BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sierra Telephone Company, Inc. (U 1016 C), Sierra Telephone Long Distance (U 5657 C), Varcomm-Sierratel, Inc., Varcomm Holdings, Inc. and V Squared Holdings, Inc. For Approval of Transfer of Control of Sierra Telephone Company, Inc. (U 1016 C), Sierra Telephone Long Distance (U 5657 C) Pursuant to California Public Utilities Code Section 854(a)	A.26-02-008 (February 13, 2026)

INTERVENOR TESTIMONY OF KORI CORDERO ON BEHALF OF THE UTILITY REFORM NETWORK

August 12, 2026

Question 1: Please state your name and business Address

Answer 1: Kori Cordero, 360 Grand Avenue, #150 Oakland, CA 94610.

Question 2: What is your occupation and current employment?

Answer 2: I am an attorney currently serving as the Telecommunications Managing Attorney for the Utility Reform Network ("TURN").

Question 3: Have you previously testified before the California Public Utilities Commission ("Commission")?

Answer 3: No. However, I have served on workshop panels and provided input to the Commission in former roles including as Deputy General Counsel for the Yurok Tribe, Outside Counsel to the Yurok Telecommunications Corporation, and CEO for the Yurok Telecommunications Corporation.

Question 4: On whose behalf is your testimony offered?

Answer 4: The Utility Reform Network.

Question 5: Please describe your education, professional qualifications, and experience.

Answer 5: I have a bachelor's degree from the University of California at Riverside ("UCR") in Political Science and a Juris Doctorate from the University of California at Los Angeles ("UCLA") with Specializations in Critical Race Studies and Public Interest Law and Policy. I have been studying and working in the fields of tribal and federal Indian law and policy since 2012 and energy, telecommunications and utilities regulatory law and policy since 2020. Over the course of my career, I have worked for, and with, a myriad of Native nations including many California Native American Tribes as: a training and technical assistance provider (Tribal Justice Specialist), in-house counsel, outside counsel, and as the Senior Tribal Advisor for the U.S. EPA Region 9.

My prior experience encompasses, in pertinent part, providing legal advice to tribal governments and tribal corporations related to the California Environmental Quality Act, energy projects, utility rights of way, utility company land transactions and negotiations with utility entities; government-to-government consultations with state and federal entities (including the Commission and Federal Communications Commission); advising the U.S. Environmental Protection Agency on Tribal issues; serving as Associate and Deputy General Counsel for the Yurok Tribe and outside counsel for several Yurok Tribe corporations, including the Yurok Telecommunications Corporation ("YTEL"), and as the Chief Executive Officer of YTEL.

I have served as a Panelist for the U.S. Department of Interior's 2022 National Tribal Broadband Summit and have also served as a panelist at various Commission events, including: R.22-03-016, September 7, 2023 Workshop Discussing General Order 133-D "Tribal and Local Government Roundtable in Response to Carrier Panel Presentations;" 2) CPUC CASF Public Workshop, April 22, 2026 "California Advanced Services Fund Broadband Adoption Account;"[1] and, 3) CPUC CASF Public Workshop, April 22, 2026 "CASF Rural and Urban Regional Broadband Consortia Account" (discussing the inclusion of Tribes).[2]

Question 6: What is the Purpose of your testimony?

Answer 6: The purpose of my testimony is to analyze the potential impacts of the proposed transaction in A.26-02-008 on Tribes and Environmental and Social Justice ("ESJ") Communities. More specifically, my testimony will focus on Issues two (2) and (3) of the Scoping Memo,[3] these issues ask:

> *2. Are there conditions of approval necessary to protect and promote the public interest?*
>
> *3. Does the proposed transfer align with the Commission's Environmental and Social Justice Plan?*

These questions necessarily overlap with Issue 1 of the June 17, 2026 *Assigned Commissioner's Scoping Memo and Ruling* ("Scoping Memo") regarding whether Joint Applicants' request for transfer of control complies with all Commission requirements. The purpose of my testimony is to critically analyze the proposed transaction's impact on Tribes and Environmental and Social Justice ("ESJ") communities, in the context of the Scoping Memo questions listed above, to ensure that before any transfer of public utility authority is consummated, the Commission "[…] review the proposal and to take such action as a condition of the transfer, as the public interest may require."[4]

Question 7: Please describe your understanding of the Commission's ESJ Action Plan

Answer 7: The Commission's Environmental and Social Justice Action Plan 2.0 ("Action Plan")

---

[1] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/casf-workshops/2026/casf-workshop-2026-powerpoint-slides.pdf

[2] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/casf-workshops/2026/casf-workshop-2026-powerpoint-slides.pdf

[3] Scoping Memo at 4.

[4] D.24-08-012 at 7, *citing* San Jose Water *Co*. (1916) 10 CRC 56.

is in place, in part to serve as a "…framework with which to integrate ESJ considerations throughout the agency's work."[5] The Action Plan includes nine overarching goals[6] and defines ESJ communities as disadvantaged communities;[7] all Tribal lands; low-income households below 80 percent of the area median income; and low-income census tracts where aggregated household incomes are less than 80 percent of area or state median income.[8] The latest version of the Action Plan includes considerations for racial equity; DEI; engagement with California Native American Tribes;[9] and, ESJ communities in High Fire Threat Districts ("HFTD").[10]

Goal 1 of the ESJ Action Plan is to "Consistently integrate equity and access considerations through CPUC regulatory Activities," including "Build[ing] Systematic Approaches for ESJ Priorities" and "Expand[ing] Opportunities for Access."[11] As part of Goal 1 implementation, the Commission established internal guidance for staff to scope ESJ issues in all proceedings,[12] as is the case in the present proceeding.[13]

Goal 3 of the ESJ Action Plan calls for extending essential communications services to ESJ communities. Goal 3.4 of the ESJ Action Plan is to extend essential communications services to ESJ communities,[14] including tribal lands, at affordable rates.[15]

Goal 6 of the ESJ Action Plan is to "Enhance enforcement to ensure safety and consumer protection for all, especially ESJ communities."[16] This generally includes tracking complaints

---

[5]CPUC, *Environmental & Social Justice Action Plan Version 2.0* (Apr. 7, 2022), https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf, ("ESJ Action Plan") at 2.

[6] ESJ Action Plan at 4 - 6.

[7] Disadvantaged communities are defined as census tracts that score in the top 25% of CalEnviroScreen 3.0, along with those that score within the highest 5% of CalEnviroScreen 3.0's Pollution Burden but do not receive an overall CalEnviroScreen score.

[8] ESJ Action Plan at 2.

[9] For purposes of this testimony "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. *See* Cal. Pub. Resources Code § 21073. California Native American tribes include both federally recognized and non- federally recognized tribes.

[10] ESJ Action Plan at 4.

[11] ESJ Action Plan at 4-5, and 23.

[12] ESJ Action Plan at 4.

[13] Scoping Memo at 4.

[14] ESJ Action Plan at 24.

[15] D. 22-08-023, Conclusion of Law 1, at 79 *stating* "The Commission is generally charged with making certain levels of energy, water, and communications service affordable under various sections of the Public Utilities Code, including Section 739(d)(2), Section 382, Section 739.8(a), and Section 871.5."

[16] ESJ Action Plan at 5, and 25.

from ESJ communities: protecting against fraud and unfair business practices in CPUC-regulated industries (Goal 6.1); using existing enforcement authority to focus on serving ESJ communities and understanding their needs (Goal 6.2); ensuring opportunities for ESJ communities to benefit from maximum compliance with CPUC rules and regulations (Goal 6.3), and engaging with ESJ communities to understand cumulative impacts through utility audits (Goal 6.4).[17]

Goal 7 of the ESJ Action Plan "[p]romotes high road career paths and economic opportunity for residents of ESJ communities."[18] As part of the 2.0 update, "Goal 7 of the ESJ Action Plan is updated to better reflect the imperatives of quality and access in both employment and training, and further promote the high road principles of equity, sustainability, and job quality across the CPUC."[19] Part of this work calls for partnering with utilities to promote economic opportunity for ESJ communities and furthering utility supplier diversity (Goal 7.3).[20]

Goal 8.2.3 of the Action Plan, seeks to advance DEI[21] and cites racial equity and DEI as part of the foundation of the version 2.0 updates.[22]

Tribal lands fall within the Commission's definition of ESJ communities[23] along with tribal communities overlapping with the other ESJ definitions.[24]

Question 9: What is the importance of considering tribal and ESJ impacts in Section 854 applications before the Commission?

Answer 9: The Commission is responsible for ensuring California residents have access to safe, clean, and affordable utility services and infrastructure.[25] The Commission is responsible for implementation of its Environmental and Social Justice Action Plan ("ESJ Action Plan") which "serves as both a commitment to furthering principles of environmental and social justice, as well as an operating framework with which to integrate ESJ considerations throughout the agency's work."[26] While the Commission's primary role is to regulate industry and improve

---

[17] ESJ Action Plan at 25, and 46-48.
[18] ESJ Action Plan at 6, 21, 23, and 25.
[19] ESJ Action Plan at 21 and 23.
[20] ESJ Action Plan at 25, and 48-49.
[21] ESJ Action Plan at 51.
[22] ESJ Action Plan at 18.
[23] ESJ Action Plan at 2.
[24] ESJ Action Plan at 2.
[25] ESJ Action Plan at 9. *See also* California Public Utilities Commission website (last accessed August 11, 2026), available at: https://www.cpuc.ca.gov/about-cpuc/cpuc-overview/about-us.
[26] ESJ Action Plan at 2.

"[…] the lives of all Californians through our recognized leadership in innovative communications, energy, transportation, and water policies and regulation."[27] it also must abide by applicable California laws and policies that address harms to ESJ and tribal communities. The Tribal impacts of a Section 854 application have a contemporary legal context that is informed by historical events.

Question 10: Please describe the historical events that inform the contemporary legal context that impacts the Commission's review of the Application.

Answer 10: From 1850 – 1853, the first years of California's statehood, California took several actions that perpetuated a genocide against the land's first peoples; the state's first Governor, Peter Burnett, used his authority to advance a "war of extermination… between the races, until the Indian race becomes extinct," [28] Governor Burnett and the California Legislature passed the 1850 Act for the Government and Protection of Indians, also known as the Indian Indenture Act, that was used to enslave California Indian children and outlaw cultural and environmental stewardship practices.[29] In mid-March 1852, the California Legislature sent resolutions to the U.S. Senate opposing the ratification of the 18 treaties negotiated between the federal government and California Native American tribes across the state.[30] In these treaties, the United States promised to forever reserve and protect approximately 7.5 million acres of land for the permanent homelands of California Native American tribes.[31] In a secret session, the U.S. Senate, following the recommendation of the California Legislature, refused to ratify the 18 treaties, thus breaking the previously agreed to promises. The fact that these treaties were not ratified was kept secret from Tribes and the public for 50 years. During this time, Tribes upheld

---

[27] California Public Utilities Commission, *Vision Statement*, (last accessed August 11, 2026), at: https://www.cpuc.ca.gov/about-cpuc/cpuc-overview/about-us

[28] California Natural Resources Agency, *Tribal Stewardship Policy*, (last accessed August 11, 2026), at 10, available at: https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Tribal-Affairs/Tribal-Stewardship-Policy.pdf ("CNRA Tribal Stewardship Policy").

[29] Kimberly Johnston-Dodds, Early California Laws and Policies Related to California Indians, California Research Bureau, California State Library, (2002), at 27-30, available at: https://www.csus.edu/college/education/engagement/_internal/_documents/indian_early_california_laws_and_policies_related_to_california_indians.pdf.

[30] "18 Broken Treaties". 2025. *Fourth World Journal* 25 (1): at 429-32, available at https://doi.org/10.63428/x3s41f03.

[31] Damon B. Akins and William J. Bauer Jr., We Are The Land: A History of Native California, 146 (University of California Press), (2021).

their commitments made in the treaties and moved off much of their homelands and never received the benefit of their bargain.[32]

Question 11: How is the historical mistreatment of Tribes reflected in the provision of utilities and telecommunications services, law, and policy?

Answer 11: In the utility space, Tribes have been historically unserved or underserved. Many tribal lands within California are in rural areas, but the efforts to expand telephone service into rural areas did not succeed.[33] Matters did not improve during the era of telecommunications growth of the 1990's, where the digital divide for Tribes widened due to the omission of tribal issues from the Telecommunications Act of 1996[34] and the failure of industry to serve Indian country. Federal telecoms policy began to address some tribal issues in the twenty-first century, federal telecoms funding was expanded to include Tribes as eligibly entities. The harms of the tribal digital divide were in stark relief during the Covid-19 pandemic resulting in an acceleration of federal funding to address the issues.[35] In recent years, the state of California has also seen important shifts to include Tribes in telecoms policy and funding.

Question 12: Please describe California's law and policy efforts to address harms to Tribes and California Native people.

Answer 12: In the twenty-first century, the state of California has taken steps to address its tragic history that has resulted in present-day harms; on June 18, 2019, Governor Gavin Newsom formally apologized on behalf of the state of California for the genocide, displacement and historical mistreatment of California Native people[36] and established regulations and policies to address historical wrongs. The following list is a summary of recent, pertinent, California law and policy actions that address the genocide of California's first people:

---

[32] CNRA Tribal Stewardship Policy at 10.

[33] Traci Morris, *History of Advocacy in Tribal Telephony and Telecommunications, 1980–2020*, SSRN ELECTRONIC JOURNAL (2026) at 10, available at: https://aipi.asu.edu/sites/g/files/litvpz4546/files/2026-02/02_FINAL%2B2-2-26%2B01_History%2Bof%2BAdvocacy_Final.pdf.

[34] Traci Morris, *History of Advocacy in Tribal telephony and Telecommunications, 1980–2020*, SSRN ELECTRONIC JOURNAL (2026) at 11, available at: https://aipi.asu.edu/sites/g/files/litvpz4546/files/2026-02/02_FINAL%2B2-2-26%2B01_History%2Bof%2BAdvocacy_Final.pdf.

[35] Traci Morris, *History of advocacy in tribal telephony and telecommunications, 1980–2020*, SSRN ELECTRONIC JOURNAL (2026) at 15-26, available at: https://aipi.asu.edu/sites/g/files/litvpz4546/files/2026-02/02_FINAL%2B2-2-26%2B01_History%2Bof%2BAdvocacy_Final.pdf

[36] *See* Governor's Office of Tribal Affairs, website, (last accessed August 11, 2026), available at: https://tribalaffairs.ca.gov/.

- **Executive Order B-10-11** (Governor Brown, 2011) Established the Governor Office's Tribal Advisor position and directed state agencies to communicate and consult with California Native American tribes to provide opportunities for meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

- **AB 52 (Gatto, 2014)** Requires state agencies to develop tribal consultation policies and directs staff to engage in meaningful outreach and engagement.

- **Executive Order N-15-19 (Governor Newsom, 2019)** Reaffirms and incorporates the principles set out in Executive Order B-10-11 by apologizing to California Native American tribes for the role of the State of California in committing historical wrongs, recognizes that the State historically sanctioned for over a century "depredations and prejudicial policies against California Native Americans" and establishes a Truth and Healing Council to be led and convened by the Governor's Tribal Advisor.

- **Statement of Administration Policy- Native American Ancestral Lands** (September 25, 2020) Directs all departments to identify opportunities for increased tribal access, co-management, and ancestral land return.

- **California Government Code Section 11019.81, Assembly Bill 923** (Ramos 2022), encouraging "the State of California and its agencies to consult on a government-to-government basis with federally recognized tribes, and to consult with non-federally recognized tribes and tribal organizations, as appropriate, in order to allow tribal officials the opportunity to provide meaningful and timely input in the development of policies, processes, programs, and projects that have tribal implications."

- **California Government Code Sections 8899.90 - 8899.95, Assembly Bill 2022**

(Ramos 2022), prohibiting the use of an offensive and derogatory term towards Native American women on places and features across California and directing the California Advisory Committee for Geographic Names to develop a process to identify and change offensive and derogatory names in California.

