Commission will presume that the tribe is the preferred transferee, and that the transfer to the tribe is in the public interest, absent a finding supported by evidence:

- a. That the tribe is not interested in acquiring the real property (e.g., that the tribe declined consultation with the IOU or confirmed that it is not interested);
- b. That the IOU acted in good faith and, after reasonable effort, was unable to agree with the tribe on reasonable terms for the transfer of the real property;
- c. That transfer of the real property to another entity is necessary to achieve IOU operational requirements, or to comply with any law, rule, or regulation²; or
- d. That transfer of the real property to another entity would be in the public interest or the interests of the IOU's ratepayers as a whole.

3.4. Impacts on Cultural Resources

As part of its review of any request for approval, the Commission will carefully consider any comments regarding potential impacts on tribal cultural resources, or suggesting measures that would mitigate those impacts. This applies whether the proposed transfer is to the tribe or to a third party.

4. DISPUTE RESOLUTION

4.1. Disputes Generally

It is the Commission's intent that, where possible, disputes be resolved informally, by discussion between the IOU and any interested tribes.

4.2. Disputes About Notice

If there is a dispute about the tribe or tribes that the IOU must notice, or about the extent of any tribe's Ancstral territory, the IOU shall attempt to resolve the dispute through discussion with the tribe or tribes raising the dispute. If discussion is unable to resolve the dispute, the IOU shall use its best judgment to determine how to proceed with the required notification. The IOU shall document any steps it takes to resolve such a dispute, and the reasons for any determination that it makes.

² Such laws, rules, and regulations include, but are not limited to, the requirements of FERC licenses and prior Commission Decisions governing the Disposition real property, such as D. 03-12-035 and 08-11-043.

DRAFT

4.3. Multiple Interested Tribes

If, following notice from the IOU of a proposed Disposition of real property, more than one tribe seeks ownership of available to acquire such real property, and if the tribes are unable to resolve the dispute themselves, the IOU shall engage in meaningful consultation with the tribes to attempt to resolve the dispute. If that consultation fails to resolve the dispute, the IOU, in consultation with the tribes, shall propose a reasonable resolution to the dispute to the Commission as part of its request for approval. The IOU will take into consideration each tribe's connection to the surplus property at issue; the current use of the property; the proposed use after transfer; and any other relevant considerations raised by the IOU, tribes, and any other stakeholder to the disposition of the real property

5. ANNUAL REPORTS

5.1. Annual Reports

The IOUs shall, by April 1st every year, submit a report providing the Commission with an updated list of notifications provided in the previous calendar year, recent and upcoming real property dispositions, as well as a summary of tribal contacts and consultations (including the outcome of those consultations they have undertaken over the previous year.

From: [Jill ZamEk](#)
To: [Green, Stephanie](#)
Subject: advocating for a public workshop
Date: Tuesday, March 10, 2020 2:25:10 PM

Hello, Ms. Green. I'm advocating for a CPUC public workshop in San Luis Obispo regarding the new policy on the right-of-first-refusal to purchase any lands transferred away from the utilities. Our community will be impacted by this policy and the Diablo Canyon lands.

Thank you,
Jill ZamEk
Arroyo Grande

From: [Lucy J Swanson](#)
To: [Green, Stephanie](#)
Cc: [Swanson Jane](#)
Subject: Comments on CPUC Workshop if March 24, Tribal Land Policy
Date: Tuesday, March 24, 2020 11:13:42 AM

TO: Stephanie Green
stephanie.green@cpuc.ca.gov

FROM: L. Jane Swanson
janeslo@icloud.com

RE: Tribal Land Policy as relates to Diablo Canyon lands

It is clear from the first hour of this webex meeting that there has been much confusion and failure of communication on the topic of the new Tribal Land Policy and how it might be applied to the future use of Diablo Canyon lands.

The definition of which Native American groups qualify as stakeholders in this matter is also not clear to me. Are the members or leaders of such groups required to document their ancestry or historical connections to the lands? That would seem a difficult burden to meet, given the lack of record keeping at the time when these peoples were removed from their lands. On the other hand, it would seem appropriate to make sure that those claiming tribal status truly are representing the interests of such a people.

Given that plant closure will not be complete until the end of 2025, and that decommissioning will happen in stages over decades, there is no time pressure at present to make decisions regarding the adoption and application of the new policy. The CPUC should hold a workshop in San Luis Obispo County after the Coronavirus threat has passed and before the new policy guidelines are passed.

It will be important that any future land transfers be accompanied by a conservation easement, to ensure the permanent conservation of the land's resources and the protection of sustainable public access.

Jane Swanson
janeslo@icloud.com

From: [rosemary wilvert](#)
To: [Green, Stephanie](#)
Subject: Conserving Diablo Lands
Date: Monday, March 23, 2020 1:38:17 PM

1. **The CPUC should hold a workshop in San Luis Obispo (since we are directly impacted) before the new policy guidelines are adopted;** and
2. **Any land transfers occurring under the Tribal Land Transfer Policy must be accompanied by a conservation easement, to ensure the conservation of the land's resources and protection of sustainable public access.**

Thank you,

Rosemary Wilvert

Cal Wilvert

603 Al-Hil Drive

San Luis Obispo, CA 93405

805-235-5778

John Laird
1214 King Street • Santa Cruz, CA 95060

March 19, 2020

Email: JohnLaird9@aol.com

President Batjer, Commissioners Guzman Aceves,
Shiroma, Rechtschaffen, and Randolph
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
(Via Email and U. S. Mail)

Public Workshop in San Luis Obispo County on the Tribal Land Transfer Policy Guidelines

Dear President Batjer and Commissioners:

I am writing with regard to the Tribal Land Transfer Policy Guidelines, an issue that has arisen in regard to the decommissioning process on the Diablo Canyon Nuclear Power Facility. The disposition of a large parcel of land adjacent to that facility that is a key issue in the decommissioning process. It is of considerable interest in San Luis Obispo County, where I am currently spending a lot of time and hope to represent in the State Senate this coming December.

The Decommissioning Engagement Panel wrote to you in a letter dated March 13, summarizing the local concerns on this issue. I endorse the points made in that letter and wish to highlight two of them for your consideration.

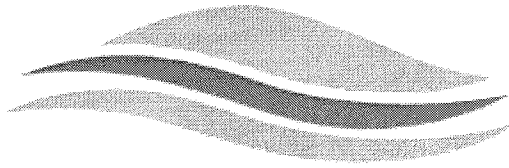
The first is that there is considerable community interest in San Luis Obispo on this issue. The workshop that is scheduled is in the Capay Valley, which is grossly inconvenient, easily over five hours one way from San Luis Obispo by car, and very limiting in the ability of that community interest to be represented at that workshop. A workshop in the San Luis Obispo area would be the one way to make sure that the community interest there is heard in your process.

Second, much of the reason for intense community interest in this policy is the status of the lands at Diablo Canyon. As Secretary for Natural Resources in the Brown Administration, I had worked to advance acquisition of the "Wild Cherry Canyon" property that is part of the PGE lands at this facility. It is a special and unique opportunity for long-term land conservation that does not exist near urban areas in California. The best method for protection would be a conservation easement in perpetuity made prior to the land transfer. I wanted to make sure that this is on your radar screen. Thank you in advance for your consideration.

Very Truly Yours,



John Laird



DIABLO CANYON Decommissioning Engagement Panel

March 13, 2020

President Batjer
Commissioners Guzman Aceves, Shiroma,
Rechtschaffen, and Randolph
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
(Via Email and U.S. Mail)

Subject: **Request for Public Workshop in San Luis Obispo
On the Tribal Land Transfer Policy Guidelines**

Dear President Batjer and Commissioners:

We are the members of the **Diablo Canyon Decommissioning Engagement Panel**. Formed in 2018, the Panel was created to foster open and transparent dialogue between members of the local community and PG&E on topics regarding the decommissioning of the Diablo Canyon Power Plant. Over the last two years, we have held multiple public meetings and workshops, to address such issues as the management of spent fuel, the economic impacts of decommissioning, and the disposition of the 12,000 acres that surround the power plant known as the “Diablo Canyon Lands.” (You can learn more about the Panel by visiting our website at www.diablocanyonpanel.org)

It has come to our attention that the California Public Utilities Commission passed the Tribal Land Transfer Policy (Policy) at the end of 2019. The Panel was unaware that the Policy had been adopted until after it became final. This is unfortunate because the Policy could have a significant impact on the decommissioning process and specifically the disposition of the Diablo Canyon Lands – an issue of high importance to the local community. **We would have liked to provide input to CPUC about the Policy but were not given the opportunity to do so.**

We understand now that the CPUC is sponsoring a public workshop on the implementation guidelines for the new Policy (Guidelines). Yet, the workshop will be held in Brooks, California, which is over 300 miles away from San Luis Obispo. Given this distance, it is not practicable for members of the Panel nor community to attend this meeting. And yet, like the Policy, the Guidelines may have a direct impact on the future of the Diablo Canyon Lands and their potential for conservation and public access.

It is imperative that our local community -- which will be directly impacted by the Policy and Guidelines -- have an opportunity to provide input on the Guidelines. We therefore respectfully request that the **CPUC hold a public workshop in San Luis Obispo before the Policy guidelines are adopted**. In this way, the Panel and the community can hear first-hand from the CPUC itself about the direction of the Policy as well as provide input on

how the Policy may be implemented in a manner that could provide a win-win solution for tribes, the community, and PG&E.

Please advise as soon as possible whether a CPUC public workshop can be scheduled in San Luis Obispo *before* the Policy Guidelines are adopted. As explained before by Panel member Kara Woodruff, the County of San Luis Obispo has agreed to accommodate such a workshop for the CPUC at the Board of Supervisors Chambers in the County Government Center; moreover, the Panel stands ready to assist in making arrangements for the CPUC's visit.

We understand that measures to prevent the spread of the coronavirus may create an obstacle for a public hearing at this time, but we can offer two approaches to overcome this issue. First, a CPUC meeting – like the Engagement Panel meeting earlier this week – could be conducted “electronically.” That is, the CPUC Commissioners and the Panel members could meet in person at the Board Chambers (mentioned above), while being live-streamed to a larger, community audience. Public comments made online can be read onto the record and to the Commissioners and Panel members during the public comment period.

Alternatively, we can postpone the public workshop in San Luis Obispo until such a time when the uncertainties of the coronavirus have passed. We are fine with this approach, so long as the CPUC can assure us **that no final decisions will be made on the Policy Guidelines until the local workshop is held.**

We look forward to working with you on the successful implementation of the Tribal Land Transfer Policy and hope that you will appreciate our desire and request to allow for public input on the issues of high importance to our community. Please let us know at your earliest convenience whether you will accommodate our request.

Sincerely,

Diablo Canyon Decommissioning Engagement Panel:

David Baldwin
Dena Bellman
Lauren Brown
Sherri Danoff
Alex Karlin
Scott Lathrop
Frank Mecham
Nancy O'Malley
Linda Seeley
Kara Woodruff

cc: Jonathan Koltz, Legal Advisor to Commissioner Guzman Aceves
Leuwam Tesfai, Chief of Staff, Commissioner Shiroma
Stephanie Green, Tribal Liaison
Allison Brown, Public Advisor
Tom Jones, PG&E
Maureen Zawalick, PG&E
Jim Welsch, PG&E
Erik Jacobson, PG&E
Charles Anders, Engagement Panel Facilitator
San Luis Obispo County Board of Supervisors

From: [Margaret \(P.J.\) Webb](#)
To: [Green, Stephanie](#)
Cc: assemblymember.cunningham@assembly.ca.gov
Subject: CPUC Tribal Lands Policy
Date: Thursday, March 19, 2020 1:40:30 PM

Due to the timing of the CPUC Tribal Lands Transfer Policy adoption in December before the Diablo Canyon Decommissioning Engagement Panel was even aware of the policy, I strongly encourage that the Panel take a step back and look towards an inclusive outreach to the local communities and indigenous tribes who were left out of this process. This policy has a direct bearing on the panel's mission to recommend future use of the land. This is an opportunity to preserve one of the last undeveloped coastal lands with a long history of the first protectors of the land and sea, the Chumash people. The land should be protected and not to be turned into expensive homes for the few.

The CPUC should hold a workshop in San Luis Obispo (since we are directly impacted) before new policy guidelines are adopted; and

Any land transfers occurring under the Tribal Land Transfer Policy must be accompanied by a conservation easement, to ensure the conservation of the land's resources and protection of sustainable public access.

I add my voice to the Northern Chumash Tribal Council in support of:

1. Commitment to Native American tribal government self-determination acknowledging Native American tribes with equal standing under the law with inclusion rather than exclusion.
2. Commitment to open space and public access to Pecho Coast lands around Diablo Canyon.
3. Protection of tribal resources, sacred sites and culturally sensitive grounds through deed restrictions and preservation.
4. Collaboration with the communities to create a dynamic multi-use sustainable seashore that includes Indigenous peoples, the proposed Chumash Heritage National Marine Sanctuary, the fishing industry, renewable energies, tourism, agriculture.

Sincerely,

Margaret Webb

P.O. Box 702

Cambria, CA 93428

From: [Kara Woodruff](#)
To: [Green, Stephanie](#); [Guzman Aceves, Martha](#); [Shiroma, Genevieve](#); [Rechtschaffen, Cliff](#); [Randolph, Liane](#); [Batjer, Marybel](#); [Stebbins, Alice](#); [news](#)
Subject: CPUC Workshop in San Luis Obispo on Tribal Land Transfer Policy
Date: Wednesday, March 11, 2020 8:55:41 AM

Good morning, Ms. Green, with a copy to Commissioners and other interested parties:

Several members of the local community have sent you emails about the new Tribal Land Transfer Policy. In particular they have asked that the CPUC hold a public workshop on the new policy and its implementation guidelines in San Luis Obispo. The purpose of this request is to give the local community an opportunity to comment on the policy, because it may have **profound effect on the 12,000-acre Diablo Canyon Lands surrounding the Diablo Canyon Power Plant.** For over twenty years, this community has fought for the conservation of and public access to those lands. If that is now at risk, we believe we should have an opportunity to talk about the policy and strategies for its implementation.

In response to those emails, **you have argued that the outreach to date was sufficient in that CPUC “announced the draft land transfer policy at a public meeting.”** Really? A policy is adopted that affects several hundred thousand acres and people around the state, and yet it’s only announced at a public meeting? How many people attend these meetings? How is this sufficient to get the word out?