- **California Health and Safety Code Section 38561.5, Assembly Bill 1757** (Garcia 2022), requiring the State to develop nature-based solutions climate targets that contribute to California's goals of achieving carbon neutrality and protecting Californians from the climate crisis. This law also requires reporting a summary of the benefits to low-income communities, disadvantaged communities, vulnerable communities, disadvantaged farmers, and Native American tribes.

- **California Government Code Section 6502.3 and Section 11019.82, Assembly Bill 1284** (Ramos 2024), encouraging the California Natural Resources Agency and its departments to enter into meaningful co-management and co-governance agreements for the management of natural resources.

- **California Public Resources Code Sections 71450 – 71452, Senate Bill 1402** (Min 2024) adopting the goal to conserve 30% of California's lands and coastal waters by 2030 and the ten pathways to accomplish this goal, including "[s]upporting tribal engagement and leadership in implementing the 30x30 goals."

The Commission is obligated to follow many of the regulations and policies cited above. Indeed, the first Tribal Advisor for the CPUC directly cites Executive Order B-10-11 (2011), AB 52 (2014), Executive Order N-15-19 (2019), and the Statement of Administration Policy-Native American Ancestral Lands as related to the creation of the CPUC Tribal Consultation Policy.[37]

Question 13: How has the Commission implemented the California laws and policies intended to bolster the rights and inclusion of Tribes and tribal communities?

---

[37] Kenneth Holbrook, CPUC "Equity for Tribes" Presentation, (last accessed Aug 11, 2026), available at: https://www.epicpartnership.org/resources/Strat_Goals_Equity_Workshop-Holbrook.pdf.

Answer 13: As a result of these law and policy shifts in California, the Commission has increased its outreach to tribal communities, members, governments, and reservations to better understand the varied and unique needs of these stakeholders and to determine if the regulated entities it oversees are meeting the needs of Tribes and tribal communities.

The Commission has put processes in place to encourage and facilitate tribal government participation in CPUC proceedings and to give "meaningful consideration" to tribal interests within the CPUC's jurisdiction, as it recognizes that its activities affect tribal governments in many ways. Since the adoption of its *Tribal Consultation Policy*[38] in 2018, the Commission has created several initiatives to facilitate dialogue and involvement of tribal governments in Commission work including a Tribal Advisor,[39] a *Tribal Land Transfer Policy*,[40] and a Tribal Technical Assistance Grant Program for communications projects.[41] Just this past year, the Commission expanded eligibility for the Consortia account to California Tribes program[42] and is overseeing a proceeding[43] fully dedicated to tribal issues, including considering updates to the Commission's *Tribal Consultation Policy* and *Tribal Land Transfer Policy*.

Question 14: Please briefly describe the Commission's Tribal Consultation Policy and Tribal Land Transfer Policy.

Answer 14: The Tribal Consultation Policy was adopted by the Commission on April 26, 2018 to improve communications between the Commission and tribes. There are six overall goals guiding the Tribal Consultation policy, including the protection of tribal cultural resources, giving meaningful consideration of tribal interests on issues within the Commission's jurisdiction, and to recognize and respect tribal sovereignty.[44]

In Resolution E-5076 issued on January 20, 2021, the Commission provided guidelines to implement the Commission's Tribal Lands Transfer Policy (TLTP). The TLTP establishes a Commission preference for the transfer of real property to Tribes when an investor-owned utility

---

[38] Available at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M212/K861/212861685.PDF.

[39] *See*, appointment of Ken Holbrook as CPUC Tribal Advisor on June 30, 2020, available at: https://www.gov.ca.gov/2020/06/30/governor-newsom-announces-appointments-6-30-.

[40] *CPUC* Resolution E-5076 Tribal Land Transfer Policy.

[41] D.20-08-005 (R.12-10-012) at pp. 15-17, Appendix 1 Tribal Technical Assistance Application Requirements and Guidelines.

[42] D.25-11-003.

[43] R.22-02-002

[44] *See* Commission Committee on Policy and Governance Memo*, Adoption of Tribal Consultation Policy,* at 1, available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/bco/tribal/tribal-consultation-policy-approved.pdf.

plans to dispose of the real property within a tribe's ancestral territory. Once the utility identifies any interested tribe or tribes, the company is expected to negotiate a transfer to the Tribe before attempting to put the land for sale on the market.

Question 15: In considering the Sierra/Varcomm Application, what steps should the Commission take to ensure that it complies with its legal, policy, and ethical obligations regarding the treatment of Tribes and other ESJ communities?

Answer 15: The Commission has agreed that it must review the impact of the Applications on Tribes and ESJ communities as part of its evaluation of the Proposed Transaction.[45] Moreover, the Application must be viewed within the context of the Commission's work to address the inequitable and disparate treatment that disadvantaged communities, including tribal communities, have experienced in California. This disperate treatment, oftentimes, leaves many rural tribal communities and tribal lands throughout the state with inadequate or nonexistent utility services, including communications services.[46]

Question 16: Please describe your understanding of Tribal and ESJ Communities Impacted by Joint Applicants' Proposed Transaction.

Answer 16: Joint applicants have acknowledged the presence of ESJ communities across the Sierra Telephone Company service territory "[…] specifically, low-income households, residents of High Fire-Threat Districts ("HFTD"), and tribal populations."[47] Based on maps provided by Joint Applicants (see Appendix D), there are at least two Tribes impacted by the proposed transaction: Southern Sierra Miwuk Nation and Picayune Rancheria of The Chukchansi Indians. However, the map does not appear to include Sierra Telephone Long Distance service territory withing California and there may be additional Tribes impacted currently or in the future. In addition, the CPUC has labeled the Sierra Telephone Company territory as including Tier 2 and Tier 3 High Fire Threat areas.[48]

---

[45] Scoping Memo at 4.

[46] *See*, for example, Broadband Infrastructure OIR (R.20-09-001) at p. 7 (30% of all California Tribal Land remains unserved). See, also, R.11-11-007, Fifth Amended Scoping Memo at p. 3 (reference to workshops where the Commission heard about "widespread problems with both availability of service and service offerings" and that COLRs are not meeting tribal communications needs.)

[47] Joint Applicants' Application at 16.

[48] *See* CPUC High Fire Threat Map, available at: https://experience.arcgis.com/experience/7dfb589984a442e79b1441e791341db0

Question 17: Please describe your understanding of Joint Applicant's Tribal Commitments in the Application.

Answer 17: Joint Applicant's do not make specific actionable tribal or ESJ commitments in their application. The Application mentions a Varcomm "commitment to engaging with Tribal governments on a government-to-government basis."[49] However, Joint Applicants are not a government and this statement reveals a lack of understanding of Tribes, tribal issues or tribal consultation. Likewise, the Application includes mention of an intention to "seek collaborative opportunities to expand broadband access on Tribal lands."[50] but does not contain any specifics of how this might be accomplished or even how this might benefit specific Tribes in the service territory.

Question 18: Do Joint Applicants demonstrate sufficient information and post-acquisition planning that suggests sufficient consideration of the Commission's ESJ Action Plan?

Answer 18: No. The Application contains approximately three pages of conclusory statements addressing the ESJ action plan without listing actionable or enforceable commitments.[51] For example, the Application identifies significant wildfire risks and claims "the transaction will facilitate continued and enhanced investment in network hardening"[52] but fails to specify the amount, if any, that will be spent on network hardening and does not identify any specific projects or benchmarks.

Question 19: What is your understanding of the Proposed Transaction's benefits to Tribes and ESJ Communities?

Answer 19: The Application does not identify benefits to Tribes or ESJ communities stemming from the Proposed Transaction.

Question 20: Based on what you find is missing or contradictory from Joint Applicants Tribal Commitments, what recommendations do you make to the Commission to mitigate the transaction's impact on Tribes?

---

[49] Application at 18.
[50] Application at 18.
[51] Application at 16 – 19.
[52] Application at 17 – 18.

Answer 20: The Commission has previously adopted conditions and mitigation measures to address tribal impacts[53] and I recommend the Commission take similar action here by requiring Sierra/Varcomm to:

1. Work with the California NACH to identify all Tribes within its California Service territory. In 1976, the California State Government passed AB 4239, establishing the Native American Heritage Commission (NAHC) as the primary government agency responsible for identifying and cataloging Native American cultural resources.[54] The NAHC can assist in identifying impacted Tribes.

2. Appoint a high-level employee as a tribal liaison to provide Tribes with direct customer service, conduct tribal consultations, and manage information sharing with Tribes. Each Tribe should have direct access to the tribal liaison via phone and email, and the tribal liaison should have the availability, access, and authority to respond to the tribes and address their concerns.

3. Create a Tribal consultation policy that aligns with the Commission's ESJ Action Plan and Tribal Consultation Policy

4. Conduct regular, recurring quarterly meetings with Tribes.

5. Include tribal members and Native Americans/Alaska Natives in any Sierra/Varcomm workforce development programs.

6. Institute an Indian hiring preference.

7. Provide Tribes within its California service territory with a Right of First Offer similar to the one required in D.21-04-008 or the CPUC Tribal Land Transfer Policy.

8. Provide Tribes within its California service territory with existing local maps of, and information on, owned, leased, and operated facilities in and around the Tribes' ancestral territory and any existing maps of adjacent areas that are identified points of integration of those facilities with the remainder of Sierra/Varcomm's system. The Commission should prohibit Joint Applicants from requiring waivers of sovereign immunity as part of any non-disclosure agreement that may be necessary to accomplish this recommendation.

---

[53] *See*, e.g., D.21-04-008 and D.26-01-023.
[54] *See* NAHC website, available at: https://nahc.ca.gov/about/.

9. Provide Tribes within its California service territory with advanced notice of ground disturbance activities and the option to have cultural monitors present during these activities.

10. Provide Tribes with notice of this proceeding and a copy of the final Decision.

Question 21: Does this conclude your testimony?

Answer 21: Yes.

Appendix List

1. Appendix A: CPUC Tribal Consultation Policy
2. Appendix B: CPUC Tribal Land Transfer Policy
3. Appendix C: CPUC ESJ Action Plan
4. Appendix D: Map of Sierra/Varcomm service territory
5. Appendix E: History of Advocacy in Tribal Telephony and Telecommunications

Appendix A

CPUC Tribal Consultation Policy

State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date: **April 6, 2018**

To: **The Commission**
(Meeting of April 26, 2018)

From: **Committee on Policy and Governance (Committee) -**
Commissioner Liane M. Randolph and
Commissioner Clifford Rechtschaffen

Subject: **Adoption of Tribal Consultation Policy**

On March 21, 2018, the Committee on Policy and Governance endorsed the Tribal Consultation Policy of the California Public Utilities Commission, which is attached for your review.

The Committee initiated its development of a tribal consultion policy at the Committee's July 12, 2017 meeting with a presenation by Judge Cynthia Gomez, Tribal Advisor to Governor Brown and Native American Heritage Commission Executive Secretary. The Committee reviewed and discussed the initial draft tribal consultion policy at the September 13, 2017 Committee meeting. Following the September Committee meeting, the draft tribal consultion policy was posted for public comment, and two public meetings and a webinar were convened in October and November 2017. All tribal governments in the State were invited to participate. A revised tribal consultion policy based on comments was discussed and endorsed at the March 21, 2018 Committee meeting.

The goals of the tribal consultion policy are as follows:

- Recognize and respect tribal sovereignty
- Encourage and facilitate tribal government participation in CPUC proceeding
- Give meaningful consideration to tribal interests in issues within the CPUC's jurisdiction
- Encourage and facilitate tribal government participation in CPUC-approved utility programs
- Protect tribal cultural resources
- Encourage investments by tribal governments and tribal members in onsite renewable energy generation, energy efficiency; low carbon transportation and energy storage.

As proposed in the initial draft tribal consultion policy, Stephanie Green was designated as the Commission's official Tribal Liaison. Stephanie is now leading the Commission's communication and engagement efforts with tribes throughout California.

The Committee requests that the Commission approve the Tribal Consultation Policy.

ATTACHMENT 1

Tribal Consultation Policy of the California Public Utilities Commission

Tribal Consultation Policy of the California Public Utilities Commission

Introduction:

The CA Public Utilities Commission (CPUC or "Commission") adopts this Tribal Consultation Policy, consistent with Executive Order B-10-11 issued by Governor Edmund G. Brown, Jr. on September 19, 2011). Executive Order B-10-11 declares that "the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus." The Executive Order directs state executive agencies and departments to "encourage communication and consultation with California Indian Tribes." It further directs state agencies and departments "to permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities."

California is home to over 170 California Native American tribes.[1] Executive Order B-10-11 applies to federally-recognized Tribes and other California Native Americans. For purposes of this policy, the terms "tribes" and "tribal governments" refer to elected officials and other representatives of federally- recognized Tribes and other California Native Americans.

This policy is not intended to replace or supplant obligations mandated by federal law. It sets forth provisions for consultation, communication and collaboration with tribes to the extent that a conflict does not exist with applicable laws or regulations. This policy is not a regulation and it does not create, expand, limit, waive, or interpret any legal rights or obligations.

Tribal Liaison:

The Commission's Tribal Liaison will assist with implementing this policy. The Tribal Liaison is responsible for coordinating outreach, communication, education and other activities affiliated with tribal interests. The Tribal Liaison will act as a point of contact for tribal governments enabling participation in Commission proceedings and Commission-approved programs. The Tribal Liaison will facilitate CPUC leadership availability for government to government consultation. Alternatively, tribal governments may contact the Commission's Public Advisor for this assistance (Email: Public.Advisor@cpuc.ca.gov or phone: (866) 849-8390). The Tribal Liaison and/or Public Advisor are additional resources, and tribal governments may continue to directly contact relevant Commission staff regarding ongoing issues.

---

[1] "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. See Public Resources Code § 21073. California Native American tribes include both federally recognized and non- federally recognized tribes. Nothing in this policy prevents tribal consultation with other Native American groups demonstrating an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the CPUC.

Tribal Consultation Policy of the California Public Utilities Commission

<u>Policy Goals</u>: The goals of this policy are as follows:

- Recognize and respect tribal sovereignty
- Encourage and facilitate tribal government participation in CPUC proceedings
- Give meaningful consideration to tribal interests in issues within the CPUC's jurisdiction
- Encourage and facilitate tribal government participation in CPUC-approved utility programs
- Protect tribal cultural resources
- Encourage investments by tribal governments and tribal members in onsite renewable energy generation, energy efficiency; low carbon transportation and energy storage.

<u>Background Regarding CPUC Authority</u>:

The range of CPUC activities is extensive and includes regulation of privately-owned utilities, including gas, electric and water utilities, and oil and gas pipeline companies, and approval of the rates they charge to customers. The CPUC also regulates some aspects of telecommunication companies, and the safety of utilities, railroads, common carriers, charter party carriers and other transportation providers, but does not approve those companies' rates. The CPUC implements laws that require the electric utilities to procure renewable electricity to reduce greenhouse gas emissions, and that require electric and gas utilities to offer incentives, grants or rebates for energy efficiency, installation of renewable energy or energy storage, and installation of electric vehicle chargers. The CPUC also implements programs that offer reduced rates for low income gas and electric customers (i.e., the California Alternative Rate for Energy (CARE) and Family Electric Rate Assistance (FERA) programs; "Lifeline" for telephone service; subsidies for broadband services for underserved communities; and utility programs that provide no-cost energy efficiency upgrades to low income customers (the Energy Savings Assistance (ESA) Program).

The CPUC's activities may affect tribal governments in several ways, including but not limited to: 1) impacts on a tribe that is a utility customer at buildings and/or businesses owned or operated by the tribe or tribal members; 2) impacts on the affordability, availability and reliability of services provided to tribal members by utilities; and 3) potential impacts from proposed construction of utility infrastructure on or near tribal property or property containing tribal cultural resources. Tribes may also experience impacts from electricity outages, or de-energizing of power lines during hazardous weather conditions.

Facilitating Tribal Government Participation:

1. The CPUC will encourage and facilitate tribal government participation in its programs and proceedings.

   a. Tribal governments may contact the CPUC's Tribal Liaison for assistance to initiate participation in a proceeding or consultation with CPUC staff or decision-makers. If a tribe identifies a specific issue for consultation with the CPUC, the Tribal Liaison will identify the appropriate Commission staff and/or decision-makers to participate in the discussions and ensure that the matter receives appropriate consideration.

   b. The CPUC will give special consideration to tribal governments' requests to participate in Commission proceedings. Administrative law judges and Commissioners are encouraged to grant a tribal government's request to become a party in a proceeding, even if a request is untimely, if the proceeding can continue under the existing schedule, or if it is reasonable to modify the schedule and consistent with principles of due process.

   c. Commission staff will assist tribal governments in locating relevant information and documents that will help them participate in Commission proceedings and/or Commission-approved programs. If necessary, Commission staff will send the relevant information or documents to a tribal government electronically or by regular mail.

   d. Commissioners and their advisors will make every effort to grant tribal governments' requests for in person meetings with decision-makers, consistent with the applicable law regarding ex parte communications, and the equal time requirements.[2] Other Commission staff will also accommodate tribal governments' request for in person meetings, whenever possible.

   e. When Commissioners travel to different cities for public meetings, they will seek to arrange separate meetings with local tribal governments, as time allows.

   f. Commission staff and Administrative Law Judges shall make efforts to ensure that relevant information the Commission receives from a tribal government is submitted into the record of a proceeding, consistent with the confidentiality provisions of this policy set forth below. Where a tribal government has submitted written comments in a proceeding, the decision shall explain the tribe's concerns and how they are addressed. Where the

[2] Public Utilities Code § 1701.3(h)(3).

CPUC is unable to fully address the tribe's concerns, the CPUC shall clearly explain the legal, practical, or policy considerations underlying its decision.

g. The Commission will make efforts to ensure that tribal governments are aware of Commission- managed grant programs (such as the CA Advanced Services Fund), and various Commission- approved utility incentive and subsidy programs offered by the utilities, especially those that target disadvantaged and/or remote communities. The CPUC's Tribal Liaison will offer informational materials and meetings for tribal governments on these various programs, if requested.

h. Where feasible, Commission staff will provide assistance so that tribal governments and tribal members may seek to participate in (or benefit from) grant programs implemented by the Commission and various Commission-approved incentive and subsidy programs offered by the utilities. The CPUC Tribal Liaison will offer assistance to navigate the application process.

2. In its role as a member of the Pacific Forest and Watershed Lands Stewardship Council, the Commission will encourage prioritizing donation of Pacific Gas & Electric Company property to tribal governments and, where possible, facilitate those donations.

3. In the event that a tribal government believes that consultation has not met the standards set forth in this Policy, it may submit a written letter to the Executive Director of the CPUC explaining the deficiencies. Within 30 days, the Executive Director will either meet with the tribal government, or respond in writing, and will then direct any further consultation that he or she believes is appropriate.

Confidentiality:

- The Commission recognizes that confidentiality of information regarding tribal cultural resources, history, traditions, religious activities and sites, and other matters is important to tribal governments and tribal members.
- The Commission will follow existing laws that protect confidentiality of tribal cultural resources (including Pub. Res. Code §§§ 5097.9, 5097.933 and 21082.3(c); Government Code § 6254(r) and Cal.Code Regs., tit. 14, § 15120(d)).
- The Commission will not include any information provided by a tribal government in environmental documents, or documents it files in proceedings, if it is deemed confidential by the tribal government. The tribal government shall notify the CPUC if any information it provides is confidential, and mark any such documents as confidential.
- If appropriate, the CPUC will work with tribes to enter into a non-disclosure agreement for documents transmitted to the CPUC that contain confidential information.

- If confidential information regarding the presence of tribal cultural resources is relevant to a Commission decision, the Commission will work with the tribal government to reach agreement on how to proceed, in an effort to allow the decision-makers to consider the information, while also protecting its confidentiality.

Tribal Consultation Under CEQA:

For projects where the CPUC is the lead agency under CEQA, the CPUC will comply with the statutory requirements regarding tribal consultation enacted by AB 52 (Gatto, 2014) (Pub. Res. Code §§ 21080.3 *et seq*.). The CPUC may also consult the Governor's Office of Planning and Research *Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA* (June 2017).

Summary of CEQA Consultation Process:

- A tribal government may request CEQA consultation if it is traditionally and culturally affiliated with the geographic area of a proposed project.
- The consultation must take place prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report. (Pub. Res. Code § 21080.3.1(a)). Since the initial consultation occurs early in the agency's CEQA review process (see below under Timing of Consultation), the consultation will occur before the CPUC's release of a draft or proposed negative declaration, mitigated declaration, or environmental impact report.
- The consultation must address alternatives to the project, recommended mitigation measures, or significant effects, if requested by the tribe. (Pub. Res. Code § 21080.3.2(a)).
- If the agency determines that a project may cause a substantial adverse change to tribal cultural resources, the agency must consider mitigation measures. The agency must "when feasible, avoid damaging effects to any Tribal cultural resource." (Pub. Res. Code 21084.3(a)). The statute describes mitigation measures that the agency may adopt, if feasible, to avoid or minimize the impacts. (Pub. Res. § 21084.3(b)).
- The consultation concludes when either 1) the parties agree on measures to recommend to mitigate or avoid a significant effect, if one exists, on a tribal cultural resource (Pub. Res. Code § 21082.3(a)), or 2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Res. Code § 21080.2.2(b)).

In 2016, Appendix G of the CEQA Guidelines was amended to implement AB 52. The Environmental Checklist in Appendix G of the CEQA Guidelines now directs lead agencies to address tribal cultural resources in Question #11: "Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 20180.3? If so, has consultation begun?" Appendix G of the Guidelines also directs the lead agency to identify whether the project would cause a substantial adverse change in the significance of a tribal cultural resource that is: listed or eligible for listing in the California Register of Historical Resources; is listed in a local register of historical resources; or that is significant pursuant to the criteria in Public Resources Code § 5024.1(c) (CEQA Guidelines, Section XVII).

Advance Request for Notice of Projects:

- Pursuant to AB 52, a tribe may inform agencies in advance that it would like notice of projects subject to CEQA that are seeking the agency's approval and that are within the tribe's traditionally and culturally affiliated area.
- The CPUC's website has a form has a form letter that tribal governments may submit to the CPUC requesting advance notice of CEQA projects in its area. See: http://www.cpuc.ca.gov/tribal/.

Timing of Consultation: The CPUC will follow the statutory deadlines for tribal consultation under CEQA, which generally require the following:

- When a tribe has requested notice of CEQA projects, the CPUC must provide written notice to that tribe of a project in its area, within 14 days of determining that the project application is complete.
- A tribe may request to engage in consultation within 30 days of receipt of the notice, and designate a lead contact person.
- The CPUC will begin the consultation process within 30 days of receipt of the request for consultation.
  - The CPUC will hold a consultation meeting at one of the CPUC offices (in Sacramento, San Francisco or Los Angeles) or at a tribal government office within 30 days.
  - If a meeting at a Commission office is not feasible for the tribal government, the consultation may occur at a mutually agreeable alternative location or by telephone.
  - If the tribe requests that the consultation be scheduled for a time after the 30 day period, the CPUC will accommodate the request.
- The CPUC will participate in additional consultation meetings as necessary to address the issues and work in good faith to reach an agreement with the tribal government on recommendations for project modifications or mitigation measures.
- The CPUC will honor a tribe's request for CEQA consultation that is made more than 30 days after the tribe's receipt of notice, as long as there is still time for meaningful consultation to occur.

<u>Other Situations</u>:

When a tribe has not requested advance notice of all CEQA projects from the CPUC, if the Commission is the lead agency, a request will be made to the Native American Heritage Commission to identify tribal entities interested in the project area. Commission staff will ensure that the identified tribal entities receive written notice of a proposed project in their area at the beginning of the environmental review process. The Commission will carefully consider all tribal government comments regarding potential impacts on tribal cultural resources and suggested mitigation measures.

Appendix B

CPUC Tribal Land Transfer Policy

Date of Issuance: January 20, 2021

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-5076
January 14, 2021

R E S O L U T I O N

Resolution E-5076—Adoption of Guidelines to Implement the CPUC Tribal Land Policy consistent with Executive Order B-10-11 and the CPUC Tribal Consultation Policy, The Tribal Land Transfer Policy, and Public Utilities Code Section 851.

PROPOSED OUTCOME:

- This Resolution approves the Tribal Land Transfer Policy (TLTP) Guidelines to Implement the CPUC Tribal Land Transfer Policy. These TLTP Guidelines provide non-mandatory guidance on complying with the TLTP to all CPUC-jurisdictional public utilities requesting permission to dispose of real property under Public Utilities Code Section 851 (Section 851). These Guidelines are mandatory on all electrical corporations (Pub. Util. Code, § 218), gas corporations (Pub. Util. Code, § 222)—but excluding corporations that only operate independent gas storage facilities (e.g., Lodi Gas Storage, Wild Goose Storage, Central Valley Storage, Gill Ranch Storage, or any similarly situated entity), and common carrier pipeline corporations—and water corporations (Pub. Util. Code, § 241) – excluding those with less than 2,000 service connections (i.e., Class C and D water utilities). For purposes of this Resolution and these Guidelines, those corporations are referred to as "Investor Owned Utilities," or "IOUs." When IOUs seek to dispose of real property under Section 851, these Guidelines require

IOUs to take affirmative steps to determine whether California Native American Tribes (Tribes) are interested in purchasing the property, and these Guidelines give Tribes a right of first offer on the property before the IOU may put the property on the open market.

SAFETY CONSIDERATIONS:

- Effective administration of the TLTP is part of the responsibility of the IOUs to meet their obligations under Public Utilities Code Section 451 to provide services that promote the safety, health, comfort, and convenience of their patrons, employees and the public.

ESTIMATED COST:

- The TLTP will require additional noticing and consultation with affected Tribes. The additional cost of implementing the TLTP is not known at this time.

SUMMARY

This Resolution adopts the California Public Utilities Commission's (CPUC) Tribal Land Transfer Policy Draft Implementation Guidelines (Draft Guidelines), with an effective date of issuance. The Draft Guidelines apply to Investor Owned Utilities (IOUs) seeking CPUC approval for the future disposition of all fee interest conveyances of real property pursuant to Public Utilities Code Section 851. The Draft Guidelines will facilitate transfers of fee interest in real property to Tribes by offering Tribes a contractual right of first offer.

BACKGROUND

On September 19, 2011 Governor Edmund G. Brown Jr. issued Executive Order B-10-11, which first committed the State of California to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus. Executive Order B-10-11 created the position of Governor's Tribal Advisor within the Office of the Governor and further ordered: "that it is the policy of this Administration that every state agency and department subject to my executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other representatives of Tribal governments to provide meaningful input into the development of legislation, regulations, and policies on matters that may affect Tribal communities."[1]

On June 18, 2019, Governor Gavin Newsom reaffirmed Governor Brown's Order with Executive Order N-15-19. Executive Order N-15-19 states that in early statehood, California's first Governor, Peter Burnett declared "a war of extermination" against Tribal communities and that the State's laws and policies continued to discriminate against Native Americans and to deny the existence of Tribal government well into the twentieth century. The order further acknowledges that the State of California has never formally apologized for these historical wrongs that were tolerated, encouraged, subsidized and committed by State actors against Native Americans.

[1] Executive Order B-10-11 Governor Edmund G. Brown Jr. September 19, 2011

Acting to advance the intent of both Executive Orders, the CPUC Committee on Policy and Governance approved the Tribal Consultation Policy (Consultation Policy) on March 21, 2018; on April 6, 2018, the Consultation Policy was formally adopted by the CPUC.[2] The Consultation Policy recognizes Tribal sovereignty and ensures meaningful consideration of Tribal interests within the CPUC's jurisdiction by facilitating Tribal government participation in CPUC proceedings – including California Environmental Quality Act consultations, protecting Tribal cultural resources, encouraging Tribal investments in various renewable energy efforts and participation in CPUC-managed grant programs and CPUC-approved utility incentive and subsidy programs.

Tribal Land Transfer Policy

Consistent with the goals of the Consultation Policy, and both Executive Orders, the CPUC's Emerging Trends Committee proposed a Tribal Land Transfer Policy intended to provide additional protections for Native American cultural resources by providing an opportunity for Native American Tribes to regain lands within their ancestral territory, but lost through institutional bias and unfair means in the 1800s and early 1900s.

Development of the Tribal Land Transfer Policy (TLTP) occurred from June through October of 2019. Notice to stakeholders, public outreach and meetings were held with Tribes; public comments on the proposed policy were accepted. Following receipt and

[2] CPUC Tribal Consultation Policy, Adopted April 2018. https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M212/K861/212861685.PDF

review of comments, the Draft TLTP was placed on the CPUC Agenda for vote. On December 5, 2019, the TLTP was formally adopted by the CPUC.[3]

The TLTP builds on the Tribal Consultation Policy by establishing a CPUC preference for the transfer of real property to Tribes when an investor owned utility (IOU) plans to dispose of real property within a Tribe's ancestral territory. Conceptually, the Policy creates an expectation that for any future disposition of real property subject to Public Utilities Code Section 851, the IOUs will offer Tribes a right of first offer before putting the property on the market.

In adopting the TLTP, the CPUC affirms its respect for Tribal sovereignty, supports the protection of Tribal sacred places and resources, and seeks to ensure meaningful consideration of Tribal interests, including the return of lands within the Tribe's ancestral territory. The TLTP acknowledges that IOUs own real property located within Tribes' ancestral territories and upholds California law and policy encouraging consultation and cooperation with Tribal governments to protect Tribal sacred places and cultural resources of historical, spiritual, and ceremonial importance to Tribes. The CPUC's review of real property transfers subject to Section 851 may affect land use activities on or near Tribal communities, may affect the protection and accessibility of Tribal sacred sites and cultural resources, and may provide opportunities to return lands to California Tribes within their Tribal Territories.

A cornerstone of the TLTP is acknowledging the need for the CPUC and the IOUs to respect the sovereignty of the Tribes and the respect for and consideration of spiritual beliefs and cultural values by provision of timely information on the process to effectively engage in CPUC proceedings of interest. To ensure the Tribes are informed

---

[3] CPUC Tribal Land Transfer Policy, Adopted December 5, 2019. https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Supplier_Diversity/Final%20Land%20Transfer%20Policy%20116.pdf

of transfers, the CPUC will facilitate Tribal Government access to information by first providing effective notice to Tribes, early meaningful consultation, and then facilitating Tribal participation in proceedings involving requests by IOUs to dispose of real property subject to Public Utilities Code Section 851. When an IOU plans to dispose of real property within a Tribe's ancestral territory, the CPUC will ensure that the Chairperson or the designee of any appropriate Tribe receives notice of the planned disposition and a request to meet from the IOU.

The Revised Draft Guidelines attached to this Draft Resolution implement the TLTP. Information required to be provided to Tribes by the Revised Draft Guidelines include: 1) identification of the real property at issue; 2) the reason for the disposition; 3) contact information for a representative of the IOU that is able to provide and, 4) at the Tribes request, enough additional information for the Tribe to determine whether it is interested in purchasing the real Property.

To facilitate a Tribe's evaluation of real property of interest, the CPUC will give special consideration to Tribal government requests to participate in CPUC proceedings involving requests by IOUs to dispose of real property under Section 851. A Tribal Government may request to become a party in such proceedings, and if the appropriate Tribe does not receive notice before the IOU begins the Section 851 process, the CPUC will provide the Tribe reasonable additional time to participate in the proceeding, and will require meaningful consultation with the Tribal government to determine whether the Tribe is interested in acquiring the real property. CPUC staff and Administrative Law Judges will ensure that relevant information received from a Tribe is submitted into the record of a proceeding.

Importantly, where an IOU seeks approval to transfer real property within a Tribe's ancestral territory, the IOU will provide a Tribe a right of first offer. The CPUC will further deem that Tribe the preferred transferee absent a finding supported by evidence that: 1) the Tribe declined consultation or otherwise confirmed it is not interested in acquiring the real property; 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 CPUC policy; 3) that the 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 greater public interest.