And indeed, it was not sufficient. In spite of the policy’s significant impact, **only a few small number of organizations responded to the draft policy during your “public comment period.”** Only a handful of tribes responded, three utilities, the Native American Land Trust, and the Stewardship Council. Here’s who did not respond (because they did not know about the policy): any people or organizations from San Luis Obispo, any conservation groups, any environmental groups, and not even all the tribes from San Luis Obispo itself.

Had any of these people or organization known about the draft policy, **we would have provided input. Indeed, we would have specifically asked that any transfers of land away from investor-owned utilities (such as PG&E) be subject to conservation easements that ensure the (1) in-perpetuity protection of ecological, cultural, and scenic resources; and (2) sustainable, appropriate public access.** Without this protection, you have placed the conservation values of the Diablo Canyon Lands – as well as other lands in the state – at risk for development and otherwise.

At a bear minimum we ask that you hold a workshop **this year** in San Luis Obispo, so that your commission has the opportunity to hear the local community’s perspective on the Tribal Land Transfer Policy and hear input about how the careful implementation of the policy may be achieved, for a win-win for all parties including tribes, utilities, and local communities.

Thank you for your consideration,

Kara Woodruff
Member,

Diablo Canyon Decommissioning Engagement Panel

PS: Please see this article published this morning from our local paper, calling for a workshop in San Luis Obispo on the new policy:

<https://www.sanluisobispo.com/opinion/editorials/article241024711.html>

From: [Robert DeGraff](#)
To: [Green, Stephanie](#)
Cc: boardofsups@co.slo.ca.us; hharmon@slocity.org; agomez@slocity.org; apease@slocity.org; estewart@slocity.org; cchristianson@slocity.org
Subject: Diablo Canyon Lands and the Tribal Land Transfer Policy
Date: Wednesday, March 18, 2020 5:10:22 PM

Dear Ms Green,

I am a resident of San Luis Obispo and an ardent supporter of the conservation of our local undeveloped lands. I support the CPUC's Tribal Lands Transfer Policy with the following caveat: the CPUC's regulations should provide that any land transfers occurring pursuant to the Tribal Land Transfer Policy must be accompanied by a conservation easement to ensure the conservation of the land's resources and the protection of sustainable public access.

Yours truly,
Robert DeGraff
2478 Victoria Ave. #105
San Luis Obispo, CA 93401

From: [Lillian Clary](#)
To: [Green, Stephanie](#)
Cc: [Kaye Bruns](#)
Subject: Diablo Canyon Decommissioning, conservation issues
Date: Saturday, March 21, 2020 9:56:31 AM

As a long time resident of the Central Coast and a member of the Backcountry Horsemen of California, I want to weigh in on an issue regarding the decommissioning of the Diablo Canyon reactor site.

I am not able to attend the session on March 24.

I applaud the policy that allows tribes to have a chance to obtain lands of cultural importance.

However, I am very concerned that a conservation easement be established to protect public access.

Please develop policy guidelines that preserve public access.

Thank you

Lillian Clary

From: [Jim Conway](#)
To: [Green, Stephanie](#)
Subject: Fw: Workshop in San Luis Obispo
Date: Thursday, March 26, 2020 12:57:02 PM

From: Jim Conway <jconway@calpoly.edu>
Sent: Thursday, March 26, 2020 12:51 PM
To: stephanie.green@puc.ca.gov <stephanie.green@puc.ca.gov>
Subject: Workshop in San Luis Obispo

March 26, 2020

Stephanie,

I believe that a workshop should be held in San Luis Obispo County in regard to the Tribal Land Transfer Policy, before the policy guidelines are finalized. This is necessary, because our communities will be directly impacted by this policy, as it will apply to the disposition of the Diablo Canyon land holdings and surrounding acreage. Also any land transfer under the policy must include a conservation easement. Such an easement would help preclude over development of the lands involved, and might preclude major developers from using a tribe to front for them. Conservation of this coastline and adjoining property should be the main concern of policy makers in the decision making process.

Jim Conway
Cayucos, CA

From: [Bruce Berlin](#)
To: [Green, Stephanie](#)
Subject: Need for Public hearing - Tribal Lands Transfer Policy
Date: Monday, March 9, 2020 5:30:59 PM

Hello Ms. Green-

I firmly believe that the CA Public Utilities Commission should sponsor a public workshop about the new Tribal Lands Transfer policy in San Luis Obispo, since our community will be directly impacted.

The PUC's new Land Transfer Policy, which gives **tribes with ancestral connections to California lands owned by investor-owned utilities (such as PG&E) **the right-of-first-refusal to purchase any lands transferred away from the utilities.****

Further public discussion needs to happen to examine the policy's applicability to the Diablo Canyon Lands and what it may mean for conservation and public access.

Among the shortcomings of the new policy, is the faulty outreach process that deprived the public of an opportunity to provide input.

Please strongly consider this and put this on an upcoming agenda .

-

Thank you.

Bruce Berlin
Arroyo Grande

From: [Russell Hodin](#)
To: [Green, Stephanie](#)
Subject: Protection of Diablo Canyon lands
Date: Wednesday, March 11, 2020 8:32:26 AM

Stephanie Green
California Public Utilities Commission

11 March, 2020
San Luis Obispo, CA

Dear Ms. Green and CPUC Commissioners,

The Diablo Canyon Decommissioning Engagement Panel has been discussing the fate of PG&E property, including the DCNPP itself with its interim waste storage, for months, so it was a surprise to learn in our local paper that the CPUC had recently discussed and adopted policy regarding utility lands, including those here in San Luis Obispo County, without local notice, or public hearings, or by reaching out to the decommissioning panel directly.

It is the overwhelming wish of county residents that the bulk of the PG&E Diablo Canyon property remain undeveloped and that it be preserved for perpetuity through legal instrument, including a guarantee of limited public access. This would be of tremendous overall benefit to California, and to the county of San Luis Obispo. Towards this end, I would strongly encourage the CPUC to revisit its recently adopted Tribal Lands Transfer Policy such that conservation through a process of negotiated easements with local interest groups, including affected tribal groups, be allowed upfront before any offer of transfer of lands. Conservation of utility lands should be a first and highest priority, beyond public safety.

Public hearings to discuss and gather input for a conservation and lands transfer process under the new policy should be scheduled in local communities, including San Luis Obispo.

Thank you for the consideration of our county's wishes for, and recognition of the historical and ongoing efforts to conserve the Diablo Canyon lands.

Yours,
Russell Hodin
1570 Hansen Lane
San Luis Obispo, CA 93401

[https://linkprotect.cudasvc.com/url?
a=https%3a%2f%2fwww.sanluisobispo.com%2fopinion%2feditorials%2farticle241024711.html&c=E,1,uLZp9k9Sr-
COLOHrEFER9d6bIhBmVtWcqT0d_OrjE1xDiYOMLLK6VDkQoIQ7AcKIm3dEAUqyFhnjIqMeUxCcqrkK3F2nAMG1w53OqfERgP9gqJlc.&typo=1](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.sanluisobispo.com%2fopinion%2feditorials%2farticle241024711.html&c=E,1,uLZp9k9Sr-COLOHrEFER9d6bIhBmVtWcqT0d_OrjE1xDiYOMLLK6VDkQoIQ7AcKIm3dEAUqyFhnjIqMeUxCcqrkK3F2nAMG1w53OqfERgP9gqJlc.&typo=1)

Sherri Danoff
PO Box 2382
Avila Beach, CA 93424

April 1, 2020

Stephanie Green
CA Public Utilities Commission
Stephanie.Green@cpuc.ca.gov

SUBJECT: IMPLEMENTING GUIDELINES FOR TRIBAL LAND POLICY

Dear Ms. Green,

I'd appreciate consideration of my comments on the Draft Guidelines. My interest is from being a member of the Diablo Canyon Decommissioning Engagement Panel (Panel), my profession as a land use planner and my being a resident of Avila Beach. Avila is gateway to the Diablo Canyon facility and Diablo lands.

- Guidelines Section 1. General Provisions, includes 1.1. Purpose and Intent, which basically is to implement the Tribal Land Policy. 1.1.iv.c. states: "The intent of these Guidelines is therefore to further those goals." I suggest adding a phrase at the end: "as long as implementing such land transfer is shown to be consistent with public safety, health and welfare."

Diablo lands and land on which the nuclear facility is located almost certainly would continue having access through Avila. The other possible access is through Montana de Oro, a state park. A land use involving high intensity weekend use could exacerbate Avila's already unsafe access road congestion. Avila has one-way in and out, a 3-mile long narrow winding access road, high fire hazard, earthquake faults and tsunami potential. Also, after nuclear facility decommissioning it is highly likely that used nuclear fuel will remain.

In addition, a land transfer could be contrary to public welfare if a conservation easement is not in effect for Diablo Canyon lands. County residents registered overwhelming support for conservation by an advisory initiative in 2000. At recent workshops of the Panel, the public strongly supported conservation and public access for passive recreation.

- At the PUC's 3/24/2020 meeting on the Guidelines, Commissioner Randolph commented on Guidelines Section 2. Notification. Utilities are required under 2.1 to notify pertinent tribes before requesting of the PUC to dispose of land. The Commissioner recommended also notifying the pertinent local government. I think this suggestion is excellent so as to facilitate public knowledge about the potential tribal land transfer. In addition, there would be benefit to notifying local organizations and individuals known by the PUC to have interest in the matter.

Additionally, I suggest augmenting 2.3. Contents of Notice by adding that notifications to pertinent local governments, per the above suggestion, are to recommend to the local government that it hold a public meeting concerning the potential land transfer.

- Guidelines Section 3. Requests for Approval, includes 3.3. Presumption in Favor of Tribe. This presumes “transfer to the tribe is in the public interest, absent a finding supported by evidence:”

It only is possible for the public to communicate about whether the transfer is in the public interest if the PUC informs the public that the PUC will be considering the transfer.

Normally, an application for development is submitted to a local jurisdiction and broad review of potential impacts under the California Environmental Quality Act (CEQA) is triggered. However, once a tribe has land and becomes federally recognized, local regulations do not apply.

I suggest adding Section 3.5. Findings for Approval and include in the new section that notifications having been provided to the local government and to organizations and individuals known to be interested.

Thank you for the opportunity to provide input for the draft Guidelines.

Sincerely,

Sherri Danoff

C: Commissioners, CPUC

From: [Kara Woodruff](#)
To: [Green, Stephanie](#)
Subject: RE: Meeting Follow Up - Tribal Land Transfer Policy
Date: Thursday, February 27, 2020 10:29:47 AM
Attachments: [image001.png](#)

Thanks Stephanie – appreciate the heads up. Also, in case you haven't yet connected with her, you may be hearing from Violet Sage Walker. She is a member of the local Northern Chumash Tribe and believes that her tribe has been left out of the process in developing the new policy and in other issues relevant to Native Americans. Members of her tribe have a very conservation-oriented view and have a vision for the protection of the Diablo Canyon Lands and its natural and cultural resources, that may be different than the other local tribe, the yak tityu tityu – that is Violet's perspective anyways. I hope that all tribes with a historic connection to the area will be considered in future utility-owned land use planning.

Also, FYI, we (myself, other members of the Engagement Panel, and the Friends of Wild Cherry Canyon) have requested that the CPUC hold a workshop in San Luis Obispo, since our community may be very directly affected by the new policy. As I mentioned to your colleagues, the County of SLO has offered the use of its Board of Supervisors Chambers in the SLO County Government Center, which would seem to be a ideal venue for a workshop that will attract a lot of local interest. I am happy to help set up this meeting in any way, and I hope you and your colleagues will consider it.

Thank you and best wishes, Kara

Kara Woodruff
Member,
Diablo Canyon Decommissioning Engagement Panel

From: Green, Stephanie <stephanie.green@cpuc.ca.gov>
Sent: Wednesday, February 26, 2020 5:19 PM
To: Kara Woodruff <KWoodruff@blakeslee-blakeslee.com>
Subject: RE: Meeting Follow Up - Tribal Land Transfer Policy

Here is the flyer for the 3/24 workshop. I have no details yet regarding any additional workshops.

Stephanie

From: Kara Woodruff <KWoodruff@blakeslee-blakeslee.com>
Sent: Tuesday, February 25, 2020 3:52 PM
To: Green, Stephanie <stephanie.green@cpuc.ca.gov>

Subject: RE: Meeting Follow Up - Tribal Land Transfer Policy

Good – thank you. Can you let me know please when/where (Bay Area?) that workshop is planned? I'm hoping that CPUC can hold a second workshop on the Central Coast – looking into that per the below, as I'm sure you saw. Thanks again, Kara

From: Green, Stephanie <stephanie.green@cpuc.ca.gov>
Sent: Tuesday, February 25, 2020 3:43 PM
To: Kara Woodruff <KWoodruff@blakeslee-blakeslee.com>
Subject: RE: Meeting Follow Up - Tribal Land Transfer Policy

Thank you for providing this update. I am glad the meeting went well. We should have a good discussion at the workshop.

*Stephanie Green, CPUC Executive Division, Stephanie.Green@cpuc.ca.gov
Office 415-703-5245 Cell 415-265-9757*
www.cpuc.ca.gov | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

From: Kara Woodruff <KWoodruff@blakeslee-blakeslee.com>
Sent: Tuesday, February 25, 2020 3:35 PM
To: Green, Stephanie <stephanie.green@cpuc.ca.gov>
Subject: FW: Meeting Follow Up - Tribal Land Transfer Policy

Hi Stephanie: I wanted to provide you with an email that I sent to your colleagues, in following up on yesterday's meeting. If you have any questions, please let me know. Thank you, Kara

Kara Woodruff
Member,
Diablo Canyon Decommissioning Engagement Panel

From: Kara Woodruff
Sent: Tuesday, February 25, 2020 3:24 PM
To: 'Martha.GuzmanAceves@cpuc.ca.gov' <Martha.GuzmanAceves@cpuc.ca.gov>; 'Koltz, Jonathan' <Jonathan.Koltz@cpuc.ca.gov>; 'jack.mulligan@cpuc.ca.gov' <jack.mulligan@cpuc.ca.gov>; 'bor@cpuc.ca.gov' <bor@cpuc.ca.gov>
Cc: Sherri Danoff <sherri39@charter.net>
Subject: Meeting Follow Up - Tribal Land Transfer Policy

Greetings, everyone, and thank you again for meeting with me and fellow Engagement Panel member Sherri Danoff yesterday in Commissioner Guzman Aceves' office. (Please forward this to Pat Kelly – unfortunately I did not get that email address from the meeting):

At that meeting, we promised a few follow up items, as follows: First, to provide some proposed language

to supplement the Tribal Land Transfer Policy, to ensure that the policy doesn't undermine attempts to conserve the natural and cultural resources of land subject to transfer to tribes. Second, to explore a venue for a workshop in San Luis Obispo. And third, to provide a link to the Diablo Canyon Lands section of the Panel's Strategic Vision.