If an IOU submits an application or advice letter consistent with Section 851 for the disposition of real property, the CPUC will ensure that the record contains a showing of notice and meaningful consultation with the appropriate Tribe(s), consistent with the identified Tribal ancestral territory recognized by the Native American Heritage Commission (NAHC). This includes, but is not necessarily limited to:

- a copy of a written request to the NAHC to identify Tribal entities interested in the area where the real property being disposed of is located;
- a copy of written notice to the Tribal Chairperson or their designee of the IOU's intent to dispose of the subject real property, including a request to consult with the Tribe regarding the Tribe's interest to acquire the subject real property;
- Documentation of communication between the IOU and the Tribe regarding whether the Tribe is interested in acquiring the real property.

If those requirements are not met, and if those deficiencies cannot be cured, the CPUC may deny the Application or Advice Letter.

As part of its review of any disposition of real property under Section 851, the CPUC will consider any request by a Tribal entity, comments regarding potential impacts on Tribal cultural resources, or suggested measures to mitigate those impacts. This applies to all such transfers, consistent with all laws, rules, and regulations governing the protection of cultural resources on real property.

If more than one Tribe seeks ownership of available real property, and if the Tribes are unable to resolve the dispute themselves, the TLTP Guidelines require that the IOU or the CPUC will engage in meaningful consultation with the Tribes to attempt to resolve the dispute.

The Guidelines requires the IOUs to establish a website for all matters pertaining to the Guidelines and Policy. The Guidelines also require quarterly reporting, such as a list of recent and upcoming IOU real property transactions, and a summary of Tribal contacts and consultations and the outcome of the consultations, undertaken over the previous quarter. The CPUC will post these reports from the IOUs.

Informal Comments Received on Draft Tribal Land Transfer Policy and the Draft Guidelines

During the comment period on the Draft Tribal Land Transfer Policy, the CPUC received informal comments[4] from the three large electric utilities, several California Native American Tribes, the Native American Land Conservancy, and the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council). The informal comments received were, where appropriate, incorporated in the TLTP and subsequently, the Revised Draft Guidelines attached to this Resolution. Although the informal comments received have already been considered, a summary of some of the key comments received will serve as background and may facilitate additional comments on this Draft Resolution to further develop the TLTP Guidelines, and the associated record of this Resolution before the CPUC.

Comments submitted by IOUs generally proposed certain clarifications and modifications to the Draft TLTP regarding the types of transactions subject to the Draft TLTP, the resources to identify the appropriate Tribe within a geographic area, and the process challenges associated with providing a “right of first refusal.”

[4] The comments received prior to this Resolution are designated here as “informal” because while they inform the actions taken in this Resolution, they were not part of a CPUC proceeding. Comments received by the CPUC prior to the issuance of this Draft Resolution are available here: https://www.cpuc.ca.gov/Tribal/

The IOUs recommended the Policy be clarified to exclude the types of minor conveyances subject to General Orders 173 and 69-C, as such minor conveyances are typically made to governmental entities, or to developers as a condition of their development projects. These types of grants generally allow specific and limited uses. IOUs stated that including easements interests in IOU real property subject to the "right of first refusal" offer significantly expands the requirements for IOUs without advancing the goal of the Draft Policy of returning lands to Tribes.

The IOUs expressed concern with the definition "within or adjacent to Tribal territory," and "Tribal territory is defined as the territory designated by the Tribe and submitted to the NAHC for notice of projects under AB 52." The IOUs believe that there may be disputes between Tribes regarding areas outside of the recognized bounds of a reservation. Specifically, an IOU may inadvertently notify or show preference to one Tribe as opposed to another where there are competing claims. Additionally, IOUs state that the TLTP does not specify the protocols to be used should two or more Tribes lay claim to the same property, and it is not clear that the NAHC will attempt to resolve claims or disputes between Tribes. At a minimum, the IOUs believe the CPUC should provide a detailed map with associated single points of contact for providing the notice.

The IOUs' requested that the Policy be amended to provide a "right of first offer" as opposed to a "right of first refusal," explaining that a "right of first refusal" provides a third party with the contractual right to acquire property on the same or better terms as had been proposed by another potential purchaser, who has expended time and resources investigating any number of issues related to the sale. The ability to extend and negotiate offers for the disposition of the property could be adversely impacted, if a third party is aware that any potential agreement could be discarded should a Tribe decide to accept an agreement with identical terms.

The IOUs explained that negotiations with a third party typically occur prior to the transaction being submitted to the CPUC for approval pursuant to Section 851, and third parties would be less willing to negotiate for the acquisition of real property before a Tribe confirms that it has no interest in that property. Instead, a "right of first offer" would ensure the Tribes are provided with notice and an opportunity to present an offer prior to the CPUC completing its deliberations on a disposition.

Comments submitted by the Stewardship Council stress the importance of exempting Pacific Gas and Electric Company's (PG&E) Land Conservation Commitment (LCC) from the Tribal Land Transfer Policy. First, the Stewardship Council believes that key provisions in the Draft Policy conflict with the legal requirements of the PG&E Bankruptcy Settlement Agreement and Stipulation ordered in Decision (D.) 03-12-035. Second, the Stewardship Council states that since its inception it has made a concerted effort to extend the benefits of the LCC to Native American entities resulting in more than 8000 acres donated in fee. To facilitate the transfers the Stewardship Council has allocated several million dollars in funding to Native American entities providing critical support to enable the Tribes to meet the robust conservation provisions of the LCC. Finally, even though many donations are still in negotiation, the planning efforts have been mostly completed and the Stewardship has funding only to complete the LCC before dissolving in 2022.

Comments submitted by the Tribes were broadly supportive of the Tribal Land Transfer Policy but expressed concern that the Policy does not clearly state what lands would be considered the Tribe's aboriginal territory and what "adjacent to a Tribes aboriginal territory" means. For many federally recognized Tribes, lands that are traditionally and culturally affiliated with a Tribe include those lands that are located within the Tribe's reservation, but also include lands located beyond the reservation boundaries. It is not uncommon for several Tribes to claim a historical, cultural, or spiritual connection to the same lands, and the Tribal Land Transfer Policy may result in multiple Tribal claims to the same property.

The Tribes also stressed the need for a clear standard of "meaningful consultation." Comments recommend that meaningful consultation means consultation in advance with the decision maker or intermediaries with clear authority to present Tribal views to the IOU. Simply requiring documentation of communications between and IOU and the appropriate Tribe, in and of itself, is not meaningful consultation.

The Draft Guidelines are intended to provide the guidance necessary to effectively and efficiently implement and further the goals of the CPUC's TLTP. Many of the clarifications of the TLTP requested by commenters is provided in <u>Section 1.3 Definitions</u> of the Draft Guidelines.

Following issuance of a preliminary version of the Draft Guidelines, the CPUC held a Tribal Land Transfer Policy Workshop on March 24, 2020. Due to Covid-19 restrictions, the Workshop was held by Webinar and comments were received via chat during the Workshop.[5]

Workshop comments specific to Draft Guidelines include:

A comment from Mona Tucker suggested that Section 3.3(d) should be removed from the Draft Guidelines, as she contends it has the potential to greatly devalue the benefits of the TLTP to Tribes and is contradictory. Ms. Tucker believed Section 3.3(d) puts an undue burden on Tribes against entities who may seek a variety of uses that could be claimed as a greater "public interest."

---

[5] Materials from the March 24, 2020 workshop on the Draft TLTP Guidelines, including an agenda and a Chat Transcript, can be found here: https://www.cpuc.ca.gov/Tribal/

A comment from Kara Woodruff stated that dozens of comments related to the closure of Diablo Canyon request the conservation of the 12,000 acres of Diablo Canyon Lands. In these comments the CPUC has been asked to require Conservation Easements be placed on any land transfers away from IOU's to Tribes or any other recipients. Ms. Woodruff sought clarity on how the CPUC will protect the conservation values and suggests the CPUC include in the TLTP Guidelines a provision that requires an analysis of conservation values and a Conservation Easement, where appropriate.

Additional Comments from the public at the workshop:

- One commenter stated that the TLTP starts with the presumption that transferring lands to a native Tribe is in the public interest but does not consider that such interest may be contrary to important community values such as conservation.
- Commenters were interested in learning more about the possibility of quarterly noticing of upcoming real property dispositions in addition to the Annual Report required in Section 5.1 of the Draft Guidelines.
- Commenters were interested in the number of Tribal groups contacted regarding the TLTP, the database of those contacts, and the contact for the CPUC's Tribal Liaison.
- Commenters questioned when the California Environmental Quality Act (CEQA) would be triggered, if a transfer of land would trigger CEQA, who would be the Lead Agency under CEQA, and the relationship between CEQA and a Conservation Easement for protecting land in perpetuity.
- A commenter questioned how local government rules and regulations apply to a sovereign nation land.
- Another commenter offered that both CEQA and any local rules apply to Tribal land held in fee, and the federal government will conduct National Environmental Policy Act (NEPA) review if/when the Tribes propose that land be accepted into trust by the Bureau of Indian Affairs.

Where appropriate, the informal comments received at the March 24 workshop were incorporated into the Draft Guidelines appended below.

NOTICE

Notice of Resolution E-5076-E is made by publication in the CPUC's Daily Calendar. A copy of Draft Resolution E-5076 was mailed and distributed in accordance with Section 4 of General Order 96-B and Rule 15.6 of the CPUC Rules of Practice and Procedure.[6]

COMMENTS

Draft Resolution E-5076 was originally circulated on July 31, and the initially established comment period was for opening comments to be received by August 24, 2020 with reply comments to be received by September 3.

On September 2, the September 3 due date for comments was suspended and the comment period was extended to September 24, 2020, with reply comments due October 8, 2020. After that comment period closed, Draft Resolution E-5076 and the appended Draft Guidelines received substantive amendments, and Draft Resolution E-5076 was revised and re-circulated for an additional comment period on December 11, 2020. On January 5, 2021 comments on Revised Draft Resolution E- 5076 were submitted by 3 California Native American Tribes,[7] the 3 major IOUs, and the California Coastal Commission.

---

[6] The CPUC Rules of Practice and Procedure. https://www.cpuc.ca.gov/rpp/

[7] The Santa Rosa Rancheria Tachi Yokut Tribe and the Dry Creek Rancheria Band of Pomo Indians submitted comments that were substantially identical. For simplicity's sake, this Resolution refers only to those comments made by the Santa Rosa Rancheria Tachi Yokut Tribe. The CPUC means no disrespect to the Dry Creek Rancheria Band of Pomo Indians.

During the initial comment period, comments were received from several California Tribes, Investor Owned Utilities, industry groups, a California county and a public agency. The received comments were generally supportive of the Tribal Land Transfer Policy but offered numerous suggestions to improve the Draft TLTP Guidelines to improve TLTP implementation and to more effectively achieve Tribal interests.

To make it easier to follow the procedural history, the CPUC refers to the version of the Guidelines that was circulated on July 31 as the "Initial Draft Guidelines," and to the version of the Guidelines that was recirculated on December 11 as the "Revised Draft Guidelines."

Comments from Tribes on the Initial Draft Guidelines

The Yurok Tribe submitted comments that addressed specific sections of the Initial Draft Guidelines and requested the following modifications:

- Section 1.2(c) was seen as not clearly addressing the circumstances under which IOUs may be allowed to place an easement on land prior to transfer. The Yurok Tribe recommended that placement of major encumbrances such as conservation easements be prohibited prior to transfer unless by consent of the receiving Tribe and that the Tribe's regulatory and adjudicatory jurisdiction apply.
- Section 1.4 should be modified to mandate a "user-friendly' website that accommodates limited Tribal Internet access.
- Section 2.1 should be amended to match the language in the TLTP. The Tribe further recommends that the IOUs should send multiple notifications in 30-day increments.
- Section 2.2 should be modified to indicate that notification should be through a written letter, e-mail, or phone call.
- Section 3.2(a) should be amended to require the CPUC to send notification to the Tribes of the topic, time, location, filing and record and explain the process and opportunity to participate in the advice letter and/or 851 proceedings and detail the process for Tribal participation including allowing 60 days to review and file

comments into the record and allowing 60 days to respond to any opposition to the Tribe's comments.

- Section 3.3(d) should be removed to eliminate the exception from the TLTP that could follow from the term "public interest", or to revise the subsection to better define the term.
- Section 3.4 should be revised to require the CPUC to request consultation regarding potential impacts to Tribal cultural resources and carefully consider the mitigation measures requested, striving to implement the mitigation measures requested by the Tribe and should clarify if the IOUs and the CPUC are required to follow the CEQA process.
- Section 4.3 should be modified to eliminate the term "any other stakeholder" to avoid undermining the process and damaging relationships between Tribes.

The Paskenta Band of Nomlaki Indians (Paskenta Band) recommended revising the Initial Draft Guidelines to ensure that any land subject to the Guidelines is offered to any Tribe at 20% below market rate. The Paskenta Band also believed that the exemptions that could exclude a Tribe as the preferred transferee were too broad and vague and may allow the IOUs and CPUC to undermine the goals of the TLTP.

The San Fernando Band of Mission Indians commented that it is imperative that the language in Draft Resolution E-5076 clarify land disposition when an IOU plans to dispose of real property specific to Ancestral Lands, rather than the broad language of "cultural and traditionally affiliated".

The Xolon Salinan Tribe requested more information on how GO 173 and GO 69-C easements are used. The Xolon Salinan Tribe is a State Recognized Tribe with no monthly income. Therefore, land transfers would have to be donated or purchased at $1.00 to make a legal real estate transaction. The Tribe stated that within the Central Coast region there are other Tribal entities that may have overlapping ancient Tribal boundaries, due to the number of inconsistent academic writings. The Tribe recommended that Tribal evidence of connection to a specific land should lie mainly within the Pre-Contact era, not after contact (Mission era).

The Round Valley Tribes, a sovereign confederation of Northern California Indian Tribes, submitted comments suggesting numerous changes to the Initial Draft Guidelines. First, the Round Valley Tribes suggested revising Section 1.1(b)(i) to acknowledge Tribes as sovereign nations, and Section 1.1(b)(ii) to apply the policy to any property within a Tribe's ancestral territory. The Round Valley Tribes also suggested Section 1.3(a) be revised to rely on a Tribe's constitution and description of "Ancestral Territory" if a Tribe has not designated its ancestral territory under Assembly Bill (AB) 52. If a Tribe's constitution does not include a description of ancestral territory the Handbook of North American Indians should be used as a source.

The Round Valley Tribes recommended that Section 2.1 be revised to require a 14-day timeline to begin consultation with Tribes once the IOU decides to dispose of real property. Next the Round Valley Tribes recommended extending the response period by Tribes from 90 to 120 days. Also, the Round Valley Tribes recommended that, after an IOU properly notices a Tribe of a forthcoming disposition, and the Tribe does not respond, the IOUs should hold the offer to the Tribe open for 60 days. Section 2 should be revised to require that the IOUs maintain a written record of communications with Tribes related to specific dispositions.

The Round Valley Tribes recommended that Section 3.3(d) be removed because a balancing of public interest would contradict the goal of the TLTP. Additionally, Section 3.4 should be revised to require that IOUs coordinate with a Tribe's Tribal Historic Preservation Officer (THPO) or other appropriate Tribal representative regarding how the conveyance of real property might impact Tribal cultural resources. A written record should be kept and submitted with the IOUs request for approval.

Finally, the Round Valley Tribes recommended that General Orders 173 and 69-C be included in the Initial Draft Guidelines, as both orders represent a possible first step for Tribes to re-establish and maintain connection to ancestral lands.

IOU Comments on the Initial Draft Guidelines

SoCalGas, SCE, SDG&E, and PG&E submitted comments in support of the goals of the TLTP, but critical of the process by which the Policy was adopted. They recommended that, given the complexity of the factual, legal and policy issues arising from the TLTP and Initial Draft Guidelines, the CPUC should withdraw both and initiate a formal rulemaking. The IOUs asserted that the Initial Draft Guidelines would likely frustrate the purpose of the TLTP and fail to effectuate transfers to the Tribes.

The IOUs agreed that the Initial Draft Guidelines should be revised to clarify that the TLTP is applicable to a fee interest in real property and not easements and other less-than-fee interests, as an easement is a non-possessory right, the transfer of which would not advance the goals of the TLTP.

The IOUs took the position that the TLTP should not be expanded to licenses issued pursuant to GO 69-C because such licenses are required to be for limited purposes and can be terminated as necessary for utility purposes. The IOUs commented that GO 69-C does not authorize leases, nor the sale of real property. Rather, they argued, applying the TLTP and Initial Draft Guidelines to GO 69-C transactions would inundate Tribes with notices for easements for road widenings, pipeline crossings, community gardens, and plant nurseries. Occasionally Tribes may request such licenses for ceremonial purposes on IOU property but expanding the Guidelines to include notification to Tribes to issue a revocable GO 69-C license would result in delay of operations such as accommodating telephone and communication providers using IOU utility poles.

The IOUs commented that the Initial Draft Guidelines should be revised to establish an orderly and efficient process for the determination of a Tribe's interest in a particular transaction. They suggested that the NAHC, in consultation with the Tribes and the CPUC's Tribal Liaison, should predetermine which Tribe has a superior claim within any given territory within the IOU service area. The Initial Draft Guidelines should be revised to delete the requirement that IOUs resolve conflicts among Tribes related to the TLTP.

They also suggested the response time from the NAHC should be reduced from 90 to 30 days to allow the remainder of the 90-day period for negotiations.

PG&E believed the term “adjacent to” is ambiguous and should be changed to clarify the right of first refusal may be exercised by the Tribe or Tribes whose ancestral territory includes the IOU real property. They recommended the guidelines be changed to:

- specify the procedures and timelines for the exercise of the Right of First Refusal;
- establish a procedure for transactions that may qualify for exemption and for high value transactions in which Tribes may participate while still achieving the greatest gain on sale for the ratepayers; and

PG&E also maintained that the Initial Draft Guidelines should recognize exceptions for sale of operational facilities such as water canals being sold to water districts, and the commercial sale of developed property such as the sale of a service center building. The Initial Draft Guidelines should recognize a specialized procedure governing the sale of high value property with an expected value. For example, GO 173 requires a utility to file an 851 application for transactions valued over $5 million.

PG&E stated the definition of “dispositions” should exclude the term “encumbrance” to avoid expanding the scope of the TLTP to include transactions associated with utility financing that do not implicate a transfer of IOU property. Also, the phrase “disposition by any other means of an estate in real property” would include short-term leases and transactions not intended to be subject to the TLTP.

SCE commented that the application of the TLTP and Initial Draft Guidelines to leases and easement transactions pursuant to GO 173 does encompass limited transactions that may convey fee ownership but the bulk of transactions involve leases and easements to counties and cities for various forms of improvement projects.

SCE argued that subjecting conveyances pursuant to GO 173 and 69-C could substantially delay essential IOU operations because SCE's capital infrastructure frequently requires the acquisition or disposition of easements or the relocation of existing systems of other IOUs. For example, SCE is presently providing a jurisdiction with temporary access rights to complete a road widening, without further CPUC approval, pursuant to GO 69-C.

SCE asked that the Initial Draft Guidelines and TLTP exempt all conveyances made pursuant to GO 173 and GO 69-C and should not extend beyond a transfer of fee ownership or a long-term lease of less than 50 years. According to SCE, exempting the conveyance of easements, licenses, and minor property sales does not appear to be inconsistent with the CPUC's intent to transfer fee ownership to a Tribe.

SCE noted that GO 173 does allow for the sale of land provided the value does not exceed $5 million. Lease approval by GO 173 cannot be for more than 25 years and therefore does not resemble a long-term transfer of real estate that would be comparable to fee ownership.

SCE further noted that GO 173 empowers CPUC staff to refer an Advice Letter filing to the CPUC for formal approval under Section 851 if staff believe there are issues that merit CPUC review. SCE states that the CPUC could exempt advice letter filing under GO 173 from the TLTP and Initial Draft Guidelines unless staff determines that a sale of land of a large or significant parcel is at issue and should be referred to the CPUC for formal approval pursuant to Section 851.

SCE commented that the Initial Draft Resolution identified a 90-day window for an initial response from the NAHC. SCE suggested that Tribes should be given a 30-day time period to respond to the subsequent IOU notice of disposition of real property. If the Tribe does not respond the IOU should provide a follow-up notice and allow for a 10-day response period.

SCE believed the Initial Draft Guidelines were unclear as to whether the Tribe must match the offer given or that they merely be notified of the transaction.

SCE noted that the concerns related to consultation and implementation of the Guidelines are substantial and should be addressed not by an implementation workshop, but through revisions to the Initial Draft Guidelines prior to CPUC adoption of the Draft Resolution, rather than after the adoption of the Resolution.

SCE objected to the Draft Resolution's requirement of IOU reporting on a quarterly basis, as opposed to the TLTP's annual reports. SCE further argued that the requirement of a list of upcoming and anticipated real property transactions is potentially onerous, and that it would be inappropriate for SCE to signal that it is evaluating a potential sale.

If a dispute arises between multiple interested Tribes, the Initial Draft Guidelines required that the IOU engage in "meaningful consultation" and "propose a reasonable resolution." SCE believed these terms are subjective and require the IOU to mediate a dispute. Instead, SCE recommended that IOUs be required to provide each Tribe notice and opportunity to submit offers in those instances where an IOU is selling operational property without need for a specific parcel from a third party (land swap) and where the primary motivation of the transaction is profit as opposed to operational need of the purchaser.

Other Comments on the Initial Draft Guidelines

The California Building Industry Association (CBIA) submitted comments indicating a primary concern over the inclusion of easements as a disposition in the Initial Draft

Resolution and request that easements be excluded from the types of dispositions subject to the TLTP.

CBIA stated that home builders and municipalities regularly ask IOUs to relocate easements to facilitate the construction of roadways or to accommodate the development of new housing projects. Homebuilders will often offer a new easement to the IOU in return for a quitclaim of the original, affected easement.

It further stated that an IOU's quitclaim of an existing utility easement in exchange for a replacement easement should not be considered a "disposition" within the context of the TLTP, as the IOU is not receiving compensation in exchange for the transfer of the old easement but is receiving an equivalent land interest.

According to CBIA, GO 173 and GO 69-C ensure that certain routine IOU conveyances may be handled administratively and without need for full CPUC approval. In the context of an easement exchange, GO 173 and 69-C are the appropriate protocols.

CBIA asserted that an easement held by an IOU for transmission and distribution purposes has no value to Tribes because they cannot change the use of the easement. Unless the Tribes were to obtain fee title to the underlying land, which does not belong to the IOU, the Tribes would no ability to control the land. Thus, CBIA argued that all transactions related to easements should be excluded from the TLTP. According to CBIA, this exemption could easily be accomplished through a revision to the term "disposition" that excludes all transactions pertaining to easements on private property.

Finally, CBIA argued that the CPUC should seek additional comments and hold additional public workshops to seek input from local agencies, affordable housing groups, owners of utility encumbered parcels, and other parties.

San Diego Metropolitan Transit System (MTS) submitted comments stating that the Initial Draft Resolution created confusion and prevents routine cooperation between public agencies and IOUs, and asked the CPUC to suspend the TLTP, withdraw the Initial Draft Resolution and initiate a formal rulemaking.

According to MTS, MTS and SDG&E each operate linear rights-of-way and at times must cross the other entity's right-of-way and have a history of providing license, easement, or other non-fee transfers of real property rights to allow public infrastructure projects to move forward while avoiding involuntary acquisitions using the condemnation process. Using the GO 173 process under Section 851 adds approximately 4 months to public projects. According to MTS, the Initial Draft Guidelines would require all real estate-related project negotiations between MTS and SDG&E to first be offered to the applicable Tribes, even if SDG&E has no intention or interest in formally disposing of the property in question.

MTS recommended the TLTP should apply to "surplus property" that is no longer needed by the IOU, the definition of disposition should exclude easements and other non-fee conveyances, and the TLTP should not apply to GO 69-C conveyances, or to transactions with a public agency to support a public project.

The Western Power Trading Forum (WPTF) submitted comments expressing concern that the Initial Draft Guidelines were overly broad and could be interpreted to apply to easements across IOU real property that a developer needs to interconnect a renewable generation facility with the IOU's transmission system.

To avoid confusion and unnecessary litigation that might delay renewable project timelines and costs, WPTF urged the CPUC to modify the Initial Draft Resolution to exclude disposition of a limited set of real property rights such as non-exclusive easements and rights-of-way that are used for interconnection purposes.

Horizon West Transmission, LLC (Horizon West) submitted comments expressing concern that the Initial Draft Guidelines could be interpreted to require a right of first refusal for easements and other real property rights that the IOUs may grant for use by specific electric transmission, storage, and generation projects (Energy Projects) that require such easements and real property interests to complete construction and interconnect with the IOU's electric transmission and distribution system.

Horizon West commented that when an IOU proposes to convey an easement or similar real property right for a specific Energy Project's use, such as to install specific equipment, any corresponding right of first refusal must be for the acquisition of the same right and would not be meaningful to a Tribe.

Horizon West believed granting a right of first refusal for Energy Project easements and similar real property rights would increase delay and risks for Energy Project development and creates a risk that someone might exercise the right without a way to use them or for the purpose of resale at a higher price. Where easement rights are granted for a specific Energy Project it is not appropriate to assume that the Tribe is the "preferred transferee" especially if doing so would prevent an Energy Project from being completed or interconnected.

Horizon West believed the Initial Draft Guidelines should be modified so that the right of first refusal in not a requirement for IOU dispositions of real property interests granted for Energy Projects.

The County of San Luis Obispo commented that the Initial Draft Guidelines would benefit from greater clarity regarding the presumption that the Tribe is the preferred transferee and in particular the provision allowing the presumption in favor of the Tribe to be rebutted by a showing that the transfer of the property at issue to another entity would be in the public interest. According to the County, if the public interest can be served by either transferring the utility property to a Tribe or to another entity, it is not clear from the Draft Guidelines how such an issue would be resolved. This issue would also benefit from further discussion during the implementation workshop.

The County was concerned that disputes may arise between Tribes' claims to certain properties and, based on the utilities' probable lack of expertise regarding the Tribal interests involved in a particular property, it is not clear that the utilities are the appropriate entities for brokering a resolution of disputes between Tribes regarding their ancestral territories as such transactions are likely to be more sensitive and complex than typical real estate transactions. The County believes the dispute resolution process in the Draft Guidelines to be unclear. According to the County, if the utility fails to resolve a dispute between Tribes, it is unclear how the utilities will propose a resolution to the CPUC. As the dispute resolution process is currently structured in the Draft Guidelines, the County believes it would benefit from further development during a workshop.

January 5, 2021 Comments on Revised Draft Resolution E-5076

The California Coastal Commission (CCC) submitted comments recommending that the Revised Draft Guidelines Section 2.1 be modified to require that IOUs notify the CCC and any relevant local governments of Section 851 Fee dispositions subject to the TLTP for real property located within the coastal zone.

Comments submitted by the Northern Chumash Tribal Council (NCTC) clarify that Tribal sacred places and cultural landscape resources are described in SB 18 and refers to Public Resources Code Section 5097.9 and 5097.995 and may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1. The NCTC comments that Alfred Kroeber's reference to ancestral territory is not recognized by all California Tribes and should not be used as a resource. Next, the NCTC points out that all California Native American Tribes are independent governmental entities. The NCTC recommends that the IOUs consider undertaking pre-consultation with Tribal entities to develop a foundation of mutual respect and cooperation. The NCTC comments that the IOU Tribal website should place a high priority on Tribal confidentiality to protect and preserve cultural places. The NCTC believes that 60 days for a Tribe to express interest is preferable. Finally, the NCTC expresses concern with the "parallel agendas within the IOUs that run contrary to the intent of the TLTP and how Tribes will be treated fairly and equally".

The Santa Rosa Rancheria Tachi Yokut Tribe (Tachi Yokut) commented that examples of when an easement could be placed on real property should be provided and that the Tribe purchasing the property should be consulted on any proposed easement, and additional negotiations should occur between the Tribe and IOU if the CPUC authorizes an easement over land prior to transfer to a Tribe if that easement was not anticipated during negotiations. The Tachi Yokut point out in comments that there is no explanation for how the workshop will affect the definition of "ancestral territory". Next, the Tachi Yokut comment that the change in scope of the IOUs to which the TLTP would apply is inconsistent with the TLTP and should be modified to include all IOUs. Regarding Notification, the Tachi Yokut request that the timeframes in the Revised Draft Guidelines should not begin until a USPS return receipt is received by the IOU indicating that the notice was delivered to and accepted by the Tribe, and that the Tribe should have 90 days, not 60 to respond to the IOUs notice. The Tachi Yokut comment that 60 days is insufficient time for due diligence and recommends at least 90 days be provided. Additionally, the Tachi Yokut request that all notices sent by IOUs to Tribes also be sent to the CPUC.

Regarding requests for approval, the Tachi Yokut comment that Revised Draft Guidelines Section 3.1(b)(i) should be modified to read: "identify any interested Tribes through the procedures described in Section 2.2, provide them with notice of the proceeding, an opportunity to comment, and an opportunity to acquire the real property at the terms negotiated by the IOU with the third-party purchaser". Next, the Tachi Yokut comments seek clarification of Revised Draft Guidelines Section 3.1 and the actions that the CPUC may take under that Section. Next, the Tachi Yokut comment that Revised Draft Guidelines Section 3.2 should be modified to require the CPUC to identify all interested Tribes in accordance with the procedures described in Section 2.2 if such Tribes have not already been identified. The Tachi Yokut next comment that Section 3.3(d) lacks clarity as to how the CPUC would determine how another public interest would be evaluated and suggest that the section should be modified to read: "that transfer of the real property to another entity would serve a greater public interest. The Tachi Yokut comment that Section 3.4 should be modified to require that all "review and consideration of impacts to cultural resources will be consistent with all laws, rules, and regulations governing the protection of cultural resources on the Real Property".

Regarding dispute resolution, the Tachi Yokut are concerned that the IOUs have authority to resolve disputes over which Tribes should be notified and suggest modifying Section 4.2 to read: "if there is a dispute about the Tribe or Tribes that the IOU must notice, or about the extent of any Tribes ancestral territory, the IOU shall provide notice to all Tribes who claim the property as within their ancestral territory". Additionally, the Tachi Yokut comment that parties to a dispute should seek mediation assistance from the NAHC.

Finally, the Tachi Yokut request that several sections of the Revised Draft Guidelines be amended to incorporate the requirements of a "right of first offer" and several other clerical corrections.

Southern California Edison (SCE) submitted comments recommending that the Tribes and Commission identify ancestral territories through government-to-government consultation and provide a map overlay of IOU service areas relative to Tribal ancestral lands, arguing that IOUs are not positioned to determine the ancestral territories of Tribes and believe it would be more efficient to use an overlay map created by the Commission and Tribes.

Next, SCE proposes to amend Revised Draft Guidelines Section 2.2(a) to allow IOUs to contact the NAHC quarterly, rather than on a per-project basis.

Next, SCE recommends that Section 1.3(d) be revised to clarify that easements and all less-than-fee transactions do not apply to the TLTP.

Finally, SCE recommends that Section 5.1(a) be limited to quarterly reporting of dispositions in-process and completed dispositions and not include a list of upcoming, anticipated dispositions.

SDG&E/ SoCalGas (Sempra) submitted comments stating that the Revised Draft Resolution appears to violate PU Code Section 453(a), which prohibits IOUs from granting a preference as to rates, charges, service, or facilities. Sempra also argues that the Revised Draft Resolution effects a regulatory taking. Next, Sempra comments that the dispute resolution approach proposed in the Revised Draft Resolution is problematic, because dispute resolution between Tribes is within those Tribes' power as sovereign nations, rather than within the power of the State of California or the CPUC. Additionally, Sempra requests several modifications to the Revised Draft Guidelines to clarify a number of terms including "disposition", "real property", and "right of first offer".

Finally, Sempra recommends replacing the dispute resolution provisions in Section 4 with interim provisions pending the results of the technical workshop.