Easy stuff first: I contacted the Planning Director of SLO County (Trevor Keith, who is also a member of the Engagement Panel) about the use of its Board of Supervisor's chambers for a CPUC workshop meeting. He is expected to get back to us with details and when he does, we will promptly let you know.

Second, here is the link to the Diablo Canyon Lands section of the Panel's Strategic Vision:
<https://diablocanyonpanel.org/decom-topics/diablo-canyon-lands/>

Finally, here's my suggestion on proposed language to promote conservation of investor-owned utility property:

In the introduction section of the Tribal Land Transfer Policy, please insert the following paragraph at the end, just prior to the "Background" section:

"The Tribal Land Transfer Policy is intended to promote (and not undermine) the conservation of lands and their natural and cultural resources. Thus, if a IOU desires or is directed to attach a conservation easement on the subject land prior to transfer, it may do so without adverse effect from this Policy. The conservation easement should be consistent with relevant law, run with the land in-perpetuity, held by a qualified non-profit conservation organization or agency, and include terms to restrict future development and provide appropriate public access, to ensure the sustainable use of the land under tribal or other ownership."

Even better, the Policy could go further by actually **requiring that a conservation easement be in place prior to any transfers of land** -- to tribes or otherwise. This would provide the highest level of protection for the natural and cultural resources on utility owned lands.

This paragraph could/should be expanded with greater detail (including conservation goals, specific parameters that should be included in the easement language, etc.) in the formal implementation guidelines that the CPUC is expected to create and distribute publicly.

I will add that the Engagement Panel will be discussing the new Policy at its public meeting on Wednesday, March 11 – agenda below. We welcome all of you to attend and provide input during the public comment period and/or be available to answer questions from the Panel and the community. We can also likely make room on the agenda if the CPUC wishes to make a brief presentation. If a more detailed presentation is desired, I'd recommend that being done at a CPUC workshop in our county or at a future Engagement Panel meeting which we would be happy to devote to this subject (we unfortunately already have a full agenda for the March meeting).

Best wishes and thank you again for your time, Kara

Kara Woodruff
Member,
Diablo Canyon Decommissioning Engagement Panel



DIABLO CANYON
Decommissioning Engagement Panel

Diablo Canyon Decommissioning Engagement Panel Meeting

Date/Time:	3-11-2020 / 6:00 PM – 9:30 PM	Facilitator:	Chuck Anders	
Meeting Location:	1055 Monterey Street, SLO; County Government Offices	Recorder:	Kate Williams	
Webcast:	SLO-SPAN			
TV Broadcast:	Channel 21 (Charter)			
Meeting Purpose:	Better understand the State and Local permit requirements and timing; receive an update from PG&E on current decommissioning matters; discuss the implications of the CPUC tribal policy; receive information on the status of the RFP for dry cast storage; review current DCDEP activities, including the updated Panel Charter and application process; and receive public comment.			
AGENDA				
Item #	What – Content	Action Path	Who	Target Start Time
1.	Panel Meeting Start		All	6:00 PM
2.	Welcome / Safety Briefing (911, AED, CPR)	▪ Inform	O'Malley	6:00 PM (5)
3.	Review Meeting Agenda	▪ Inform	Anders (Facilitator)	6:05 PM (5)
4.	SLO County CEQA/EIR/CDP Process/Timing of Decommissioning and New Position	▪ Present ▪ Discuss	Keith/SLO County Staff	6:10 PM (30)
5.	Coastal Commission Coastal Development Permit Process for Decommissioning	▪ Present ▪ Discuss	TBD	6:40 PM (30)
6.	CPUC Tribal Land Transfer Policy <ul style="list-style-type: none"> ▪ Description of Policy ▪ Opportunities and Rationale for Policy ▪ Concerns about Conservation and Public Access 	▪ Inform ▪ Discuss	Bellman Lathrop Danoff/Woodruff	7:10 PM (25)
7.	Break			7:35 PM (5)
8.	Update on Critical PG&E Matters <ul style="list-style-type: none"> ▪ Bankruptcy Status ▪ NDCTP Status/Settlement 	▪ Inform Discuss	PG&E	7:40 PM (15)
9.	Request for Proposal Process for Dry Cask Storage <ul style="list-style-type: none"> ▪ Status of RFP Process/Timeline ▪ Important Considerations 	▪ Inform ▪ Discuss	Scenen Seeley/Karlin	7:55 PM (20)
10.	Summary of Panel Activities, Charter Update and New DCDEP Application Process	▪ Inform Discuss	Baldwin Brown	8:15 PM (10)
11.	Public comment*	▪ Present ▪ Record	All	8:25 PM (40)
12.	Panel Discussion and Response to Public Comment	▪ Discussion	Mecham/Panel	9:05 PM (20)
13.	Introduction to next meeting topic: Transportation Considerations of Decommissioning	▪ Present	Danoff	9:25 PM (5)
14.	Adjourn Meeting	▪ Action	Anders	9:30 PM

*Please note that public comment could take place earlier than scheduled if the meeting runs ahead of schedule.

From: [Jill ZamEk](#)
To: [Green, Stephanie](#)
Subject: San Luis Obispo Mothers for Peace Comments on the CPUC Tribal Land Transfer Policy
Date: Thursday, April 2, 2020 9:28:45 AM

San Luis Obispo Mothers for Peace Comments on the California Public Utilities Commission (CPUC) Tribal Land Transfer Policy

The CPUC has recently enacted the Tribal Land Transfer Policy which allows tribes the right of first refusal to acquire any property transferred away from “investor owned facilities.” This includes Pacific Gas and Electric Company (PG&E) and its Diablo Canyon Lands - as well as hundreds of thousands of other acres across the state. San Luis Obispo Mothers for Peace understands that the details and guidelines of this policy have not yet been adopted. Thus, we provide input.

Mothers for Peace supports the intent of the policy which is meant to mitigate historic misconduct. Our concern is how this policy may be implemented.

With the exception of sites located in densely populated urban areas, Mothers for Peace proposes that any land transfers occurring under the Tribal Land Transfer Policy or other entity must be accompanied by a conservation easement. We seek the conservation and protection of the land’s resources (ecological, cultural, scenic) as well as sustainable and permanent public access.

San Luis Obispo County will be directly impacted by this new policy. In regards to the Diablo Canyon Lands, we advocate for a required conservation easement before any tribal land transfer occurs. This would reflect the DREAM initiative passed in the community in 2000 as well as years of community efforts to conserve those lands as reflected in the strategic vision adopted by the Diablo Canyon Decommissioning Engagement Panel.

Mothers for Peace additionally requests that the CPUC hold a workshop in San Luis Obispo specifically for the Diablo Lands AFTER the Coronavirus risk has passed and BEFORE the final policy guidelines are adopted.



Laura Genao
Managing Director
State Regulatory Affairs
Laura.Genao@sce.com

April 30, 2020

Via Email

Ms. Stephanie Green
CPUC Tribal Liaison
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Stephanie.Green@cpuc.ca.gov

Re: Southern California Edison’s Comments on the Draft Guidelines to Implement the CPUC Tribal Land Policy

Dear Ms. Green:

Southern California Edison (SCE) appreciates the opportunity to provide comments to the Draft Guidelines to Implement the CPUC Tribal Land Policy (Guidelines). The Guidelines are intended to provide greater detail than the broader Tribal Land Policy¹ and should address concerns raised in the comments on the Policy.²

SCE supports the California Public Utilities Commission’s (CPUC or Commission) efforts to ensure California Native American Tribes (Tribes) are engaged and meaningfully considered in the disposition of Investor-Owned Utility (IOU) lands. In order to meet that shared objective, and to contribute to resolving issues raised in the adopted policy, SCE recommends that the Guidelines: (1) apply to properties subject to Public Utilities Code Section 851 filing that require Commission approval, (2) define a process flow and provide specific timelines for tribal engagement, (3) protect the confidentiality of tribal cultural resources by fostering more direct government-to-government communication, and (4) identify a Commission led formal dispute resolution process.

The Guidelines Should Apply to Dispositions of Land in Fee Simple Ownership or Leases That Require Commission Approval Pursuant to Public Utilities Code Section 851

The types of land dispositions subject to the Guidelines remain unclear, and the categories included in the terms “dispose of” and “disposition” appear to be overly broad. To clarify the ambiguity, SCE recommends the Guidelines only apply to dispositions of fee simple ownership or leases where

¹ California Public Utilities Commission Investor-Owned Utility Real Property- Land Disposition – First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes, p.7.

² SCE incorporates by reference its October 11, 2019 and November 15, 2019 comments to the Tribal Land Policy; attached for convenience.

Commission approval is required pursuant to Public Utilities Code Section 851. Discreet conveyances pursuant to General Orders 69-C (conveyances with a right of recapture or to jurisdictions with the power of eminent domain) or 173 (dispositions pursuant to Section 851 where an advice letter filing is utilized) should be exempt. Such discreet dispositions include conveyances to local governments to accommodate road widenings or other public works related projects. To refine the categories included in the term “disposition,” SCE requests modification of the definition to either remove reference to “encumbrance,” or clarify that encumbrances resulting from financing activities that do not include a transfer in ownership of the asset to a third party (e.g., a modification to a trust indenture) are exempt. Subjecting minor conveyances and encumbrances resulting from financing activities to the Policy may result in delays to local government projects or add unnecessary reviews for tribal governments.

SCE also agrees with the comments provided by letter on March 30, 2020 by the San Diego Gas and Electric Company (SDG&E). Specifically, SCE shares SDG&E’s concern regarding the impact the Guidelines may have on our collective ability to grant utility and conservation easements.

The Guidelines Should Define the Process Flow and Specify Timeframes for Tribal Engagement

The Guidelines require that each IOU request the Native American Heritage Commission (NAHC) identify tribes with an interest in the territory within which the real property lies, a process that may exceed 90 days. Given that the scope of the notice is not limited to larger transactions, an uncertain review period could delay public improvement projects such as road widenings dependent on the receipt of an easement or other right of way instrument. To streamline the tribal engagement process for all parties, SCE offers the following recommendations:

- The IOU contact the NAHC to receive Native American referral lists (per county) on a quarterly basis covering the IOU’s service territory. The benefit of this approach is that it avoids a case by case approach and streamlines the 90-day timeframe.³
- The Guidelines should include a process flow with specified timeframes for tribal responses. Providing a process to follow, document, and provide proof of completion when filing a request for approval under Section 851 will help foster a mutual understanding of what constitutes good faith and reasonable efforts.⁴ SCE recommends the Guidelines include a requirement for IOUs to provide a 30-day timeframe for tribal response to a notification of disposition of property. If the tribe does not respond, the IOU must then send the tribe a follow-up notification with a 10-day response period. Including defined process flow and timeframes in the Guidelines creates an actionable good-faith standard for the IOU to follow.

The Guidelines Should Protect Tribal Confidentiality by Fostering Direct Government-to-Government Communication

SCE supports the Commission’s efforts to protect tribal cultural resources (TCR).⁵ In order to protect TCRs from unintended disclosure, SCE recommends stating that any confidential data included in a filing or

³ Guidelines Section 2.2(b) IOU to Identify Interested Tribe or Tribes.

⁴ Guidelines Section 3.3(b) Presumption in Favor of Tribe.

⁵ Guidelines Section 3.4 Impacts on Cultural Resources.

notification associated with the Tribal Land Policy will be provided by tribes to the Commission, consistent with the confidentiality provisions set forth in the Commission's Tribal Consultation Policy. SCE recommends the Guidelines specify tribal comments regarding potential impacts to tribal cultural resources be submitted directly to the Commission, rather than the IOU. Fostering this direct government-to-government communication would be beneficial for all parties and minimize any potential for miscommunication if the IOU served as the intermediary.

The Guidelines Should Identify a Commission Led Formal Dispute Resolution Process

SCE requests the Guidelines be modified to include a formal dispute resolution process that identifies the Commission as responsible for resolving disputes between interested tribes.⁶ The guidance currently places the responsibility for dispute resolution on the tribes and IOUs through informal consultation.

SCE requests the Guidelines identify the Commission as responsible for determining tribes' connection to the subject property through government-to-government consultation with the interested tribes. Tribal territories and ethnographic affiliations are often fluid, which could unintentionally place the IOU in a position to choose one tribe over another and risk important tribal relationships. Additionally, as discussed above, the consultation between the Commission and tribes may include information regarding confidential tribal cultural resources that is not provided to IOUs. SCE requests the Commission act as the Policy's dispute resolution arbiter, or by selecting a third-party arbiter, to ensure careful consideration of a tribes' connection to the subject property.

SCE appreciates the Commission's continued stakeholder engagement in the development of the Draft Guidelines to Implement the CPUC Tribal Land Policy and thanks you for your consideration of SCE's comments.

Sincerely,

/s/ Laura Genao

Laura Genao
Managing Director – State Regulatory Affairs
Southern California Edison Company
601 Van Ness Avenue, Suite 2030
San Francisco, CA 94102

⁶ Guidelines Section 4.3 Multiple Interested Tribes.



Clay Faber
Director – Regulatory Affairs
8330 Century Park Court
San Diego, CA 92123
Tel: 858-654-3563
CFaber@sdge.com

March 30, 2020

VIA EMAIL

Stephanie Green
Tribal Liaison
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Stephanie.Green@cpuc.ca.gov

Re: Comments on Draft Guidelines for Tribal Land Policy

Dear Ms. Green:

San Diego Gas & Electric Company (“SDG&E”) appreciates the opportunity to provide comments on the Draft Guidelines to implement the tribal land transfer policy approved on December 5, 2019 (“Tribal Land Policy”). SDG&E serves 18 federally recognized tribes, along with other tribal organizations, in a service territory of only 193 square miles. The Tribal Land Policy therefore has the potential to significantly impact SDG&E’s operations and its partnerships with tribes and other community stakeholders.

SDG&E shares the Commission’s commitment to meaningful consideration of tribal interests, and SDG&E believes that the Draft Guidelines must provide clear instruction both to investor-owned utilities (“IOUs”) and to tribes. SDG&E also believes that the Commission and its staff should play a stronger role in implementing the Tribal Land Policy, particularly where there may be disputes among tribes.

The Tribal Land Policy states that it is meant to work as an “overlay over the existing [Public Utilities Code] Section 851 process.”¹ As the Commission is aware, Section 851 was originally implemented to *streamline* the process for sales, transfers, leases, or encumbrances of utility property, which had previously “been criticized for being costly and cumbersome.”²

¹ Tribal Land Policy, p. 1.

² Sen. Floor, Analysis of Assem. Bill No. 736 (2005-2006 Reg. Sess.) Aug. 24, 2005, p. 2, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200520060AB736#; see also Assem. Floor, Analysis of Assem. Bill No. 736 (2005-2006 Reg. Sess.) Aug. 30, 2005, p. 2.

SDG&E believes that the purposes of Section 851 and the Tribal Land Policy can be harmonized for the benefit of all parties through collaborative revision of the Draft Guidelines.

SDG&E previously submitted comment letters on the Commission’s draft versions of the Tribal Land Policy that were released last year. These comment letters proposed clarifications that remain relevant to the Draft Guidelines.³

As the Commission noted in its Tribal Land Policy, some of the concerns raised in earlier stakeholder comments, “though well taken, will be better addressed in the implementation guidelines[.]”⁴ The workshop held on March 24, 2020, was an important first step in leveraging stakeholder input so that the implementation guidelines provide certainty to all parties. SDG&E is submitting these comments to follow up on the workshop. A redline of the Draft Guidelines with revisions to effectuate these comments is included as **Attachment A**.

I. POLICY SCOPE AND EXEMPTIONS

The Tribal Land Policy applies to “future applications and advice letters submitted by investor-owned utilities (IOUs) requesting permission to dispose of Real Property . . . under Section 851 of the Public Utilities Code.”⁵ The definitions in the Tribal Land Policy and the Draft Guidelines further address the Tribal Land Policy’s scope. These definitions, however, differ and require clarification to avoid confusion and overly broad application.

A. Definition Clarification

The Tribal Land Policy defines “dispose of” and “disposition” as “the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in real property.”⁶ By contrast, the Draft Guidelines propose to define “disposition” as “the transfer, sale, donation, encumbrance, or disposition by any other means of an estate in real property.”⁷ The Tribal Land Policy defines “real property” as “any IOU real property whose disposition is subject to approval in accordance with California Public Utilities Code Section 851.”⁸ The Draft Guidelines include a similar, though not identical, definition.⁹

Despite some clarification during the development of the Tribal Land Policy, SDG&E is concerned that the policy continues to be overly broad. The Draft Guidelines should clarify the

³ SDG&E incorporates its October 17 and 28, 2019 comment letters by reference and also attaches them for convenience. (See **Attachments B** and **C**.)

⁴ Tribal Land Policy, p. 7.

⁵ *Id.*, p. 1.

⁶ *Ibid.*

⁷ Draft Guidelines, § 1.3.c.

⁸ Tribal Land Policy, p. 1.

⁹ To avoid confusion, SDG&E recommends that the definitions in the Draft Guidelines be revised for consistency with those in the Tribal Land Policy.

transactions to which the Tribal Land Policy applies, while clearly exempting those that do not further the Commission's interests in developing the Tribal Land Policy in the first place.

B. Problems with Utility Easements

SDG&E receives many requests from public agencies and private landowners to vacate or relocate utility easements on their property. By its very nature, an easement encumbers land owned by another party. In most cases, a public agency or private landowner is seeking to develop land that it already owns, which may require relocating utility easements or returning a utility easement to the public agency or private landowner. Many of these requests are to accommodate affordable housing, infrastructure, transit, and infill development projects that advance important state policy goals.

Requiring IOUs to offer these easements to tribes before returning the easements to the public agency or private landowner via quit claims or relocation is problematic for several reasons. It would:

- (a) not provide a tribe with any fee simple interest in the land,
- (b) would only provide a tribe with an easement limited to utility use,
- (c) would not further the Commission's policy interests,
- (d) likely violates the property rights retained by the underlying property owner, and
- (e) would be a waste of both IOU and tribal resources.

IOUs may face increased resistance, if not absolute refusal, to requests for utility easements from public agencies and private landowners once they discover that utility easements may not be returned to them upon termination of utility use by IOUs. This added uncertainty to using or developing their own land could reduce their willingness to work with IOUs.

C. Problems with Conservation Easements

Conservation easements are another area of concern. Public agencies, such as the California Department of Fish and Wildlife and the California Department of Parks and Recreation, frequently require IOUs to grant conservation easements as mitigation for environmental impacts from construction activities. Requiring IOUs to offer conservation easements to tribes before granting them to public agencies or third-party conservation groups would frustrate important state policy goals, impede IOUs' ability to comply with binding mitigation measures, and fail to provide a tribe with any fee simple interest in the land.

D. Proposed Revisions to Exempt Easements

Accordingly, we request that the Draft Guidelines be revised to specify that the following shall not, in any case, be considered a disposition of real property subject to the Tribal Land Policy:

- (a) a grant of an easement,
- (b) a termination of an easement,
- (c) a modification of an easement, or
- (d) a replacement of any easement with another easement with the same landowner.

Additionally, we ask that the Commission consider the comments we provided on this topic in our October 17, 2019 letter,¹⁰ and revise the Draft Guidelines to include clear exemptions for each of the categories that we described in the letter.

II. PROCEDURAL CLARIFICATIONS AND SUGGESTED CHANGES

In the Tribal Land Policy, the Commission deferred specific procedural provisions to these Draft Guidelines explaining that the “[Tribal Land] Policy is just that: a policy. It is meant to be an overarching framework, not a detailed guidance document. The Commission in consultation with the Tribes, IOUs, and other stakeholders, will be developing more detailed guidelines to implement this broad Policy.”¹¹

The Draft Guidelines, however, continue to omit the procedural guidance necessary to provide the Commission, IOUs, and tribes with certainty on policy implementation. SDG&E believes that the following clarifications and suggested changes would benefit all parties.

A. Notification Process

The Tribal Land Policy states that the “Commission will adopt guidelines requiring notification of the Tribal Chairperson or their designee of the IOU’s intent to dispose of any Real Property within a Tribe’s ancestral territory.”¹² The Draft Guidelines propose requiring IOUs “submit a written request to the [Native American Heritage Commission (“NAHC”)] to identify tribes with an interest in the territory on which the real property lies.”¹³ If the NAHC does not respond within 90 days, or if the response is inconclusive, the Draft Guidelines require the IOU to independently decide which tribes to notify, a determination which may require evaluation of tribal ancestral territories.¹⁴

Although SDG&E believes in building strong partnerships with our tribal communities, and maintains a dedicated tribal liaison, it does not consider itself an expert on tribal issues and does not believe it should be in the position of identifying potentially interested tribes based on ancestral territories. Rather, SDG&E proposes that the Commission incorporate the notification process used when notifying tribes in connection with General Order 131-D filings, which is well understood by all parties. Pursuant to that process, notice on the NAHC “shall constitute

¹⁰ See **Attachment B**.

¹¹ Tribal Land Policy, p. 7; see also *id.*, pp. 4-5.

¹² *Id.*, p. 4.

¹³ Draft Guidelines § 2.2 (IOU to Identify Interested Tribe or Tribes).

¹⁴ *Ibid.*

notice on California Indian Reservation Tribal Governments.”¹⁵ Centralizing notice requirements would minimize confusion and ensure that all tribal governments are appropriately informed of dispositions of property in their territories as efficiently as possible, and allows those tribes potentially interested in providing fair market value for the property to step forward. SDG&E’s revisions to Section 2 of the Draft Guidelines would require IOUs to provide all relevant information to the NAHC (including location) such that tribes would be fully informed of the disposition of surplus real property.

B. Contents of Notice

The Draft Guidelines require that an IOU provide the “reason the IOU is disposing of the real property.”¹⁶ SDG&E requests that this requirement be clarified to ensure that IOUs need not violate any third-party confidentiality that may be associated with a proposed transaction, including by naming parties who have requested a land interest transfer. In such cases, we believe it is adequate to provide tribes with notice of the proposed land disposal without specifically identifying any third parties.

C. Time to Respond to Notice

The Tribal Land Policy states that after tribes have been provided with notice of a proposed disposition of real property, the “Tribe will have 90 days to respond to the notification as to its interest in the subject Real Property.” No such timeline is provided in the Draft Guidelines; this oversight will create confusion and will create significant inefficiencies as well as unnecessary increased costs. In its October 24, 2019 letter, SDG&E commented that a 90-day notice period would adversely impact IOUs’ ability to move forward with routine land transactions and requested that the time period be reduced to 30 days.¹⁷ We continue to believe that 30 days is sufficient to allow tribes a reasonable opportunity to indicate an interest in the property. To ensure a timely and streamlined process, as contemplated under Section 851, SDG&E proposes revising the Draft Guidelines to include either: (a) a 30-day window for a tribe to express its interest in the disposition of real property or, at a minimum, (b) the 90-day requirement provided for in the Tribal Land Policy.

D. Time Period for IOU Consultation

Neither the Draft Guidelines nor the Tribal Land Policy provide procedures or time limitations for IOUs and tribes to consult or negotiate regarding the transfer of land from an IOU to a tribe upon mutually agreeable terms. The Guidelines would be an appropriate place for this additional level of detail. The only guidance provided in the Draft Guidelines, however, is that IOUs make a “reasonable effort” to negotiate with interested tribes. Although this standard is acceptable for a policy-level document, SDG&E believes that the Draft Guidelines should be

¹⁵ General Order No. 131-D, §§ IX.A.1.g, IX.B.1.d.

¹⁶ Draft Guidelines, § 2.4.b.

¹⁷ See **Attachment C**.

revised to incorporate specific procedures and time limits as a framework for transactions between IOUs and tribes.

As we noted in our October 17, 2019 comment letter, analogous language in the California State Lands Act is instructive.¹⁸ Government Code Section 54223 provides: “After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to this article[.]”

Including similar language in the Draft Guidelines would provide certainty, create reasonable expectations and understanding on all sides, and encourage IOUs and tribes to work together cooperatively in a timely manner. Accordingly, we request that the Draft Guidelines include language that requires a 90-day good faith negotiation period, but allows for the IOU to thereafter submit a request for approval under Section 851 without further need for consultation or negotiation should the parties be unable to reach mutually agreeable terms.

E. Annual Reports

SDG&E requests that the Draft Guidelines set a date certain for IOUs to submit annual reports. We propose April 1 to avoid times of the year when other annual reports are frequently due, and after wildfire season. SDG&E also proposes that the Draft Guidelines specify that annual reports are to be submitted to the Deputy Executive Director for Energy and Climate Policy, but we are agreeable to other specified individuals or offices.

III. IOU ROLE IN DISPUTE RESOLUTION

The Tribal Land Policy states that “[i]f more than one Tribe seeks ownership of available Real Property, and if the Tribes are unable to resolve the dispute themselves, this Policy creates an expectation that the IOU or the Commission will engage in meaningful consultation with the Tribes to attempt to resolve the dispute.”¹⁹ SDG&E is very concerned that the Tribal Land Policy and the Draft Guidelines continue to place IOUs in the position of attempting to resolve disputes with and among tribal governments. Even more troubling is that the Draft Guidelines now wholly omit any reference to the Commission’s role in the dispute resolution process.²⁰

SDG&E is committed to meaningful partnerships with tribes, but IOUs are not well-suited to resolving potentially contentious disputes related to land ownership and ancestral

¹⁸ California Government Code §§ 54221 *et al.*

¹⁹ Tribal Land Policy, p. 6.

²⁰ See Draft Guidelines, § 4.

territories.²¹ IOUs do not have the requisite expertise or the authority to make informed judgments about which tribes hold superior claims to certain properties or to appropriately evaluate “each tribe’s connection to the surplus property.”²² Indeed, tribes may not feel comfortable divulging potentially confidential information to IOUs to support their connection to certain properties.²³ Requiring IOUs to make such determinations also has the potential to erode trust and damage relationships between IOUs and tribes. Finally, placing dispute resolution outside a formal governmental process may tend to favor tribes with more financial resources and exacerbate existing resource inequalities between tribes.

Disputes of this nature are best resolved by a governmental entity and in a Government-to-Government context. The Commission’s involvement with dispute resolution would be consistent with Governor’s Executive Orders B-10-11 and N-15-19, which order the implementation of effective and meaningful Government-to-Government communication between the State and tribes on matters affecting tribal communities. As such, SDG&E proposes that the Draft Guidelines be revised to reflect the Commission’s rightful role over any disputes arising under the Tribal Land Policy.

IV. CONSISTENT REFERENCE TO “SURPLUS” LANDS

The Tribal Land Policy refers to an IOU’s disposing of “surplus property” (e.g., Tribal Land Policy, p. 1, fn. 6). The reference to “surplus” property is largely absent in the Draft Guidelines, however. SDG&E proposes that it be incorporated for consistency and clarity. Additionally, SDG&E believes that it would be helpful to define “surplus property” or “surplus real property” as “land owned by any IOU, that is determined by the IOU to be no longer necessary for the IOU’s use, except property being held by the IOU for the purpose of exchange.” This definition is modeled on the definition of “surplus land” in the California State Lands Act. Providing concrete definitions for all terms in the Draft Guidelines will eliminate any future uncertainty about the Tribal Land Policy’s applicability.

V. FAIR MARKET VALUE

SDG&E believes that payment of fair market value for surplus property is implicit in the Tribal Land Policy and Draft Guidelines and requests that the Draft Guidelines expressly include this understanding. This clarification would manage expectations associated with the disposition of surplus property, is required of a reasonably prudent manager of ratepayer assets, and would provide a valuable starting point for negotiations between IOUs and tribes. As noted in our

²¹ We note that the Agua Caliente Band of Cahuilla Indians and the Habematolel Pomo of Upper Lake both identified the issue of potential conflicts among multiple interested tribes in their comments on the Draft Policy, submitted on October 8, 2019, and August 29, 2019, respectively.

²² Draft Guidelines, § 4.3.

²³ See, e.g., Pub. Resources Code, § 21082.3, subd. (c)(1) (providing that any information regarding the location, description, and use of tribal cultural resources submitted to a lead agency during the CEQA process is confidential).

October 17, 2019 letter, *requiring* donation of property would constitute an impermissible taking prohibited by both the California and United States Constitutions.