PG&E comments that the Revised Draft Resolution creates a new requirement that IOUs must file and application to seek approval of transactions under Section 3.3 of the Revised Draft Guidelines. PG&E argues that real property transfers that are shown by supporting evidence are necessary to achieve IOU operational requirements, or to comply with law, rule, or regulation as described under Section 3.3(c) of the Draft Guidelines do not warrant a more comprehensive review through a formal section 851 application.

DISCUSSION

Revised Draft Resolution E-5076 and the corresponding Revised Draft Guidelines include revisions in response to the numerous issues raised in the first round of formal comments. Formal comments on Initial Draft Resolution E-5076 were received on September 24 and Reply Comments were received on October 8, 2020. Comments added important information to the record, and where appropriate were incorporated in the Revised Draft Resolution and to the corresponding sections of the Revised Draft Guidelines.

The Revised Draft Resolution was circulated for an additional round of comments, which were received on January 5, 2021.

The Discussion Section will address this first round of comments on Draft Resolution E-5076 and Revised Draft Resolution comments received on January 5, 2021 in the same order as they pertain to the Draft Guidelines.

Before discussing comments pertaining directly to the Revised Draft Guidelines, it is necessary to address Sempra's comment that the Revised Draft Resolution appears to violate PU Code Section 453(a), which prohibits IOUs from granting a preference as to rates, charges, service, or facilities, as well as the comment that the Revised Draft Resolution amounts to a regulatory taking. These comments directly challenge the legality of TLTP as a whole, and must be addressed before moving on to comments addressing specific Sections of the Revised Draft Guidelines.

The arguments put forth by Sempra are a misreading of the TLTP and the Revised Draft Guidelines. The utilities' second argument is easier to dispose of, so the Commission addresses it first. Sempra argues that the TLTP and Revised Draft Guidelines require IOUs to sell their fee-owned property to a Tribe "on whatever terms are offered," and forces IOUs "to agree to any and all terms set forth by a Tribe," such that the TLTP and Revised Draft Guidelines amount, on their face, to an unlawful regulatory taking. That is an incorrect reading of the TLTP and Revised Draft Guidelines. Rather, the TLTP and Revised Draft Guidelines provides Tribal governments with a *rebuttable* presumption that they are the preferred transferee for covered fee simple transfers in their ancestral territory, and implements this presumption by providing them the right of first offer. The TLTP and Revised Draft Guidelines do not render a utility helpless to negotiate a good deal or require the Commission to accept a bad deal should one be presented. Nor, indeed, do the TLTP or Revised Draft Guidelines require the utilities to make *any* deal: if a transaction becomes unattractive for the utility, for any reason, it can choose not to undertake it. A facial challenge to a regulation on the ground that it effects a taking will only stand where the challenger shows that the "mere enactment" of the regulation "denies an owner economically viable use of his land . . . ." (*Keystone Bituminous Coal Ass'n v. DeBenedictus* (1987) 480 U.S. 470, 495 [internal quotation marks omitted]; *accord*, *e.g.*, *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 264.) Sempra has not shown that here.

More fundamentally, Sempra asserts that the TLTP and Revised Draft Guidelines require IOUs to unlawfully discriminate in favor of California Tribes, in violation of Section 453 of the Public Utilities Code. But Section 453 does not prohibit *all* discrimination. As the California Supreme Court has long and repeatedly held, Section 453 prohibits only *unreasonable* discrimination. (*See*, *e.g.*, *U.S. Steel Corp. v. Pub. Util. Com.* (1981) 29 Cal.3d 603, 612 [classifications must "be found to rest upon some reasonable differentiation fairly related to the object of regulation." (internal quotation marks omitted)]; *Live Oak Water Users' Ass'n v. Railroad Com.* (1923) 192 Cal. 132, 143 ["Not every discrimination or recognition of a ground of difference may be classified as unlawful. A discrimination based upon reason and justice can properly exist."].) Thus, while the TLTP does treat different classes of customers differently, it is within the longstanding powers of the CPUC to do so, as long as the differentiation is reasonable.

Here, treating Tribes differently, as a class of customers or stakeholders, than other classes is reasonable, because the differentiation is fairly related to, and calculated to advance, a legitimate governmental goal. As stated in the draft Resolution, Executive Order (EO) B-10-11[8] commits the State of California to strengthening government-to-government relationships with the Tribes and to providing meaningful opportunities

[8] https://www.ca.gov/archive/gov39/2011/09/19/news17223/index.html

for Tribal input into matters that affect them. Additionally, Executive Order N-15-19[9] acknowledged the harms and discrimination against Tribes, and the Tribes' roles in protecting and stewarding the land of California. In furtherance of EO N-15-19, the Governor's September 25, 2020 Statement of Administrative Policy on Native American Ancestral Lands[10] finds a governmental goal in Tribes' acquiring land for the purposes of: self-determination and self-government; facilitating access to sacred sites and cultural resources; engaging in traditional and substance gathering, hunting and fishing; land management and stewardship using traditional ecological knowledge; reducing Tribal land fractionalization; and, proving opportunities for education, community development, economic diversification, cultural preservation and awareness, and various investment and developmental opportunities. Implicit in these policies is the unique status of Tribal Governments as not only entities with their own sovereignty but entities with historical, cultural, communal and environmental ties to land in California that no other bodies share to the same degree. This Administrative Policy also expressly advances the goal of adopting appropriate policies and practices for Tribes to access certain lands. Many of the above legitimate state interests were encapsulated in the Commission's Tribal Land Transfer Policy, adopted on December 5, 2019, as well as the Commission's Tribal Consultation Policy, adopted on April 6, 2018, without any party challenging via appeal.

To the extent necessary, the CPUC takes official notice of both Executive Orders and the Administrative Policy, and to the facts contained therein. (Evid. Code, § 452, subd. (c).) Moreover, the CPUC finds that the fact that California Tribes were dispossessed of their land, in a manner and to an extent different than any other class of persons in

---

[9] https://www.courts.ca.gov/documents/BTB25-PreConTrauma-02.pdf

[10] https://www.gov.ca.gov/wp-content/uploads/2020/09/9.25.20-Native-Ancestral-Lands-Policy.pdf

California, is a fact "of generalized knowledge that [is] so universally known that [it] cannot reasonably be the subject of dispute." (Evid. Code, § 451, subd. (f).)

Because the treatment of Tribes established in the TLTP and in the Revised Draft Guidelines adopted today is based on the Tribe's unique status and fairly related to a legitimate governmental goal, the Commission rejects the argument that the TLTP and Revised Draft Guidelines violate Section 453's anti-discrimination mandate.

Round Valley Indian Tribes (Round Valley Tribes) commented that the Initial Draft Guidelines should acknowledge Tribes as sovereign governments entitled to a government-to-government relationship with the State of California.

The CPUC agreed that the acknowledgement of Tribal sovereignty would strengthen the Draft Guidelines. Initial Draft Guidelines Section 1.1(b)(i) was revised accordingly.

Round Valley Tribes recommended that the Draft Guidelines Section 1.1(b)(ii) be revised to indicate the Policy is not limited to "Tribal sacred places" within a Tribe's ancestral territory but should instead apply to any property—not just undeveloped land—within a Tribe's ancestral territory.

The intent of Section 1.1(b)(ii) is to ensure the protection of Tribal sacred places and cultural resources by providing Tribes the ability to own and thus control land containing cultural resources or representing a sacred place. The CPUC acknowledges that the land may have been subject to varying degrees of development since the pre-contact era and does not intend the Guidelines and TLTP to apply only to undeveloped, open spaces. The CPUC expects that this clarification addresses the Tribe's concerns.

The NCTC comment that Tribal sacred places and cultural landscape resources are described in SB 18 as referenced by Public Resources Code Sections 5097.9 and

5097.995. The NCTC do not appear to request any changes to the Revised Draft Guidelines in this respect, but Section 1.1(b)(iii) has been revised to reference SB 18.

The Yurok Tribe commented that Initial Draft Guidelines Section 1.2(c) did not clearly address the circumstances under which an IOU may place an easement on land prior to transfer. The Tribe believes the provision is vague and recommends the Draft Guidelines be revised to prohibit the placement of easements, especially a general conservation easement, without the consent of the Tribe receiving the property.

Section 1.2(c) currently states: "These guidelines do not address whether an Investor Owned Utility should place an easement on utility-owned land before disposing of that land. The CPUC will consider whether an easement should be placed on any particular land on a case-by-case basis when the Utility asks for authority to dispose of the land". The CPUC acknowledges that unnecessarily restricting land use by placement of easements prior to transfer is contrary to the goals of the TRTP. However, the CPUC cannot anticipate when it might be necessary to place an easement on a piece of land before disposition. For example, in some circumstances, easements may be necessary to preserve IOU rights-of-way, or continued access critical to ongoing operational requirements. Section 1.2(c) provides for a case-by-case assessment of easements at the time of disposition. For this reason, Section 1.2(c) remained unchanged

The Tachi Yokut comment that Section 1.2(c) should be modified to provide more examples of when an easement could be placed on real property whose disposition is subject to the TLTP prior to transfer to a Tribe. The Tachi Yokut believe that enumerating these examples would provide illustrative guidance to the CPUC in assessing requests by an IOU on a case-by-case basis to ensure that land in not unnecessarily restricted prior to conveyance. The Tachi Yokut also request that Section 1.2(c) is modified to ensure the Tribe purchasing the property is consulted regarding any proposed easement and if the easement was not anticipated during negotiations of the purchase terms between the Tribe and IOU, additional negotiations should be allowed.

While the CPUC cannot foresee all possible circumstances where placement of an easement is necessary, a utility might, for example, need to place an easement on transferred land to allow access to retained land, or to accommodate existing utility lines or conduits. Easements encumbering real property are legal contracts identified in the property deed and must be disclosed as part of a sales agreement. As such, any easements encumbering the property would be disclosed prior to initiation of negotiations. Section 1.2(c) remains unchanged.

DEFINITIONS

Definition of "Ancestral Territory"

The Xolon Salinan Tribe commented that inconsistent academic writings have documented overlapping ancient Tribal boundaries and recommend that Tribal connection to specific territory should be based on pre-contact evidence.

The Pechanga Band commented that the Section 1.3(a) of the Initial Draft Guidelines referenced the "Handbook of North American Indians" as the source for determining the ancestral territory of a Tribe that has not designated territory under AB52 but claim that this source is less widely accepted than Alfred Kroeber's 1925 "Handbook of the Indians of California", and further recommend that ethnographic sources should only be used in absence of other data. The Round Valley Tribes recommend that in such cases the Tribe's own constitution and description of ancestral territory be used. The CPUC changed Section 1.3(a) to refer to the Kroeber work.

The NCTC now comments that Alfred Kroeber is not recognized by many California Tribes and believe that individual Tribal consultations will enable the determination of traditional Tribal territories. The CPUC appreciates that not all Tribes recognize Alfred Kroeber as the accepted authority on Tribal ancestral territories and agrees with NCTC that the Tribes themselves are best able to determine Tribal ancestral territorial boundaries and that individual Tribal consultations should be the basis for determining ancestral territorial boundaries. To the extent that Kroeber's "Handbook of the Indians of California" can provide any use as a resource, it should be referenced where appropriate.

The IOUs and Tribes continue to stress the need for a means of determining Tribal ancestral territory that places the Tribes and CPUC in a government-to-government leadership role. SCE believes that it would be more effective and efficient if IOUs utilize an overlay map determined through consultations between Tribes and the CPUC. SCE recommends that the mapping be complete before implementing the Revised Draft Guidelines.

The CPUC recognizes the need to find consensus among Tribes on a reliable method or a generally accepted means of determining, or reaching agreement on Tribal ancestral territory, to both facilitate IOU noticing, and to also avoid disputes that could arise in the absence of general agreement on ancestral territorial boundaries.

To reach consensus among Tribes on generally accepted ancestral territorial boundaries and a system for assigning ancestral territory within each IOU service territory, the CPUC will hold a public workshop with Tribes, IOUs and other interested parties to arrive at an accepted method of determining Tribal ancestral territory that can be narrowly applied for purposes of TLTP notification. As recommended in SCE's and SDG&E's comments, a map overlay of IOU territory relative to Tribal ancestral lands, may be one possible outcome.

The Tachi Yokut comment that there is no explanation of how the public workshop will affect the definition of "ancestral territory".

The CPUC cannot predetermine the outcome of the public workshop that will be held with Tribes, IOUs, and interested parties. It is hoped that the workshop will lead to an accepted method for determining Tribal ancestral territory in certain geographic locations where consensus on such territory can be achieved. We cannot foresee the degree of consensus until discussion begins. The workshop may identify large geographic areas of consensus between Tribes on agreed upon ancestral territorial boundaries and may also identify areas of ancestral overlap.

Definition of "Disposition"

IOU comments on the Initial Draft Guidelines sought clarity on the scope of the TLTP and expressed concern that the term "encumbrance" would expand the TLTP to include the easement and license transactions that are a frequent and routine part of IOU business and operations.

The IOUs suggested that the TLTP be clarified to exclude the types of minor conveyances subject to GO 173, and GO 69-C, as these conveyances are generally intended to for specific, limited uses.[11] Staff expressly sought comment on the types of conveyances appropriate to include in the TLTP. Specifically:

- Will conveyances described in GO 173 and GO 69-C, often of easement rights over IOU land, facilitate a meaningful transfer of land to Tribes?

[11] CPUC General Orders are available at https://www.cpuc.ca.gov/generalorders/CPUC General Order 173, "Regarding advice letter approval of certain transfers of interests in utility property pursuant to Public Utilities Code Section 851" https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M027/K106/27106129.PDF CPUC General Order 69-C, "Easements on property of public utilities" https://docs.cpuc.ca.gov/PUBLISHED/Graphics/645.PDF

- Would inclusion in the TLTP of conveyances subject to GO 173 and GO 69-C divert Tribal resources that could be better spent examining potentially more meaningful Section 851 conveyances?
- Would inclusion in the TLTP of conveyances subject to GO 173 and GO 69-C substantially delay essential IOU operations?
- What is the appropriate application of the TLTP to GO 173, and GO 69-C conveyances, and to easements in real property?

Encumbrances are Less than Fee Simple Interest in Real Property

The IOUs were unanimous that the Guidelines should only apply to utility fee-owned real property subject to Section 851 conveyance and should not apply to easements or GO 69-C grants.

The IOUs explained that easements are either held by the IOU over land owned by another party or are granted by the IOU to allow a party to engage in limited, explicitly defined activity on IOU fee-owned property, and does not convey title. The land that is subject to the easement may not be used for any purpose other than the purpose expressly defined in the easement, and the easement usually only provides the IOUs with the right to construct and maintain electrical infrastructure.

Most utility easements are service and disTribution easements granted by landowners in return for receiving electric or gas service. In situations where the IOU removes its facilities there would no longer be a public purpose and the easement would revert to the landowner. In situations where a landowner requests the easement be moved to a different location, the utility would accommodate the request in exchange for a new easement location acceptable to the utility, and subject to Section 851 approval.

The majority of easements granted by the IOUs to other entities involve the granting of easements to neighbors to use a specific piece of property for a specific purpose, or to a party requesting permission from an IOU to encroach for a specific purpose within an IOU's easement upon another person's property.

The IOUs contended that easements and encroachments have little or no value to anyone but the requesting party and would be of little value or benefit to a Tribe. Because of the limited nature of easements, the IOUs argued that the public interest is not served by requiring the IOUs to offer a Tribe an easement the Tribe cannot meaningfully use.

The CPUC agrees that including real property easements in the Policy will not advance the stated goals of the TLTP to return ancestral lands to the appropriate Tribe. Instead, inclusion of easements would be contrary to the public interest by needlessly slowing useful utility conveyance processes without furthering the goals of the Policy. Accordingly, real property easements will be exempt from the TLTP.

Although real property easements will be exempt from the TLTP, Tribes can and should seek real property easements over IOU real property where such easements may benefit the Tribe.