VI. CLARIFICATION OF “ADJACENT TO”

The Draft Guidelines currently define the “right of first refusal” as requiring an IOU disposing of surplus real property to “contact the tribe or tribes whose ancestral territory is on or adjacent to the real property[.]”²⁴ It is currently unclear how or when property qualifies as being “adjacent to” a tribe’s ancestral territory. To mitigate that uncertainty, SDG&E requests that the Draft Guidelines be revised either to: (a) omit the term “adjacent to,” (b) clarify how adjacency is determined, or (c) limit the geographical threshold to areas “*immediately* adjacent” to a tribe’s ancestral territory. SDG&E also continues to recommend that the Commission, in consultation with the NAHC and individual tribes, prepare a map to attach to the Draft Guidelines that identifies each tribe’s ancestral territory.

We appreciate the Commission’s commitment to engaging with stakeholders throughout this process and look forward to continued involvement in developing comprehensive guidelines. Thank you for your consideration of these comments.

Sincerely,

/s/ Clay Faber

Clay Faber
Director of Regulatory Affairs

²⁴ Draft Guidelines, § 1.3.h.

Attachment A

San Diego Gas and Electric Company
Redline of Proposed Changes to the Draft Guidelines
to Implement the CPUC Tribal Land Policy

Attachment A
San Diego Gas & Electric Company Redline Proposed Changes

GUIDELINES TO IMPLEMENT THE CPUC TRIBAL LAND POLICY

1. GENERAL PROVISIONS

1.1. Purpose and Intent

- a. The purpose of these Guidelines is to implement the Commission's Tribal Land Policy, which it adopted on December 5, 2019.
- b. The goals of the Tribal Land Policy are:
 - i. To recognize and respect Tribal sovereignty;
 - ii. To protect Tribal sacred places and cultural resources;
 - iii. To Ensure meaningful consideration of Tribal interests and the return of lands within the Tribe's ancestral territory to the appropriate Tribe; and
 - iv. To encourage and facilitate notice and Tribal participation in matters before the Commission that involve transfers of surplus real property subject to California Public Utilities Code Section 851.
- c. The intent of these Guidelines is therefore to further those goals.

1.2. Construction

- a. These Guidelines shall be liberally construed to further the goals of the Tribal Land Policy. See Rule 1.1(b).
- b. Unless otherwise noted, all statutory references are to the laws of the State of California.
- c. Nothing in these rules prevents an Investor Owned Utility from burdening utility-owned land with an easement before disposing of that land.

1.3. Definitions

For purposes of these Guidelines, unless the context otherwise requires—

Attachment A

San Diego Gas & Electric Company Redline Proposed Changes

- a.** “Immediately adjacent to” means having borders that are contiguous or partially contiguous with another property.
- a.b.** “Ancestral territory” means the territory designated by a tribe and submitted to the Native American Heritage Commission (NAHC) to provide to state agencies and local government for notice of projects under Assembly Bill (AB) 52. (2013-2014 Reg. Sess.) Tribes are the primary source for identification of a tribe’s ancestral territory. If a tribe has not designated territory under AB 52, “ancestral territory” for that tribe means territory identified in Vols. 8, 10 & 11 Sturtevent, Handbook of North American Indians (1978).
- b.c.** “California Native American tribe” or “tribe” means a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of the Statutes of 2004. (See Pub. Res. Code, § 21073.) This includes both federally-recognized tribes and tribes that are not recognized by the federal government. Nothing in the policy prevents tribes from consulting with other Native American groups that demonstrate an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the Commission.
- d.** “Disposition” means the transfer, sale, donation, encumbrance, or disposition by any other means of an estate in real property (it being understood that the following land transactions shall not, in any case, be considered a Disposition:
- i.** termination of an easement;
 - ii.** modification of an easement;
 - iii.** replacement of any easement with another easement with the same landowner;
 - iv.** relocation of an easement on private property;
 - v.** conveyance to or from local, state, or federal agencies (for example, for rights-of-way, trails, parks, or other public needs);
 - vi.** conveyances to any other party as required by local, state, or federal law, regulation, or any contractual obligations entered into prior to the adoption of the Tribal Land Policy;

Attachment A
San Diego Gas & Electric Company Redline Proposed Changes

vii. conveyances for the purpose of environmental or biological mitigation;

viii. conveyances for the purpose of conservation or open-space easement; or

i.ix. transactions or conveyances commenced prior to the adoption of the Tribal Land Policy.) -

e.e. “Indian country” means “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” (18 U.S.C. § 1151.)

d.f. “Investor-owned utility” (IOU) means “private corporations or persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers.” (Cal. Const., art. XII, § 3.)

e.g. “Real property” means any IOU surplus real property whose disposition is subject to approval under Section 851 of the Public Utilities Code.

f.h. “Request for approval” means an IOU’s submission, whether under the formal application process or the informal advice letter process, requesting Commission approval of the disposition of real property under Section 851 of the Public Utilities Code.

i. “Right of first refusal” means that the IOU disposing of surplus real property must contact the tribe or tribes whose ancestral territory is on or immediately adjacent to the surplus real property, and must provide the tribe or tribes the right to take or refuse the real property, before the IOU can seek third-party purchasers for the real property.

Attachment A

San Diego Gas & Electric Company Redline Proposed Changes

~~g-j.~~ “Surplus property” or “Surplus real property” means land owned by any IOU, that is determined by the IOU to be no longer necessary for the IOU’s use, except property being held by the IOU for the purpose of exchange.

2. NOTIFICATION

2.1. Notification Generally

When an IOU decides to dispose of surplus real property, before it submits a request for approval to the Commission, the IOU shall notify any relevant tribe or tribes that it intends to dispose of the property.

~~2.2. IOU to Identify Interested Tribe or Tribes to Provide Notice to NAHC~~

~~2.2.~~

~~a.~~ The IOU shall ~~submit~~ provide a written request to the NAHC to ~~identify~~ notify tribes with an interest in the territory on which the ~~r~~real property lies.

~~a.b.~~ The IOU’s request shall contain all information necessary to appropriately inform the tribes, in accordance with Section 2.4.

~~b.~~ If the NAHC fails to respond within 90 days, or if the NAHCs response is inconclusive:

~~i.~~ If the real property is located within or adjacent to a federally-recognized tribes Indian country, the IOU shall provide notice to that tribe.

~~ii.~~ If the real property is not located within or adjacent to a federally-recognized s Indian country, the IOU shall provide notice to any tribe or tribes on whose ancestral territory the real property lies.

2.3. To Whom Notice Directed

The ~~IOU~~ NAHC shall notify the tribal chairperson of any interested tribes, or the chairperson’s designee.

2.4. Contents of Notice

The notice shall include, in plain language:

a. The location and a brief description of the real property at issue;

Attachment A

San Diego Gas & Electric Company Redline Proposed Changes

- b. The A brief reason description of why the IOU is disposing of the real property, while maintaining any third-party confidentiality;
- c. A statement telling the tribe that they have a right of first refusal on the real property before the IOU may put the real property on the market;
- d. An offer to consult with the tribe regarding the tribe's interest in acquiring
- e. the real property; and
- f. Contact information of an IOU representative who is sufficiently knowledgeable about the real property to answer any questions the tribe might have, so that the tribe can decide whether it is interested in acquiring the real property.

3. TIMING OF NOTICE AND IOU CONSULTATION

3.1. Timing of Notice

Upon receiving notice from an IOU, interested tribes shall have 30 days to respond to the notification as to its interest in the subject real property.

3.2. Timing of IOU Consultation

After a disposing IOU has received notice from a tribe indicating interest in the subject real property, the disposing IOU and the interested tribe shall enter into good faith negotiations to determine mutually satisfactory terms. If the terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the disposing IOU may submit a request for approval under Section 851 without further need for consultation with the interested tribe.

4. REQUESTS FOR APPROVAL

2.5.4.1. Filing

- a. If an IOU submits a request for approval under Section 851, the request must show that the IOU provided notice to the NAHC and consultation to the interested tribe or tribes. The required showing includes:

Attachment A

San Diego Gas & Electric Company Redline Proposed Changes

- i. A copy of the IOU's written request to the NAHC to identify interested tribes;
 - ii. A copy of the ~~IOU's~~ NAHC's written notice to any interested tribal chairperson or their designee;
 - iii. Documentation of any consultation between the IOU and the tribe or tribes.
- b. If the IOU does not meet that showing, and if it is unable to cure those deficiencies, the Commission may, in its discretion:
- i. Identify any interested tribes, provide them with notice of the proceeding and an opportunity to comment;
 - ii. Direct the IOU to identify, notice, and consult with any interested tribes; or
 - iii. Reject the request for approval without prejudice.

2.6.4.2. Tribal Participation

- a. The Commission will encourage interested tribes to participate in these proceedings.
- b. Commissioner staff and Administrative Law Judges will ensure that any comment provided by a tribe is submitted into the record of the proceeding, consistent with the confidentiality provisions set forth in the Commission's Tribal Consultation Policy.
- c. If the request for approval is an advice letter filing, any comment submitted by the tribe shall be appended to the draft Resolution disposing of the advice letter filing.

2.7.4.3. Presumption in Favor of Tribe

When an IOU requests approval to dispose of real property lying in a tribe's ancestral territory, the Commission will presume that the tribe is the preferred transferee, and that the transfer to the tribe is in the public interest, absent a finding supported by evidence:

Attachment A

San Diego Gas & Electric Company Redline Proposed Changes

- a. That the tribe is not interested in acquiring the real property (e.g., that the tribe declined consultation with the IOU or confirmed that it is not interested);
- b. That the IOU acted in good faith and, after reasonable effort, in accordance with Section 3 above, was unable to agree with the tribe on reasonable terms for the transfer of the real property (including the fair market value of the consideration for the real property);
- c. That transfer of the real property to another entity is necessary to achieve IOU operational requirements, or to comply with any law, rule, or regulation; or
- d. That transfer of the real property to another entity would be in the public interest.

2-8-4.4. Impacts on Cultural Resources

As part of its review of any request for approval, the Commission will carefully consider any comments regarding potential impacts on tribal cultural resources, or suggesting measures that would mitigate those impacts. This applies whether the proposed transfer is to the tribe or to a third party.

3-5. DISPUTE RESOLUTION

3-1-5.1. Disputes Generally

It is the Commission's intent that, where possible, disputes be resolved informally, by discussion between the IOU and any interested tribes. If informal resolution between the parties is not possible, the Commission will review and resolve the dispute.

3-2-5.2. Disputes About Notice

If there is a dispute about the tribe or tribes that the IOU must notice, or about the extent of any tribe's ancestral territory, the IOU shall attempt to resolve the dispute through informal discussion with the tribe or tribes raising the dispute. ~~If discussion is unable to resolve the dispute, the IOU shall use its best judgment to determine how to proceed with the required notification. The IOU shall document any steps it takes to resolve such a dispute, and the reasons for any determination that it makes.~~

Attachment A

San Diego Gas & Electric Company Redline Proposed Changes

3.3.5.3. Multiple Interested Tribes

If more than one tribe seeks ownership of available real property, and if the tribes are unable to resolve the dispute themselves, the IOU-Commission shall engage in meaningful consultation with the tribes to attempt to resolve the dispute. ~~If that fails to resolve the dispute, the IOU, in consultation with the tribes, shall propose a reasonable resolution to the dispute as part of its request for approval.~~ The IOU-Commission will take into consideration each tribe's connection to the surplus real property at issue; the current use of the real property; the proposed use after transfer; and any other relevant considerations raised by the IOU, tribes, and any other stakeholder to the disposition of the real property.

4.6. ANNUAL REPORTS

4.1.6.1. Annual Reports

The IOUs shall, every year on or by April 1, provide the Commission with an updated list of recent and upcoming real property dispositions, as well as a summary of tribal contacts and consultations (including the outcome of those consultations they have undertaken over the previous year). Annual Reports shall be submitted to the Deputy Executive Director for Energy and Climate Policy.

Attachment B

San Diego Gas and Electric Company
Comments Provided October 17, 2019



A  Sempra Energy utility®

Clay Faber
Director – Regulatory Affairs
8330 Century Park Court
San Diego, CA 92123-1548

cfaber@SempraUtilities.com

October 17, 2019

California Public Utilities Commission
Public Advisor's Office
505 Van Ness Ave., San Francisco, CA 92102
public.advisor@cpuc.ca.gov

Re: Comment on Proposed Tribal Land Transfer Policy

Dear Commissioners Guzman Aceves and Shiroma:

San Diego Gas & Electric Company (“SDG&E”) appreciates the opportunity to provide comments on the Commission’s Draft Policy on Investor-Owned Utility Real Property – Land Disposition – First Right of Refusal for Aboriginal Properties to California Native American Tribes (“Draft Policy”) published on July 3, 2019.¹

SDG&E also appreciates the Commission’s continued interest in tribal consultation and strengthening effective relationships with tribal governments. There are nearly 20 federally recognized tribes served within our service territory and their land holdings cover 193 square miles—accounting for approximately five percent of San Diego County’s total area. SDG&E also provides service to three non-federally recognized tribes and groups. Like the Commission, SDG&E believes in building strong partnerships with our tribal communities, and maintains a dedicated tribal liaison position to ensure those partnerships are meaningful and lasting.

SDG&E understands that the Draft Policy is intended to extend similar land disposal benefits to tribes as agreed to by Pacific Gas and Electric Company (“PG&E”) in its Land Conservation Commitment² to all investor owned utilities (IOUs) throughout the State. However, the Draft Policy does not seem to consider some important differences between the retained lands subject to the PG&E Land Conservation Commitment and other IOU-owned properties. SDG&E notes that the retained lands subject to the PG&E Land Conservation Commitment were large holdings (*i.e.*, up to thousands of acres) associated with PG&E’s hydroelectric generating system that were not being used or necessary for a utility purpose. SDG&E does not maintain any hydroelectric generating facilities, and unlike PG&E’s retained

¹ SDG&E will provide additional comments on the revised draft dated October 14, 2019, in a subsequent letter.

² See D.03-12-035, Appendix A.

lands, SDG&E does not have any similarly situated large tracts of land that are not being used for utility purposes that could be considered “surplus.”

Given the complexity of the issues raised in the Draft Policy, including the potential that such land may be subsequently taken into trust by the federal government after transfer to a tribe, SDG&E recommends that the Commission first hold public workshops to allow for additional input and dialogue on these issues from a broad range of affected stakeholders. Implementation of any land transfer policy will require coordination among the Commission, utilities, tribal governments, state and federal agencies, and other interested parties.

Additionally, based upon SDG&E’s review, to provide improved certainty and fairness to all parties, SDG&E believes that, if adopted by the Commission, the Draft Policy would benefit from some additional clarification. To that end, SDG&E respectfully offers the following comments to aid in the Policy’s development and implementation.

I. REQUESTED CLARIFICATION #1: RIGHT OF FIRST OFFER

The Draft Policy provides a “first right of refusal” to interested tribes. A right of first refusal is commonly understood as the right to match or better an offer to purchase received by the land owner. On the other hand, a “right of first offer” requires the land owner to offer to sell the property to the holder of the right before offering it to anyone else.³ To avoid confusion, facilitate timely decision-making, and promote efficient transactions, SDG&E requests that the Commission revise the Draft Policy to clarify that a “right of first offer” is being provided when a property is identified for disposition by the IOU. By way of analogy, this is consistent with the approach in the California Surplus Lands Act (“SLA”),⁴ and would allow for more specificity in the procedures for negotiations, as described below, as well as take into consideration that the terms of any agreement will differ depending upon the transacting party (for example, the potential need for waivers of sovereign immunity). Additionally, providing for a “right of first offer” would allow for the development of a clear set of procedures for the sale process and expectations on all sides.

II. REQUESTED CLARIFICATION #2: DEFINITION OF “SURPLUS PROPERTY”

SDG&E requests additional clarification of the term “surplus property,” which the Draft Policy does not define. SDG&E again suggests that the Commission consider utilizing a definition similar to that contained in the SLA.

As background, the SLA directs local agencies, such as cities, counties, or special districts, to prioritize the development of low-income housing or other vital public goods, such as parks and schools, when selling or leasing surplus land. Under the SLA, “surplus land” is

³ See California Real Property Sales Transactions (4th ed. Cal CEB), § 8.58.

⁴ California Government Code §§ 54221 *et al.*

defined as “land owned by any local agency, that is determined to be no longer necessary for the agency’s use, except property being held by the agency for the purpose of exchange.”

Here, the SLA definition could be utilized with additional clarifications for the utility context. Specifically, SDG&E recommends that the Draft Policy define “surplus land” as “land owned by any IOU, that is determined by the IOU to be no longer necessary for the IOU’s use, except property being held by the IOU for the purpose of exchange”, subject to certain exemptions as discussed below.

III. REQUESTED CLARIFICATION #3: THE SCOPE OF DISPOSITIONS OF “SURPLUS PROPERTY” THAT WOULD BE IMPACTED; EXEMPTIONS

The Draft Policy currently applies to “any future disposition of surplus real property currently owned by investor owned utilities (IOUs), including any future disposition of PG&E retained lands pursuant to the Stipulation, not contained within the boundaries of a Federal Energy Regulatory Commission (FERC) jurisdictional project.” (Draft Policy, p. 1.) The Draft Policy defines “disposition” as the “transfer, sale, donation, or disposition by any other means of a fee simple interest or easement in real property.” (*Ibid.*) As proposed, SDG&E is concerned that this definition is overly broad, and that the Draft Policy could be read to apply to any transaction involving IOU land transactions.

First, as a threshold matter, and for consistency with applicable requirements, any policy should be limited to those land transactions necessitating compliance with California Public Utilities Code (“P.U. Code”) Section 851 and subject to approval by the Commission. SDG&E recommends that the Commission clarify the scope of dispositions impacted accordingly.

Second, IOUs are sometimes required to establish and then transfer conservation easements in connection with proposed development as a form of compensatory mitigation to specified parties, including state and federal agencies. As currently drafted, the Draft Policy would appear to apply to these sorts of transactions and could result in conflict with the requirements of other state or federal laws. Further, as currently defined, the “disposition of surplus real property” would capture routine land transactions, such as when an easement is relocated to accommodate a customer’s or landowners’ needs. SDG&E therefore recommends that all transactions related to easements – which by their very nature encumber land already owned by third parties – be exempted from the policy. Third, certain types of fee simple transactions should also be exempted from the policy. Thus, SDG&E requests that the Commission clarify the scope of any potential policy to revise the definition of “disposition” to exempt categories of land transactions, including all easements, such as those related to:

- Environmental or biological mitigation lands;
- Conservation and open-space easements;
- Conveyances to or from local, state, or federal agencies (for example, for rights-of-way, trails, parks, or other public needs);
- Condemnation;

- Relocation of easements on private property;
- Quitclaim of easements back to underlying property owners, including easements located on tribal lands;
- Conveyances to any other party required by local, state, or federal law, regulation, or any contractual obligations entered into prior to the adoption of any final policy by the Commission; and
- Transactions that have commenced prior to the adoption of any final policy by the Commission.

IV. REQUESTED CLARIFICATION #4: FAIR MARKET VALUE

While payment of fair market value for surplus property is implicit in the Draft Policy, SDG&E recommends that such a requirement be made explicit in any policy adopted by the Commission, to clarify and manage expectations associated with the disposition of surplus property. *Requiring* donation of property would constitute an impermissible taking prohibited by both the California and United States Constitutions.

V. REQUESTED CLARIFICATION #5: DELETION OF “OR ADJACENT TO”

As proposed, the Draft Policy would apply to any land “located in or adjacent to a tribe’s territory” without setting any specific geographic thresholds. SDG&E requests deletion of the term “or adjacent to.” It is currently unclear how or when property qualifies as being “adjacent to a tribe’s territory.” Additionally, certain tribes claim overlapping aboriginal territories, adding to the complexity of the language proposed by the Commission. SDG&E recommends that the Commission allow for the greatest certainty for all parties by clearly limiting application of the policy, if adopted, to surplus lands *located within* a tribe’s aboriginal territory. SDG&E also recommends that the Commission, in consultation with the Native American Heritage Commission and individual tribes, prepare a map to provide to IOUs that identifies each tribe’s aboriginal territory.

VI. REQUESTED CLARIFICATION #6: PROCEDURAL CLARIFICATIONS

The Draft Policy appears to omit a number of procedural provisions necessary to provide guidance to the Commission, utilities, and tribal governments upon its implementation. SDG&E believes that further procedural clarifications would benefit all parties, and request the following additions or clarifications:

- (A) Notice. The Draft Policy “requires IOUs to notify the appropriate California tribe(s) at the time the IOU determines it will dispose of surplus properties or retained land located in or adjacent to a tribe’s territory.” (Draft Policy, p. 2.) Further, should an IOU fail “to provide notice to the appropriate tribe(s) before submitting an application or advice letter requesting Commission approval of the transaction, the Commission will provide the tribe with additional time to participate in the proceeding.” (Id., pp. 3–4.) Given the number of tribes in California and in SDG&E’s

service territory specifically, SDG&E proposes that the Commission incorporate the notification process used when notifying tribes in connection with General Order 131-D filings, rather than creating a new process as part of this Draft Policy. Pursuant to that process, notice on the Native American Heritage Commission “shall constitute notice on California Indian Reservation Tribal Governments.” (General Order No. 131-D, §§ IX.A.1.g, IX.B.1.d.) Centralizing notice requirements would minimize confusion and ensure that all tribal governments are appropriately informed of dispositions of property in their territories in as efficient a way as possible, and allows those tribes potentially interested in providing fair market value for the surplus property to step forward. SDG&E believes that the Draft Policy could be strengthened by requiring indications of interest from tribes⁵ for surplus property within 30 days of such notice to the Native American Heritage Commission, which would then be provided to the Commission as part of an application or advice letter package.

- Procedures for negotiations. Notwithstanding tribal participation in proceedings under P.U. Code § 851, the Draft Policy does not currently provide any procedures or time limitations for the negotiations or transfer of land from an IOU to a tribe upon payment of fair market value. SDG&E requests that the Commission incorporate specific procedures and time limits as a framework for transactions between IOUs and tribes.

Analogous language in the SLA is again instructive. Government Code § 54223 provides: “After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to this article[.]” (Gov. Code, § 54223.)

- (B) Including similar language in the Draft Policy would encourage parties to work together cooperatively and efficiently and reduce the likelihood of disputes requiring Commission intervention. Specifically, here, SDG&E requests that the Draft Policy be revised to provide for a maximum 60-day time period after an interested tribe has submitted its indication of interest for the IOU and the interested tribe to negotiate the terms of the transfer (including, for example, responsibilities for any required or desired environmental or cultural resource studies) and a mutually satisfactory price. If the IOU and the interested tribe are unable to reach agreement on such terms within that maximum 60-day period, then the IOU should be permitted to place the land on the open market at that time.

⁵ SDG&E further believes that the definition of tribe should be clarified to those with established governments.

- (C) Multiple interested tribes. As noted above, San Diego County is home to nearly 20 federally recognized tribes and three non-recognized tribes. SDG&E has already experienced situations where multiple tribes claim overlapping territories within its service territory. In the event that multiple tribes are interested in making an offer on a piece of surplus land, the Draft Policy should provide specific procedures for determining priority among the interested tribes. For example, the SLA provides procedures for resolving priority among multiple parties. (Gov. Code, § 54227.) Although not directly applicable to the Commission’s Draft Policy, the SLA’s procedures underscore the necessity of such a framework to avoid disagreements and a finite time period for negotiations. Accordingly, SDG&E requests that the Commission incorporate additional provisions to identify priority among interested tribes.
- Substantial evidence standard. The Draft Policy states that “[w]here an IOU seeks approval to transfer non-FERC jurisdictional surplus property, including retained land, within a tribe’s territory, the tribe shall be deemed the preferred transferee absent a finding supported by *substantial evidence* that it would be in the public interest to transfer the land to another entity.” (Draft Policy, p. 4.) SDG&E requests that Commission clarify the term “substantial evidence” by either defining it or by reference to its definition in other authority (e.g., the California Environmental Quality Act, Cal. Code Regs., tit. 14, § 15384), or by striking “substantial.” SDG&E also requests clarification regarding who will determine whether the evidentiary standard has been met. If the Commission will make such determinations (presumably as part of the application or advice letter process), SDG&E recommends that the policy clearly describe the Commission’s role and any associated procedures. Further, SDG&E requests that the policy clarify that evidence that (1) a tribe is not interested in acquiring the surplus property (for example, evidence of a tribe’s failure to respond to notification or other communications indicating that the tribe is not interested in a purchase), (2) the IOU and a tribe were unable to reach agreement on the terms of the transfer within the maximum 60-day period recommended above, or (3) conveyance of the surplus property to another entity is required to comply with applicable laws, rules, or regulations, is sufficient to satisfy the applicable evidentiary standard.
- Failure to comply. The SLA also provides that “[t]he failure of a local agency to comply with this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value.” (Gov. Code, § 54230.5.) Without taking a position on whether the provision codified in the SLA is sound, SDG&E recommends providing language in the Draft Policy clarifying the consequences of transfers that fail to comply with the Draft Policy’s requirements, as well as any course of action that Commission is likely to take as a result.

VII. RECOMMENDATION #5: IMPLEMENTATION OF THE POLICY AS A PILOT PROJECT

The Policy represents a shift in the Commission's current approach to the disposition of utility property. Accordingly, SDG&E recommends that the Commission first implement the Policy as a one-year pilot project in select areas or for select dispositions, prior to final adoption. Implementation of a pilot project will undoubtedly yield valuable information that the Commission can use to develop the most beneficial and practical policy for all parties.

SDG&E appreciates the opportunity to provide input on the Draft Policy and look forward to further involvement in the Commission's process. Thank you for your time and attention to these comments.

Sincerely,

/s/ Clay Faber
Clay Faber
Director - Regulatory Affairs

Attachment C

San Diego Gas and Electric Company
Comments Provided October 28, 2019



Clay Faber
Director – Regulatory Affairs
8330 Century Park Court
San Diego, CA 92123-1548

cfaber@SempraUtilities.com

October 28, 2019

California Public Utilities Commission
Public Advisor’s Office
505 Van Ness Ave., San Francisco, CA 92102
public.advisor@cpuc.ca.gov

Re: Comments on Revised Proposed Tribal Land Transfer Policy

Dear Commissioners Guzman Aceves and Shiroma:

San Diego Gas & Electric Company (“SDG&E”) appreciates the opportunity to provide comments on the Commission’s revised Draft Policy now entitled “Investor-Owned Utility Real Property – Land Disposition – First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes” (“Revised Draft Policy”) published on October 14, 2019. SDG&E also appreciates the Commission’s interest in tribal consultation and believes that the Revised Draft Policy includes important clarifications for both investor-owned utilities (“IOUs”) and tribes. However, SDG&E continues to have serious concerns about the lack of clarity regarding scope and the many complex issues raised by the Revised Draft Policy, such as its potential dampening effect on important infill and affordable housing development goals. SDG&E therefore urges the Commission to provide a formal process and additional time for public input by all parties and stakeholders who may be impacted, indirectly or otherwise.

SDG&E previously provided comments on the Commission’s July 3, 2019, Draft Policy on October 17, 2019, which SDG&E continues to believe are important to include in any policy the Commission may adopt on this subject for clarity and implementability for all parties, including clear exemptions to the policy. In the interest of brevity, SDG&E will not repeat those comments in detail here.¹ Rather, this letter focuses on issues raised in the Revised Draft Policy, and SDG&E respectfully offers the following additional comments and requests additional opportunities in a formal process for discussion on these topics.

I. REQUESTED CLARIFICATION #1: THE SCOPE OF DISPOSITIONS OF REAL PROPERTY THAT WOULD BE IMPACTED; EXEMPTIONS

The Revised Draft Policy applies to “any future disposition of any Real Property by investor owned utilities . . .” (Revised Draft Policy, p. 1.) The Revised Draft Policy defines “disposition” as the “transfer, sale, donation, or disposition by any other means of a fee simple

¹ SDG&E hereby incorporates its October 17, 2019, comments on the Draft Policy by reference.

interest or easement in real property.” (*Ibid.*) The Revised Draft Policy further defines the “Real Property” subject to the policy as “any IOU property whose disposition is subject to approval in accordance with California Public Utilities Code section 851.” (*Id.*, p. 1, fn. 4.) While SDG&E appreciates this clarification, SDG&E is concerned that this definition continues to be overly broad, and that the Revised Draft Policy could be read to apply to any transaction involving IOU land transactions. Accordingly, SDG&E asks that the Commission review and consider the comments SDG&E provided on this topic in its October 17, 2019 letter, and include clear exemptions for categories of transactions in any policy that may be adopted as referenced in that letter.

In particular, SDG&E is concerned that the Revised Draft Policy continues to apply to easements. (Revised Draft Policy, p. 1, fn. 3.) SDG&E receives requests to vacate or relocate easements—which, by their very nature, encumber land already owned by third parties—to accommodate a customer’s or landowner’s needs. For example, SDG&E may relocate an easement to provide for affordable housing developments on the encumbered land. Requiring IOUs to offer such easements to tribes prior to quit claims or relocation would not provide the tribe with any fee simple interest in the land and may violate the property rights retained by the underlying property owner while frustrating efforts to bring affordable housing developments to market promptly. Accordingly, SDG&E continues to strongly recommend that all transactions related to easements be exempted from this policy.