GO 69-C Grants and Licenses

The IOUs were also unanimous in their comments that the TLTP and Guidelines should not apply to GO 69-C grants. The IOUs argued that GO 69-C applies a narrow exemption to Section 851, specifically authorizing a utility to grant easements, licenses or permits for rights of way, private roads, agricultural purposes or other limited uses without special authorization by the CPUC so long as the uses do not interfere with the operations of the IOU. Specifically, GO 69-C grants are only appropriate where use of the utility real property is limited and revocable and excludes the placement of permanent structures or changes to the physical environment. Thus, grants subject to GO 69-C do not require the filing of a Section 851 application or advice letter.

The CPUC agrees with the IOUs that applying the Policy to GO 69-C grants would not advance the stated goal of the TLTP to return ancestral lands to the appropriate Tribe. For this reason, the TLTP will exclude GO 69-C conveyances. The Initial Draft Guidelines were revised accordingly.

Although GO 69-C conveyances are exempt from the TLTP, Tribes can and should continue to seek GO 69-C conveyances where beneficial to the Tribe.

GO 173

Consistent with the CPUC's determination that all IOU fee simple transactions in real property be subject to the TLTP, the TLTP applies to transfers of

real property subject to Section 851 but filed by Advice Letter according to the terms and expedited procedures of GO 173.

Exemption for PG&E Land Conservation Commitment (LCC) Watershed Lands Donated in Fee.

The Stewardship Council identified provisions in the TLTP that may conflict with D.03-12-035. The CPUC recognizes that the PG&E Watershed Land Conservation Commitment (LCC), regarding which lands are subject to D.03-12-035 and are subject to Section 851, must be addressed in the context of the TLTP.

Specifically, the CPUC exempts all LCC land conveyances recommended for fee donation to the qualified recipients identified by the Stewardship Council, whether final, or still pending CPUC approval. However, this exemption does not extend to watershed parcels recommended by the Stewardship Council to be retained by PG&E under the LCC. These retained parcels, protected in perpetuity by conservation easement while excluding specific areas necessary for ongoing PG&E operations, remain under the jurisdiction of the CPUC, and shall be submitted to the CPUC for approval under Section 851 or GO 173. As such, these lands are subject to the TLTP and should be made available, where appropriate, for conveyance to Tribes.

To provide necessary clarity on the scope of applicable dispositions, and to make clear that the TLTP will not apply to any "encumbrance" over real property, such as easements and licenses, but only to fee interest in Real Property, Section 1.3(d) was revised to read: “Disposition” means the transfer, sale, donation, or disposition by any other means of a fee interest in Real Property. And Section 1.3(g) was revised to read: “Real Property” means any IOU real property whose disposition is subject to approval under Section 851 of the Public Utilities Code.

SCE and Sempra recommend revisions to Section 1.3(d) to ensure the applicability of the Revised Draft Guidelines is clear: “Easements, licenses, and leases are not considered “dispositions” subject to the Tribal Land Transfer Policy. The CPUC will provide the recommended clarification and revise Section 1.3(d) accordingly.

The Tachi Yokut correctly note that, whereas the TLTP applies to all CPUC-jurisdictional utilities, the the Revised Draft Resolution applies only to Electrical and Gas IOUs and class A and B Water Companies. The Tachi Yokut further note that this change did not come in response to stakeholder comments, and that the CPUC has not explained the change.

To be clear: the TLTP is still in effect, and still applies to all CPUC-jurisdictional utilities. That Policy “expresses a preference for the types of disposition the Commission would like to see,”[12] and the CPUC expects that the Guidelines will provide useful instruction to all CPUC-jurisdictional utilities in applying the TLTP. The Guidelines *also* make the TLTP mandatory for a subset of CPUC-jurisdictional utilities. It is a longstanding rule that the government, having identified a problem, need not solve the entire problem at once but may approach it in stages. (*See*, *e.g*., *New Orleans v. Dukes* (1976) 427 U.S. 297, 303 [“Legislatures may implement their program step by step . . . adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations.”] (internal citation omitted).) The CPUC determined that at this time, the gas and electric IOUs and large

[12] TLTP, *supra* n.3, at pp. 1-2.

water companies would provide the best opportunity for fee transfers to real property to Tribes under the TLTP. The CPUC may choose to expand the reach of the TLTP to other industry sectors as it gains experience administering the program.

“Adjacent to”

PG&E commented that the term “adjacent to” used in Section 1.3(i) creates uncertainty and should be replaced. In Section 2.2(b)(ii), the Initial Draft Guidelines again used the term “adjacent to” stating: “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 property lies.”

To remove any uncertainty surrounding the use of the term “adjacent to” the CPUC replaced use of that term in the Revised Draft Guidelines with the term “abutting” --the legal term for sharing a common property line.

Right of First Refusal, Right of First Offer

The “right of first refusal” and the “right of first offer” describe contractual rights held by a potential buyer. The Initial Draft Guidelines previously described the right extended to the Tribes as a “right of first refusal,” which required “that the IOU disposing of real property must contact the Tribe or Tribes whose ancestral territory is on or adjacent to the 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.” Following comment from the IOUs suggesting that “right of first offer” is the appropriate term to describe the legal right being extended, the CPUC changed the language in the Revised Draft Guidelines to read “right of first offer.” A “right of first offer” would provide the Tribe advance notice of the transaction and the ability for the Tribe to submit its proposal or offer for land that becomes available, before the IOUs can either list the property on the open market or enter negotiations with other parties.

Additionally, following good faith negotiations, should an IOU and Tribe fail to reach agreement on price or terms of sale, the IOUs must, before accepting a lower price, or offering more favorable terms than was offered to the Tribe, reoffer the interested Tribe the same price and terms negotiated with the interested third-party purchaser. The CPUC believes this addresses the IOUs' concerns while ensuring Tribes are offered available land on the best possible terms.

The Tachi Yokut comment that safeguards of a "right of first offer", as the term is used under California law, should be incorporated into the Revised Draft Guidelines. Specifically, when submitting notice to a Tribe that an IOU intends to dispose of real property, the IOU must offer an initial purchase price of the property. The Tachi Yokut further argue that the IOU should not later be allowed to sell the property at a price lower than that offered to the Tribe.

The CPUC believes that its existing review processes provide adequate safeguards to ensure that IOUs deal with Tribes in good faith. At this time, we will not require the IOU to offer an initial purchase price: doing so may make sense in some transactions, but not in others, and we decline to impose a blanket rule here. And, as noted above, we already require that should an IOU and Tribe fail to reach agreement on price or terms of sale, the IOU must, before accepting a lower price, or offering more favorable terms than were offered to the Tribe, reoffer the interested Tribe the same price and terms negotiated with the interested third-party purchaser.

The NCTC reference Government Code Section 65562.5 as requiring consultation to determine the proper level of confidentiality to protect and treat a cultural place with appropriate dignity, where such places are located on lands to be designated for transfer. The NCTC suggest that engaging in pre-consultation efforts may develop a foundation for a mutually respectful and cooperative relationship. The Commission supports the concept of pre-consultation and will explore consultation protocols at the upcoming workshop.

The NCTC comments that the IOU Tribal Website described in Revised Draft Guidelines Section 1.4 should prioritize Tribal confidentiality to protect prehistoric, archaeological, cultural, spiritual, and ceremonial places. The Commission shares Tribal concerns for confidentiality and will ensure privacy assurances are in place.

The Tachi Yokut suggest that Section 1.4 be modified to require that the IOU Tribal Website be publicly available, user friendly, and easily accessible from the home screen of the IOU's website. The CPUC agrees that the IOU Tribal Websites should be publicly available and readily accessible, and while the CPUC agrees that the IOUs should strive to make their websites user friendly, the CPUC notes that "user friendliness" is hard to define and often means different things to different people, and declines to adopt a specific requirement.

NOTIFICATION

Section 2.2(b) of the Revised Draft Guidelines provides 90 days for the NAHC to identify Tribes relevant to the territory on which the real property lies. Should the NAHC fail to respond or the response is inclusive, subsections (b)(i) and (ii) direct the IOU to provide notice to the relevant Tribe.

The Round Valley Indian Tribes recommended that the Initial Draft Guidelines be revised to allow Tribes 120 days to respond to a notice from the IOU. The Pechanga Band agreed that the NAHC should have 90 days to identify the appropriate Tribal transferee, but after notification, the Tribal transferee should have 90 days to respond to a Notice of Disposition.

Comments submitted by both Tribes and IOUs indicated that the Initial Draft Guidelines could benefit from greater clarity and specificity on notification timelines including the time period Tribes are granted to respond to an IOU notification, and following notification, the time period granted to the Tribes to conduct the necessary due diligence investigation to make an informed purchasing decision.

The CPUC agreed that the Notification Section in the Initial Draft Guidelines should be revised to provide for greater clarity on both noticing and timing of IOU consultation including: the number of days the NAHC will require to identify the relevant Tribe, the number of days a Tribe will need to respond to IOU notification to express interest in the disposition, and finally, the number of days required by the Tribe to conduct necessary due diligence, submit an offer to the IOU, and conclude negotiations.

In the Revised Draft Guidelines, the CPUC made the following three clarifications. First, following the IOUs' written request to the NAHC to identify the relevant Tribe, the NAHC should determine within 30 days whether a relevant Tribe can be identified. If the NAHC fails to identify the relevant Tribe, the Draft Guidelines then task the IOU with identifying the relevant Tribe.

Second, following notification by the IOU, Tribes will have 30 days to acknowledge receipt of the IOU notification and indicate interest in the real property disposition. If the IOU fails to receive a response in 30 days, the IOU shall send a second notice to the relevant Tribe. If the IOU fails to receive a response to the second notice within an additional 30 days, or the Tribe notifies the IOU that it declines the property, the IOU can then list and proceed with sale of the real property having satisfied its TLTP noticing obligation.

Third, once a Tribe expresses interest in a piece of land, the Tribe and the IOU shall make a good-faith effort to reach an agreement in principle within an additional 60 days. If, following this final 60-day period, the Tribe and IOU are unable in good faith to reach an agreement in principle, the IOU may list the real property on the open market. This is not intended to be a hard deadline; nothing in these Guidelines requires the parties to end good-faith negotiations after 60 days, so long as the parties feel that negotiations continue to be fruitful. The CPUC reminds both the IOUs and the Tribes that the CPUC will consider whether parties have acted in good faith when considering the merits of an 851 application.

The CPUC recognizes the importance of allowing the Tribe adequate time to conduct a thorough due diligence investigation of the IOU Real property being sold and believes that a 120-day evaluation and negotiation period following notification is an adequate time period. Requiring the relevant Tribe to provide an initial response within 60 days allows the IOU to move forward with the listing of property that holds no interest to the Tribe. Section 2 of the Draft Guidelines was revised accordingly.

The Tachi Yokut now recommend that Section 2.2(b)iii should be modified to provide Tribes with 90 days to respond to the notifications as to its interest in the subject real property. Additionally, the Tachi Yokut believe that 60 days is insufficient for the conduct of due diligence.

The CPUC believes that the combined period of 120 days is sufficient for the purposes of due diligence necessary to making an informed purchasing decision. The prospective Tribe will have 60 days to communicate interest to the selling IOU and an additional 60 days for remaining due diligence should the Tribe pursue purchase. And, as stated, the final 60-day period is not an absolute deadline if negotiations continue to progress. Section 2.2(b)(iii) will remain unchanged.

The Tachi Yokut believe that a provision should be added to the Revised Draft Guidelines requiring the IOU to send a copy of all notices sent to Tribes to the CPUC. Additionally, Section 2.5 should be modified to require the CPUC to post all notices on its website. Because they would impose an additional increased burden on CPUC staff, the CPUC declines to adopt these suggestions at this time but, once the Guidelines are in place, the CPUC may revisit the question.

The CPUC believes that effective notification is dependent upon reaching consensus among Tribes on agreement of ancestral territory territorial boundaries, and on a system in place to quickly assign IOU real property to the relevant Tribe. As described above, a technical workshop involving the IOUs, Tribes and other interested parties will be held in Spring, 2021 to reach consensus on ancestral territory, and an on a system for efficiently identifying the ancestral territory relative to IOU service territory boundaries for the purpose of TLTP noticing.

REQUESTS FOR APPROVAL

The Tachi Yokut suggests that Revised Draft Guidelines Section 3.1(a)(ii) should be modified to require the IOU provide any other documentation requested by the CPUC. Also, it suggests that a provision should be added to Section 3.1(a) requiring the CPUC keep confidential any materials designated by the Tribe.

The CPUC declines both suggestions as unnecessary. First, subject to narrow claims of privilege, IOUs must always provide requested documentation to CPUC staff; thus, staff already have the suggested authority. (Pub. Util. Code, § 314, subd. (a).) Second, in General Order 66-D, the Commission has already set forth a process for deciding when information submitted to it should be kept confidential.

The Tachi Yokut is concerned that, if an IOU fails to properly notice or consult with a Tribe and then asks the CPUC to approve the disposition of land in which the Tribe is interested, Section 3.1(b) provides the Tribe *only* an opportunity to comment on the proposed disposition, *and not* an opportunity to negotiate for and potentially purchase the land.

The intention of Section 3.1(b) is to ensure that the appropriate Tribe(s) are provided an opportunity to acquire ownership of the real property, regardless of whether the IOU was successful in noticing and consulting. The CPUC believes the source of confusion is the phrase "provide them with notice of the proceeding and an opportunity to comment". The intent of the Section is to engage the appropriate Tribe in the full noticing and consultation process independent of the IOU, if necessary, with the goal of transferring the real property subject to Section 851. In fact, Section 3.1(b) provides protections ensuring that Section 851 sales subject to the TLTP are not approved unless conforming to proper noticing and consultation processes, even if the CPUC itself is required to perform those tasks. Section 3.1(b) will be revised to provide this clarification.

The Yurok Tribe asked that the CPUC amend Draft Guideline 3.2(a) to require the CPUC to send notification to Tribes' Chairpersons and their designees of the topic, time, location, filings, and record and explain the process or opportunity to participate in the review of Section 851 advice letters or applications.

The CPUC understands that Tribal participation in CPUC proceedings can benefit from a greater understanding of advice letter filings and the Section 851 application procedures. The public workshop to be held following the approval of the Draft Guidelines will address procedures for Section 851 applications and advice letter filings, as well as CPUC process in general.

The Tachi Yokut comment that Section 3.2 should be modified to require any interested Tribe to receive notice of the proceedings and procedures for the opportunity to comment. Additionally, they recommend that Section 3.2(a) should be modified to require the CPUC identify all interested Tribes in accordance with the procedures described in Section 2.2 if such Tribes have not already been identified.

The CPUC agrees that the proposed modifications to Section 3.2(a) will help ensure effective Tribal participation. Section 3.2(a) will be modified accordingly.

PRESUMPTION IN FAVOR OF TRIBE

The Round Valley Tribes noted that Draft Guidelines Section 3.3(b) states that the CPUC will presume the Tribe is the preferred transferee, and that the transfer is in the public interest, absent a finding supported by evidence. This presumption assumes the IOU acted in good faith, exercised reasonable effort, and offered reasonable terms to the Tribe. The Round Valley Tribes recommended that the Initial Draft Guidelines be revised to require the IOUs make a written record of whether the Tribe was interested in acquiring the real property, and the terms of the sale offered.

The CPUC agrees a written record of IOU efforts to reach agreement with Tribes and of the negotiations that occurred are reasonable and will facilitate CPUC oversight of IOU real property dispositions subject to the TLTP. Section 3.1(a)(iii), which requires documentation of any consultation between the IOU and Tribe, was revised to include utility efforts that occurred pursuant to Section 3.3(b).

Sempra comments that certain provisions and definite limitations of terms should be contained in Section 3.3(b) of the Revised Draft Guidelines to help IOUs and Tribes reach agreement in real property transactions. Specifically, Sempra recommends revisions to Section 3.3(b) to require that the terms offered by the Tribe are on par with what would be expected in a similar market transaction. Sempra proposes the following revision to Section 3.3(b):

"That the IOU acted in good faith and, after reasonable effort, was unable to agree with the Tribe on reasonable and commercially marketable terms for the transfer of the real property, including, but not limited to, as to the fair market value and manner of compensation, limited waivers of sovereign immunity, no presumption of IOU compliance with applicable federal, state and municipal laws and regulation, and other provisions as would be expected in similar market transactions."