II. REQUESTED CLARIFICATION #2: OVERLAPPING ANCESTRAL TERRITORIES

As noted in SDG&E’s October 17, 2019, letter, San Diego County is home to nearly 20 federally recognized tribes and three non-recognized tribes. SDG&E has already experienced situations where multiple tribes have indicated an ancestral tie in overlapping portions of its service territory. Accordingly, SDG&E is very concerned about the Revised Draft Policy’s requirement that IOUs attempt to resolve disputes with tribes concerning ancestral territory and notice requirements. (Revised Draft Policy, p. 2, fn. 9; *id.*, p. 7.)

Placing IOUs in the position of attempting to resolve disputes among sovereign nations as outlined on page 7 of the Revised Draft Policy is untenable for several reasons. First, IOUs do not have the appropriate expertise nor the authority to make an informed judgment about which sovereign nation holds a superior claim or has a stronger “connection to the surplus property at issue.” (Revised Draft Policy, p. 7.) Second, requiring IOUs to make such determinations has the potential to erode trust and damage relationships between IOUs and tribes. Third, the process described in the Revised Draft Update may create an unequal playing field among tribes, favoring larger tribes with more financial resources or exacerbating existing resource inequalities between tribes.

Further, the Revised Draft Policy’s reference to “Indian Country” on page 4 and footnote 12 results in ambiguity. The definition of “Indian Country” under the federal statute (18 U.S.C. § 1151) quoted in the policy addresses criminal and civil jurisdiction, a highly complex determination, further refined by application of Public Law 280, 67 Stat. 588, in California. IOU’s are ill-suited to make this sort of a determination. Requiring an IOU to determine the extent of a tribe’s “Indian County” would be an unwieldy and ambiguous process, and there may

be overlapping claims by tribes. A more straightforward approach would be to identify existing tribal lands and allotments held by tribal members for purposes of prioritizing application of any refined policy, as the Revised Draft Policy appears to be suggesting with the “Indian Country” language in this section.

In light of these concerns, SDG&E reiterates its requests in SDG&E’s October 17, 2019, letter that the Revised Draft Policy be further revised to provide specific procedures for determining priority among interested tribes, including as discussed herein. To the extent that there are remaining disputes between tribes, the Commission’s tribal liaison should provide a clear dispute resolution process between tribes to allow for implementation of this policy.

III. REQUESTED CLARIFICATION #3: PROCEDURAL CLARIFICATIONS

SDG&E appreciates the additional procedural provisions included in the Revised Draft Policy. However, SDG&E continues to believe that further procedural clarifications would benefit all parties, and requests the following additions or clarifications:

- Time to Respond to Notice. The Revised Draft Policy provides that tribes will have 90 days to respond to notification from an IOU and indicate interest in the Real Property proposed for disposal. (Revised Draft Policy, p. 5.) SDG&E recognizes that tribes do need time to assess property issues; however, requiring a 90-day notice period would greatly impact IOUs’ ability to move forward with routine land transactions. Therefore, SDG&E recommends that the time period for indicating initial interest in a property be reduced to 30 days.
- Time Period for Negotiations. The Revised Draft Policy does not currently provide any time limitations for the negotiations between an IOU and a tribe. Instead, the Revised Draft Policy requires that the IOU act in good faith and engage in “reasonable effort[s]” “within a reasonable time period, as determined by the Commission.” (Revised Draft Policy, p. 1, fn. 2; *id.*, p. 5.) SDG&E is concerned that this standard could result in disputes between IOUs, tribes, and the Commission over what constitutes “reasonable efforts” and a “reasonable time period.” Accordingly, SDG&E reiterates its request that the Commission incorporate specific procedures and time limits as a framework for transactions between IOUs and tribes, and consider incorporating analogous language from the SLA.²
- Implementation Guidelines. The Revised Draft Policy states that the Commission will develop implementation guidelines for the final policy, in consultation with the Office of the Governor – Tribal Advisor, IOUs, and other stakeholders. (Revised Draft Policy, p. 5.) SDG&E recommends that the Commission hold additional noticed workshops and

² Specifically, Government Code §54223 provides: “After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to this article[.]” (Gov. Code, § 54223.)

provide for at least two rounds of public comment on the implementation guidelines so that appropriate procedural details can be identified and incorporated into the guidelines.

- Costs. While SDG&E supports the Commission’s goals set forth in the Revised Draft Policy, the policy will result in additional transactional and external costs for IOUs in the form of cultural resource and tribal consultants, outside counsel, duplicate escrow charges for failed transactions, longer negotiation and transaction timelines, and other similar costs.

IV. ACKNOWLEDGEMENT OF OFFER PROCESS

In the October 17, 2019, letter, SDG&E requested that the Commission revise the Draft Policy to clarify that a “right of first offer” is being provided when a property is identified for disposition by the IOU, consistent with the approach in the California Surplus Lands Act (“SLA”).³ SDG&E appreciates the additional detail provided in footnote 2 of the Revised Draft Policy, which clarifies that surplus property will be offered to eligible tribes to indicate their interest in moving forward with negotiations to acquire property before the IOU moves forward to market the property to third parties. As indicated above, SDG&E believes that a reasonable time period for negotiations should be included in any policy for clarity and to facilitate negotiations among the parties.

SDG&E appreciates the opportunity to provide input on the Draft Policy and the Revised Draft Policy. SDG&E continues to believe that the Policy raises many complex issues that continue to require clarity and that providing a formal process and additional time for broader public input is critical. SDG&E looks forward to continued involvement in the Commission’s process. Thank you for your time and attention to these comments.

Sincerely,

/s/ Clay Faber
Clay Faber
Director - Regulatory Affairs

³ California Government Code §§ 54221 *et al.*

From: [Eric Greening](#)
To: [Green, Stephanie](#)
Subject: Thoughts on implementation of the Tribal Lands Transfer Policy
Date: Sunday, March 22, 2020 5:03:05 PM

Dear PUC members,

I am broadly in support of the position of the Diablo Decommissioning Engagement Panel on implementation of the Tribal Lands Transfer Policy, subject to a few nuances set out here.

I completely support their request to hold a workshop in San Luis Obispo prior to adoption of the policy guidelines for implementation, realizing that this may occasion a delay until such a real-time, face-to-face meeting can take place; given the diverted attention of so many people in the interim, such a delay can be justified.

I support conservation easements on all lands subject to this policy that are rural, spacious, or graced with species of concern, but if urban sites are subject to this policy, it must be flexible enough to allow for appropriate urban uses on such sites. A tribe might find that the best and highest use of an urban site would be for affordable housing, places for elder and child care, cultural gathering places, and places for family-based businesses to provide sustenance for tribal members; no blanket policy should prohibit such uses where appropriate.

I also support requiring tribes to allow SOME degree and type of public access, but it would be an injustice to force unfettered access onto lands of any tribe. There is too long a history of damage to sacred sites throughout the state by careless or malicious recreationalists to countenance forcing any tribe to risk further damage. In the specific case of the North Ranch near Diablo Canyon, I would hope that any tribe that takes custody of the land would allow an easement for the California Coastal Trail to traverse their lands, similarly to how state highways cross reservations; beyond that, I would be quite satisfied if a tribe chose to limit public access to docent-led hikes, provided such hikes were not excessively rare. Tribal members could derive an income from leading these, and would have an opportunity to share their culture and knowledge of the land and its flora and fauna, thus deepening the public's appreciation of the land, its heritage, and its past, present, and future indigenous stewards.

Stay well!!

Eric Greening, Atascadero



SANTA BARBARA COUNTY
Trails Council

Otis Calef
President

March 12, 2020

Dan Gira
Vice President

Paul Herning
Treasurer

Kevin Wallace
Secretary

Susan Keller

Bob Nagy

Curt Cragg

Natalie Hodges

Kerry Kellogg

George Amoon

PG&E
Diablo Canyon C
Decommissioning Engagement Panel

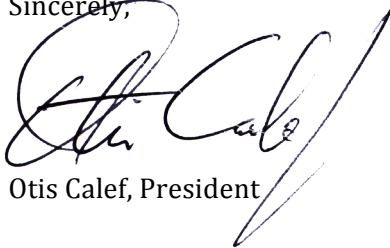
Attn: Chuck Anders, Panel Facilitator
via email: canders@strategicinit.com

Dear PG&E Staff and Engagement Panel:

The Santa Barbara County Trails Council is a grassroots membership organization that has worked vigorously on behalf of the people of California to enhance the county's trail network for over 50 years. During the past ten years we have build 20 miles of new trails and currently we have under planning and development 5 miles of the California Coastal Trail along the shoreline to the north of Santa Barbara.

The California Coastal Act has guaranteed access for the public to our ocean shoreline for 44 years via the California Coastal Trail and numerous vertical trails to the tidelands. Obviously, because of the extreme hazards associated with the nuclear power industry, the public has been denied this access along the coast of Diablo Canyon, but now, with the decommission of the plant, that right must be returned to the people of California. The Santa Barbara County Trails Council urges you, no matter the ultimate disposal of the property, to ensure that public access is guaranteed in accordance of the Coastal Act, and furthermore, that wild areas and secondary trails are included to preserve and enhance this exceptional pristine coastal zone for the enjoyment of everyone.

Sincerely,



Otis Calef, President

cc: Stephanie Green: Stephanie.green@cpuc.ca.gov
Kara Woodruff: KWoodruff@blakeslee-blakeslee.com

From: [San Luis Obispo Secretary](#)
To: [Green, Stephanie](#)
Subject: Tribal land transfer of Diablo Canyon Lands
Date: Thursday, April 9, 2020 6:24:10 PM

Commissioners,

I am writing on behalf of the San Luis Obispo Chapter of the Surfrider Foundation. Surfrider Foundation is the largest environmental group focused on protecting our shorelines on every coast with one million supporters, volunteers and activists fighting over one hundred active campaigns around the country.

We applaud and support CPUC's Tribal Land Transfer Policy as a long-overdue effort to address the historical wrongs perpetuated against California's indigenous tribes. We ask the CPUC to ensure the Diablo Canyon Lands be conserved and available to the public for managed use. We urge you to work with regional tribes to secure a conservation easement allowing only limited development consistent with local zoning thereby ensuring the preservation of environmental, agricultural, and cultural resources in perpetuity prior to offering the land for sale.

Thank you for considering of our comments.

Sincerely,

Jim Miers
Secretary for the [SLO Surfrider Chapter](#)
805-439-2191

From: [Barrett, Chris E](#)
To: [Green, Stephanie](#)
Subject: Tribal Land Transfer Policy
Date: Tuesday, March 10, 2020 7:07:03 AM

Hello,

There are shortcomings of the new Tribal Land transfer policy, including the faulty outreach process that deprived the public of an opportunity to provide input. The CA Public Utilities Commission should sponsor a public workshop about the new policy in San Luis Obispo, since our community will be directly impacted. Please make this happen, It's the right thing to do.

Thank you,

Chris Barrett

(805) 878-9508

1340 New[port Avenue

Arroyo Grande, CA 93420



Laura Genao
Managing Director
State Regulatory Affairs
Laura.Genao@sce.com

October 11, 2019

Public Advisor's Office
505 Van Ness Avenue
San Francisco, CA 94102

Re: Southern California Edison's Comments on Proposed Tribal Land Transfer Policy

Dear Public Advisor's Office:

Southern California Edison (SCE) appreciates the opportunity to provide comments to the draft policy entitled "Investor-Owned Utility Real Property-Land Disposition-First Right of Refusal for Aboriginal Properties to California Native American Tribes" (the "Draft Policy"). SCE supports the California Public Utilities Commission's (CPUC or Commission) efforts to ensure California Native American Tribes (Tribes) are engaged and meaningfully considered in the disposition of Investor-Owned Utility lands. SCE also supports the Draft Policy's intent to provide notice to Tribes when seeking approval to dispose of assets pursuant to Public Utilities Code Section 851.

SCE has identified ambiguities along with gaps in the Draft Policy and proposes certain clarifications and modifications regarding the types of transactions subject to disposition, resources to identify the appropriate Tribe within a geographic scope, and process challenges associated with "right of first refusal" and timing gaps during the process.

First, SCE recommends the scope of transactions applicable to this Draft Policy be clarified to include only those requiring full commission approval pursuant to Section 851 and not the types of minor conveyances subject to General Orders 173 or 69-C. Such minor conveyances are typically made to governmental entities or developers as a condition to their development projects. Second, there are unintended challenges associated with a geographic scope that could result in multiple tribes laying claim to a property. To address this potential conflict, SCE recommends using the geographic bounds of recognized reservations. Lastly, there are also process concerns associated with providing a Tribe a "right of first refusal" that would result in unnecessary expenditure of time and resources by an initial prospective third party purchaser or lessee and could potentially jeopardize SCE's ability to negotiate with third parties. SCE recommends establishing a "right of offer" to a Tribe that would ensure the Tribe is provided with notice and is afforded an opportunity to present an offer prior to the Commission completing its deliberations on a disposition. Timing should also be clarified so that a utility has the ability to notify the Tribe and solicit an offer either prior to filing a Section 851 application or during the course of the Commission's 851 review. SCE also recommends including a timeframe within which the Tribe would be required to submit its offer.

SCE further details its proposed modifications and respectfully requests clarifications as explained below.

Nature of Disposition

SCE respectfully recommends the Draft Policy should be clarified such that it only applies to conveyances that would otherwise require full Commission review and not to the types of minor conveyances typically made to governmental entities or developers as a condition to their development projects where such conveyances are subject to General Orders 173 or 69-C, or to the types of transactions that involve a land-swap rather than monetary compensation. The Draft Policy currently defines the term “disposition” to mean “...the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in real property.” SCE is frequently asked to grant a variety of minor encumbrances to government agencies and third parties. For example, SCE may be asked to convey a portion of operational right of way to a jurisdiction to enable the widening of a public road. Including transactions that are outside the scope of Section 851(e.g., road widening or easements) would delay and/or add cost to these projects or otherwise interfere with orderly land planning.

It is unclear to SCE whether the Draft Policy is applicable to:

- (i) Transactions requiring formal approval by the Commission through a formal decision pursuant to Public Utilities Code Section 851,
- (ii) Minor conveyances made following an advice letter filing pursuant to General Order 173; or
- (iii) Dispositions without additional approval required by the Commission pursuant to General Order 69-C.

Pursuant to Section 851 of the Public Utilities Code, SCE is required to seek formal Commission approval prior to selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of property that is “necessary or useful in the performance of its duties to the public...” For qualified transactions in excess of five million dollars (\$5,000,000), a formal order from the Commission is required. For transactions under five million dollars (\$5,000,000) an advice letter filing may be utilized as set forth in General Order 173. Uncontested advice letters may be approved by the executive director or director of the applicable division (typically the Energy Division for SCE’s filings).

The Commission has provided public utilities with advance approval for certain forms of encumbrances and dispositions pursuant to General Order 69-C. That General Order allows utilities to “grant easements, licenses or permits” for “rights of way, private roads, agricultural purposes, or other limited uses...whenever it shall appear that the exercise of such easement, license, or permit will not interfere with the operations, practices and service...” Pursuant to General Order 69-C, such grants to parties other than the United States government, State of California, or political subdivisions (such as counties or cities) are conditional upon the right of the utility to resume use of the property on the utility’s own motion or by order of the Commission. SCE interprets this provision to be a right to recapture or terminate the encumbrance. Because conveyances under General Orders 173 and 69-C are designed to

be minor or routine, SCE respectfully submits that the Draft Policy should not apply to such conveyances.

SCE further recommends that the Draft Policy must be limited to transactions involving the exchange of monetary consideration. By way of example, if SCE agreed to a “land-swap” because it had a greater need for an alternative parcel of property, a Tribe should not be engaged or involved with the transaction because it does not own the specific property SCE may need to pursue its project.

Geographic Scope

SCE recommends that the Draft Policy should apply only to lands within an established reservation. The Draft Policy requires that publicly regulated utilities provide a Tribe with a right of first refusal prior to seeking approval to dispose of an asset “within or adjacent to Tribal territory.” Per footnote 6, “Tribal territory is defined as the territory designated by the Native American Heritage Commission (NAHC) for notice of projects under AB 52.” SCE understands there could be disputes between Tribes regarding such areas outside of the recognized bounds of a reservation. In particular, the NAHC may reference multiple contacts for a Tribe or several different Tribes for a single parcel of property. SCE is concerned that it may inadvertently notify or show preference to one Tribe as opposed to another where there are competing claims or where ownership is otherwise unclear. The Draft Policy does not clarify what protocol should be used to the extent two or more Tribes lay claim to the same property. SCE further submits that the Draft Policy should not be applied to areas that may be adjacent to Tribal territory given the unintended confusion the Draft Policy would cause. Therefore, SCE suggests that the Draft Policy be calibrated to the geographic bounds of recognized reservations. In the event SCE’s recommended modification regarding recognized reservations is not implemented, SCE requests the Commission consider providing a detailed map with associated single points of contact for providing the requisite notice.

Right of Refusal v. Right of Offer

SCE respectfully requests that the Draft Policy be amended to provide the applicable Tribe with a “right of offer” as opposed to a “right of first refusal.” A “right of first refusal” provides a third party with the right to acquire property on the same or better terms as had been proposed by a bonafide purchaser.¹ SCE believes that its ability to extend and negotiate offers for the disposition of property would be adversely impacted if a third party was on notice that any potential agreement could be unwound should a Tribe decide to accept an agreement with identical terms.

The acquisition of property by a third party may require the expenditure of time and resources by a prospective purchaser or lessee on a wide range of issues. These negotiations frequently occur prior to the transaction being submitted to the Commission for approval pursuant to Section 851 of the Public Utilities Code. If a transaction could be unwound due to a Tribe’s right of first refusal, SCE anticipates

¹ See generally, *Smyth v. Berman*, 31 Cal. App. 5th 183, 192 (Cal. App. 2d Dist. 2019) (“...a right of first refusal is a species of option to purchase: It is a conditional option that entitles the holder, if the seller decides to sell property and has obtained an acceptable, bonafide offer from a third party buyer, to make an offer that meets or beats the third party’s offer.”).

that third parties would be less willing to negotiate for the acquisition of SCE's real property assets unless and until the subject Tribe confirms that it will not pursue the property on its own. SCE therefore does not believe the Draft Policy would be in the best interest of ratepayers as currently written. In contrast to a right of first refusal, a right of offer would ensure that Tribes are provided with notice and are afforded an opportunity to present an offer prior to the Commission completing its deliberations on a disposition. Both utilities and the Commission would further preserve their discretion to either approve the offer or to move forward with the transaction after having balanced the interest of ratepayers, utilities, Tribes, and the public.

The timing for the utility to make the right of first offer or right of first refusal (as selected by the Commission) should also be provided. For example, the parameters of an agreement would be known to SCE and the third party at the time of filing an application for Commission approval pursuant to Section 851 of the Public Utilities Code. Therefore, SCE suggests that the Draft Policy give the utility the option to both notify the Tribe and solicit an offer either prior to filing the 851 application or during the course of the Commission's deliberations. SCE respectfully submits that the Draft Policy should clarify a timeframe within which the Tribe would be required to submit its offer (e.g., within 10 days of being notified)

SCE appreciates the opportunity to provide comments regarding the CPUC's Draft Tribal Land Transfer Policy. With the requested revisions and clarifications to the Draft Policy to focus on disposition of properties subject to Section 851 filing, defining geographic scope, providing a right of offer to Tribes rather than first right of refusal, and identifying timelines, SCE supports the implementation of this Draft Policy. If you have any questions regarding this matter, please do not hesitate to contact me. We look forward to continuing discussions regarding the Draft Tribal Land Transfer Policy.

Sincerely,

/s/ Laura Genao

Laura Genao
Managing Director – State Regulatory Affairs
Southern California Edison Company
601 Van Ness Avenue, Suite 2030
San Francisco, CA 94102



Laura Genao
Managing Director
State Regulatory Affairs
Laura.Genao@sce.com

November 15, 2019

California Public Utilities Commission
Public Advisor's Office
505 Van Ness Avenue
San Francisco, CA 94102

Re: Southern California Edison's Supplemental Comments on Proposed Tribal Land Transfer Policy

Dear Public Advisor's Office:

Southern California Edison (SCE) writes to supplement its comment letter of October 11, 2019. Following submittal of SCE's letter, the Commission's staff posted a revised policy on or about October 14, 2019. SCE appreciates and acknowledges the efforts made to address issues raised by parties. However, the revised policy continues to have ambiguities and gaps regarding disposition of properties subject to Section 851 filing, defining geographic scope, providing a right of offer to Tribes rather than first right of refusal, and identifying timelines that we recommend addressing and resolving prior to Commission adoption of this policy. Below are ongoing open issues for Commission consideration:

- The applicable types of land dispositions remain ambiguous. For example, should the policy apply to discreet/minor sales, leases, or easements that may be approved via advice letter filing per General Order 173 or transactions with a right of recapture pursuant to General Order 69-C? Such dispositions frequently include conveyances to local governments to accommodate road widenings or other public works related projects. Therefore, SCE recommends that the policy only apply to dispositions of fee simple ownership or leases extending beyond 50 years where approval of the Commission pursuant to Section 851 is required. Discreet conveyances pursuant to General Orders 69-C (conveyances with a right of recapture or to jurisdictions with the power of eminent domain) or 173 (dispositions by advice letter filing) should be exempted.
- Additional clarity is still needed regarding which geographic areas the policy applies to. The revised policy uses the term "Indian Country." SCE's initial comments notes that lands outside of the bounds of a recognized reservation may be subject to multiple/conflicting claims and the term Indian Country is susceptible to different interpretations. SCE has requested that the Commission provide a map with single points of contact to the extent the policy is outside of a reservation. SCE would also request a formal dispute resolution protocol to use.

- The current proposed timeline with the right of first refusal adoption presents potential delays and challenges. SCE shares the views expressed by San Diego Gas and Electric (SDG&E) in its letter of October 28, 2019. Notably, SCE respectfully submits that providing a Tribe with 90 days to respond to a notification of a land sale would be problematic and that this period should be reduced to a more reasonable 60 days. A substantial delay coupled with an uncertain standard of review would likely disincentivize other potential purchasers from performing due diligence or entering into negotiations. Moreover, given that the scope of the notice is not limited to large transactions, a 90 day review could also delay public improvement projects such as road widenings dependent on the receipt of an easement or other right of way instrument.
- In addition, using a “reasonable efforts” standard regarding negotiations with a Tribe could prove to be problematic. Therefore, SCE continues to support replacing the “right of first refusal” with a “right of offer” without an obligation on the part of the utility to accept the offer. This would not impact the Tribe’s right to file an objection if and when the utility proceeds with an application to dispose of property to a third party pursuant to Section 851 of the Public Utilities Code. Doing so would further enable the Commission to balance the interest of the public, tribes, and ratepayers because it mitigates risk third parties would perceive in negotiating with utilities for land rights, affords ratepayers with the potential for a reasonable rate of return, and preserves the intent of the Tribal Land Transfer Policy.

SCE agrees with SDG&E that the IOUs, Tribal representatives, other impacted parties, and Commission staff should discuss the policy in workshops. Thank you for your continued consideration of SCE’s comments and concerns.

Sincerely,

/s/ Laura Genao

Laura Genao
Managing Director – State Regulatory Affairs
Southern California Edison Company
601 Van Ness Avenue, Suite 2030
San Francisco, CA 94102

From: [Vita Miller](#)
To: [Green, Stephanie](#)
Subject: Tribal Lands policy
Date: Sunday, March 15, 2020 6:13:18 PM

Hello,

I am requesting that the CPUC hold a public hearing in San Luis Obispo County before this policy goes into effect. Particularly in regard to the issue of the decommissioning of the Diablo Canyon Nuclear Power Plant and the disposition of the surrounding open space.

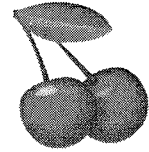
I am in favor of the Right of First Refusal by validated tribal interests; however there must be agreements in place to keep these lands as open space in perpetuity with conservation easements and other means to limit development. Limited trail use, that is done with respect to the non-human inhabitants of these pristine areas can be included and perhaps a nature center that focuses on Native American history.

Please have a hearing in SLO County, perhaps after the Corona virus has run it's course.

With regard,

Vita Miller
1205 Bay Oaks Dr.
Los Osos, CA 93402
805-704-3173

Friends of Wild Cherry Canyon



January 24, 2020

President Marybel Batjer
Commissioners Guzman Aceves, Randolph, Rechtschaffen, and Shiroma
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Via Facsimile 415/703-1758 and U.S. Mail

Subject: **Tribal Lands Transfer Policy and the Diablo Canyon Lands**

Dear President Batjer and Commissioners:

We the undersigned represent Friends of Wild Cherry Canyon, an informal affiliation of over a thousand local residents and others who support the in-perpetuity conservation of (and sustainable public access to) the 12,000-acre Diablo Canyon Lands (which include the 2400-acre Wild Cherry Canyon property) located in San Luis Obispo County within the Irish Hills.

As you know, the Diablo Canyon Lands surround the Diablo Canyon Nuclear Power Plant, which is set to close by 2025. Before and since PG&E announced its plans to close the plant, we -- along with many others in this community -- have fought to ensure that these lands are protected in-perpetuity and made available for sustainable public access. Our view is supported by the passage of the Dream Initiative some twenty years ago, which was a ballot measure in San Luis Obispo County calling for the conservation of the Diablo Canyon Lands upon the plant's closure. The Dream Initiative passed by 75% of the vote -- which means that the community has clearly stated its desire to see the Diablo Canyon Lands conserved, now that the plant is closing.

In addition, the Diablo Canyon Decommissioning Engagement Panel (Panel) has held multiple public meetings and workshops to address the issue of the conservation of the Diablo Canyon Lands. They received almost 1000 comments, nearly all were in support of conservation and public access. As a result of this public process, the Panel published its Strategic Vision, which included the following provisions:

- **The 12,000 acres of Diablo Canyon Lands surrounding DCP are a precious treasure and a spectacular natural resource that should be preserved in perpetuity for the public and future generations, in acknowledgement of its significant resource values.**
- **The request for land ownership by the local Native American community should be acknowledged and considered as a valid claim for historical reasons, while bearing in mind the overwhelming public testimony that the Diablo Canyon Lands be conserved and made available for public managed public use.**

- **The transfer, by easement or fee title, of a portion of the Diablo Canyon Lands for exclusive use by the Native American community should be considered, with protection by conservation easement or other such means that would allow limited development consistent with local zoning and the preservation of the environmental and cultural resources in perpetuity.**

Given the history and strong community support for conservation, we were concerned when we heard about the CPUC's new Tribal Lands Transfer Policy. On its face, it does seem to right a historic wrong in returning utility-owned lands to the people it was stolen from generations ago, without compensation and often under horrific circumstances.

On the other hand, we are concerned that the policy would undermine the ability to conserve the land and its wildlife, and to make it available for public access. If under the policy the Diablo Canyon Lands (or any part of them) are transferred to a tribal entity (or ANY entity for that matter) without restriction, that will render these lands vulnerable to development down the road. And although there's every reason to believe that the current members of the local tribe will support conservation, there is no way of predicting the priorities of future generations.

Therefore, we respectfully ask that when you implement the Tribal Lands Transfer Policy, that you do so very carefully and with due regard for the protection of land and wildlife. **Please be sure that any receiving entity of any utility lands (including but not limited to the Diablo Canyon Lands) has both a strong conservation ethic and is restricted in its use of those lands forever – in a manner that ensures their in-perpetuity protection.** This is not difficult to achieve. For example, any and all utility transfers of land should be accompanied by a conservation easement or other restriction on title that would run with the land, and specifically prohibit development in the future. A conservation easement could also include provisions to assure sustainable and appropriate public access.

Finally, we understand that you will be holding public workshops on the new policy. When you do, we ask that you schedule at least one workshop in San Luis Obispo County – where your policy would likely be implemented. Our residents have a long-standing dedication to conservation of the Diablo Canyon Lands, and we wish to demonstrate our interest in working together to assure that these lands are protected for the benefit of future generations and the natural world.

Sincerely,

Jennifer Langford and Denise Allen
Founders, Friends of Wild Cherry Canyon

From: slowoodguy@gmail.com
To: [Green, Stephanie](#)
Subject: Workshop on Native American land transfer policy
Date: Friday, March 13, 2020 8:48:40 AM

Dear Ms. Green:

As a resident of Arroyo Grande, just 10 miles from the Diablo Canyon Lands, I respectfully ask that the CPUC hold a public workshop regarding the CPUC's Native American land transfer policy in San Luis Obispo County so that the voices of the residents may be heard. Thank you for consideration of this request.

Tom Burhenn