The CPUC agrees that the proposed revision to Section 3.3(b) will provide the clarity and certainty that is required to reach agreement on fee transfers of real property and will reduce transaction risk to both IOUs and Ratepayers by holding Tribes to commercially marketable terms.

In comments on the Initial Draft Guidelines, Tribes expressed concern with Section 3.3(d), which allows the presumption in favor of the Tribes to be rebutted by a finding "that transfer of the real property to another entity would be in the public interest." The Tribes recommended that the subsection be removed because the balancing of public interests would be difficult and would contradict the intent and purpose of the Policy. Conversely, the County of San Luis Obispo commented that many governmental entities, such as State Parks, the state university system, counties and cities, are well positioned to take ownership of land formerly owned by utilities, especially where public trust doctrine issues are involved or conservation easements are appropriate. The County believed that it was unclear from the Initial Draft Guidelines how the public interest issue will be resolved.

The CPUC fully understands the overlapping historical injustices that the State, its agents, and the utilities worked on California's native people. The CPUC cannot undo those injustices. We can, at best, partially mitigate them. That is what the TLTP, and these Guidelines, are intended to do. At the same time, the CPUC has a legal obligation to weigh the public interest; to determine what is best for all Californians. In recognition of our history of injustice, the presumption in favor of the Tribes places a thumb firmly on one side of the scales. But we cannot entirely neglect the other side.

Thus, the CPUC acknowledges that overreliance on subsection (d) could effectively undermine the TLTP. And, on the other hand, rejecting all non-Tribal transferees could be counter to the public interest as well. The CPUC recognizes that it cannot foresee all future scenarios that may involve the transfer of IOU real property to entities requesting that property. The Section 851 formal application process requires a vote of the full CPUC to approve the sale of IOU real property. The formal application process allows for evidentiary hearings, if necessary, to consider all evidence and hear all arguments, prior to arriving at a decision. This process is designed to provide full and transparent consideration of whether a Section 851 transfer is in the public interest. Removing Section 3.3(d) would limit the discretion of the CPUC in its determination of the public interest as required by the State Constitution. For this reason, Section 3.3 subsection(d) was not removed.

The Tachi Yokut now comment that the inclusion of Section 3.3(d) fails to provide clarity on how the CPUC would evaluate competing public interests. They suggest that Section 3.3(d) be modified to read: "That transfer of the real property to another entity would serve a greater public interest".

The CPUC believes this is a reasonable clarification. Section 3.3(d) will be modified to incorporate the suggested phrase.

PG&E notes that the Revised Draft Guidelines add a new procedural requirement that would require TLTP transactions under Section 3.3 proceed through a formal Section 851 application. PG&E believes that real property transfers that are shown by supporting evidence as necessary to achieve IOU operational requirements, or to comply with law, rule, or regulation, as described under Section 3.3(c) of the Revised Draft Guidelines do not warrant a more comprehensive review through a formal Section 851 application. PG&E argues that CPUC review of qualifying real property transfers necessary to achieve IOU operational requirements should continue to be allowed under the GO 173 advice letter treatment specified in Section 851. The CPUC agrees with PG&E that the exemption under Draft Guidelines Section 3.3(c) is critical to allowing utility projects to efficiently progress. The CPUC also agrees with PG&E that GO 173 contains adequate procedural mechanisms to ensure that transactions that warrant more thorough review can be instead processed by the formal Section 851 process if deemed necessary by CPUC staff. For this reason Revised Draft Guidelines Section 3.3(c) will remain subject to GO 173 treatment under Section 851. The CPUC notes, however, that General Order 96-B always allows CPUC staff to determine that an advice letter, including one subject to GO 173, requires disposition by formal proceeding.[13] We therefore expect that dispositions subject to GO 173 will be handled by advice letter, but do not rule out the possibility that such a disposition may require additional process.

The Tachi Yokut comment that the inclusion of Section 3.3(d) fails to provide clarity on how the CPUC would evaluate competing public interests. They suggest that Section

---

[13] *See* GO 96-B, General Rules, Rule 5.3; *see also* GO 173, Rule 2.4 ("Advice letters filed pursuant to this order shall generally be processed pursuant to GO 96-B or its successor regulation . . . .").

3.3(d) be modified to read: "That transfer of the real property to another entity would serve a greater public interest".

As stated above, removing Section 3.3(d) would limit the discretion of the CPUC in its determination of the public interest. In fact, the purpose of that discretion is to determine the greater public interest. For this reason, Section 3.3(d) was modified to incorporate the suggested phrase.

In a situation where IOU real property is for sale and the evidence supports a finding that the Tribe is not the preferred transferee under Rule 3.3, Subsections (b) and (d), the IOU will not be permitted to file for approval of the sale using the GO 173 advice letter process, but instead must file a formal 851 application. Requiring a formal 851 application assures that fullest possible examination of the transfer occurs, including evidentiary hearings, if necessary. The CPUC believes that requiring the formal 851 application approval process for IOU real property dispositions subject to Section 3.3 will ensure that the presumption in favor of the Tribe does not become a nullity. Section 3.3 was revised accordingly.

The Tachi Yokut comment that Section 3.4 should be revised, consistent with the TLTP, to require that all "review and consideration of impacts to cultural resources will be consistent with all laws, rules, and regulations governing the protection of cultural resources on the real property". The CPUC believes that the suggested language was implied in Section 3.4 but will revise the Section as suggested to provide additional strength and clarity.

Standard Definition of Consultation

Comments submitted by the Tribes generally supported the goals of the TLTP, but expressed a need for more information on how the TLTP would be applied, and how disputes over ancestral lands common to more than one Tribe and subject to multiple claims would be resolved. Tribes also expressed concern over a lack of a clear standard for "meaningful consultation."

The Pechanga Band commented that the Guidelines should mirror the definition of "consultation" in California Government Code Section 65352.4:

"Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American Tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the Tribes' potential needs for confidentiality with respect to places that have traditional Tribal cultural significance.

The CPUC agrees that formal definition of such a key term is warranted. Accordingly, the CPUC accepts that use of California Government Code Section 65352.4 provides additional clarification sought by the Tribes. The Revised Draft Guidelines now reflect the definition of "consultation" to be in accordance with Government Code Section 65352.4

Tribes were concerned that consultation occur only with Tribal leadership with the authority to represent the Tribe. The CPUC understands that concern. To ensure that consultation occur with authorized Tribal leadership, a list of each approved Tribal leader authorized to engage in consultation should be submitted by Tribes to each IOU. It will be the responsibility of the Tribes to keep the list of authorized Tribal leadership current.

Following identification of the appropriate Tribe and its approved Tribal leader, and formal notice per Section 2 of the Draft Guidelines, the IOU shall request consultation. Consultation can be initiated by various means including by letter, telephone call, or personal visit. The IOU's request for consultation represents a gesture of good will on behalf of the IOU and will likely facilitate the conveyance process by ascertaining whether the Tribe is interested in the real property in question.

Protection of Tribal Cultural Resources

The Tribes are greatly concerned with protecting cultural resources within and outside current reservation boundaries and requested that the Draft Guidelines require the IOUs to coordinate with a Tribes Tribal Historic Preservation Officer (THPO) or other appropriate Tribal representative and keep a written record regarding how the disposal of IOU Real property might impact cultural resources.

The CPUC agrees that requiring a record of such discussions will facilitate the CPUC's ability to consider impacts on cultural resources. Section 3.4 was revised accordingly.

DISPUTE RESOLUTION

Section 4 of the Draft Guidelines addresses dispute resolution, including disputes about notice and disputes involving multiple interested Tribes. Regarding noticing, the Draft Guidelines generally assign responsibility for resolving disputes to the IOUs and generally require the IOUs to engage the Tribe(s) to resolve disputes that may arise. Also, should discussion between the IOU and the Tribe(s) fail to resolve the dispute, the IOU is required to exercise its best judgment in determining how to proceed, while documenting steps it has taken to resolve the dispute and the reasons for any determination it makes.

Both the IOUs and Tribes expressed concern over the lack of IOU resources to identify the correct Tribe for purposes of noticing under Section 851. IOU comments addressed their capacity to resolve claims or disputes over Tribal territory should they arise between Tribes. Similarly, the Tribes expressed concern that the IOUs were not the appropriate entity to resolve such potential disputes. Both Tribes and IOUs generally reject the proposal that the IOUs should be given responsibility for resolving disputes with and among Tribes.

The IOUs claim to not have expertise or authority to make judgments on competing Tribal claims and expressed concern that making such judgements could damage the relationship between IOUs and Tribes. They speculate that placing dispute resolution outside a formal governmental process may also tend to favor Tribes with greater financial resources.

Likewise, the Pechanga Band believes that, due to the IOUs' lack of familiarity with Tribes' histories and legal and political configurations, the IOUs' are ill-equipped to mediate disputes regarding ancestral land claims. The Pechanga Band prefers that the role of the NAHC be expanded to include dispute resolution.

The NCTC is concerned that not all California NAHC-recognized Tribes are treated fairly and equally.

The Tachi Yokut expressed concern in comments that the IOUs have absolute authority under Rule 4.2 to resolve disputes over which Tribes should be notified even though the Revised Draft Guidelines acknowledge that Tribes are the primary source for identification of a Tribe's ancestral territory. The Tachi Yokut believe that all Tribes who claim the property is within their ancestral territory should be notified. They suggest modifying Section 4.2 to read: "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 provide notice to all Tribes who claim the property as within their ancestral territory."

The Tachi Yokut also expressed concern that the IOUs have authority under Section 4.3 to resolve disputes between Tribes if more than one Tribe seeks ownership of the property. Though the Tachi Yokut recognize that the CPUC has no jurisdiction over the NAHC, the parties should be required to request mediation by the NAHC. They suggest that in the event the NAHC is unable to assist in mediation, the IOU should not be tasked with proposing a resolution.

The IOUs are unanimous in their belief that the dispute resolution process outlined by the CPUC is unworkable in that it requires the IOUs to exercise independent judgment to resolve disputes that may arise between Tribes. The IOUs maintain that it is not clear that the CPUC has the jurisdiction to direct the IOUs to resolve territorial disputes between sovereign nations. Nor is it clear that the IOUs possess the requisite expertise to make informed judgements about which Tribe may hold superior claims to certain properties.

The CPUC recognizes that the NAHC has greater expertise in this area than either the CPUC or the IOUs and would welcome its guidance. However, the CPUC has no jurisdiction over the NAHC, and their participation facilitating dispute resolution would necessarily be voluntary. Nevertheless, the CPUC agrees with the Tribes that disputing parties should first contact the NAHC to seek mediation as a first step toward dispute resolution. Section 4.3 has been amended to so require.

Moreover, the CPUC disagrees with the IOUs' assertion that they are being required to finally adjudicate competing claims between Tribes. They are being required to put together a proposed transaction with one buyer, and to present that proposed transaction to the CPUC for approval. Under the current dispute resolution framework, it is *the CPUC* that will ultimately adjudicate disputes, in the Section 851 application. The CPUC has further clarified this point in Section 4.3.

The IOUs recommended that the CPUC work directly with the Tribes to develop a Tribal overlay map of each IOUs service territory (Tribal Interest Reference Map) which would reflect the consensus of all affected Tribes.

The CPUC believes that agreement on Tribal ancestral boundaries among Tribes and a process for applying the agreed upon boundaries to the IOUs notification process would minimize potential future disputes among Tribes over noticing. Until agreement is reached and a process is developed, the Draft Guidelines provide guidance and outline a transparent process to resolve potential disputes. Recently, the CPUC created the position of Tribal Advisor to provide expertise and coordination within the CPUC on Tribal matters. The CPUC expects the Tribal Advisor to act as a meaningful resource to Tribes, IOUs, and CPUC staff with the ability to provide independent and unbiased oversight of dispute resolution efforts between Tribes and

IOUs. The Commission acknowledges that only the Tribes can determine the spiritual, symbolic, or cultural value that each available parcel of land hold for a specific Tribe. Accordingly, we agree that it is inappropriate for IOUs to make that determination, and that the IOUs should not bear final responsibility for settling disputes between Tribes. Instead, as the Guidelines have always explained, the IOUs will partner with Tribes and the CPUC in this role. The CPUC has further clarified this framework in Section 4.3.

The CPUC will work with Tribes, IOUs and other interested parties to reach agreement on Tribal ancestral boundaries and on a process by which agreement on boundaries can be operationalized by IOUs to enable efficient, dispute free notifications. The proposed creation of Tribal ancestral territorial map overlays of IOU service areas, or perhaps even the creation of a new Tribal land reference system using Geographical Information System (GIS) technology, may be possible.

To initiate this process, the CPUC will hold a public workshop with Tribes, IOUs and other interested parties to reach general agreement on Tribal ancestral boundaries, identify areas of disagreement, and possibly even identify systems to incorporate ancestral territorial mapping into IOU notification systems.

Ultimately, however the CPUC agrees with the Tribes and IOUs that it will be the CPUC's responsibility, consistent with the TLTP, to make a final determination in any dispute. This has always been both the intent and the outcome of the Guidelines.

Future Public Workshop

Because of the concerns expressed by Tribes and IOUs regarding the consultation process, notification, and dispute resolution, the CPUC believes it is important to hold a public workshop to address TLTP implementation issues, including a discussion of possible protocols that can be applied to ensure the consultation process is meaningful. The workshop will be held within 90 days of the formal adoption of the Draft Guidelines.

With the clarification provided in this revised Draft Resolution, the CPUC believes that the Draft Guidelines will provide the necessary direction to IOUs and the Tribes.

The CPUC realizes that this difficult and complex effort will only succeed by partnering with the Tribes themselves. Only the Tribes can provide the evaluation of each land opportunity presented, and only they can determine the spiritual, symbolic, or cultural value that each available parcel of land holds for a specific Tribe. For this reason, the CPUC believes that a partnership with the Tribes is essential to the success of this effort. The TLTP expresses this belief in a concise statement of goals, and the Adopted Guidelines will provide the plan to achieve it.

The TLTP recognizes that until recently the Tribes have not been extensively involved in the CPUC process, and lacking that experience, will need the full cooperation of CPUC staff to participate fully and effectively. For this reason, the TLTP directs CPUC staff to facilitate and encourage transfers of real property to the Tribes, expressing a preference that real property of Tribal importance return to the rightful ancestral Tribe. What the TLTP cannot do, however, is determine an outcome. Each Section 851 transfer will be considered in the CPUC's existing process, which provides all affected stakeholders notice and an opportunity to participate.

Irrespective of the CPUC's intent to facilitate Tribal involvement and the CPUC's expression of preference for land dispositions going to Tribes showing a strong interest in that ancestral land, the TLTP recognizes that the stated preference can, and must be, by law, rebutted by a showing that the transfer would conflict with established law, regulation or a CPUC finding that the transfer would not be in the public interest.

The CPUC has carefully reviewed every comment it received on the Draft Guidelines. To the extent the CPUC has not specifically addressed a comment here, that suggestion has been declined.

CONCLUSION

The TLTP Guidelines are a means of protecting Tribal lands of special significance to Native American Californian Tribes, ensuring the protection of sacred sites and cultural resources by offering the opportunity for Tribal ownership of ancestral lands. The CPUC approves the TLTP with the clarification that all less-than-fee conveyances of real property are exempt from the TLTP. Accordingly, all easement interest and/or license agreements subject to GO 69-C, Section 851, or GO 173 are exempt from the general application of the TLTP.

The PG&E watershed lands subject to PG&E's LCC ordered by D.30-12-035 donated in fee under Section 851, or currently designated for fee donation, are exempted from the TLTP. However, PG&E watershed lands designated by the Stewardship Council for retention by PG&E will be subject to the TLTP, but in accordance with the terms of the LCC ordered by D. 03-12-035, following the dissolution of the Stewardship Council, expected in 2022.

Following the formal adoption by the CPUC of the Guidelines, the CPUC will hold a public workshop with IOUs, Tribes, and interested third parties to identify areas of agreement on Tribal ancestral territorial borders and to discuss the possible development of a system by which agreement on those boarders can facilitate IOU TLTP notification efforts. Additionally, the public workshop will facilitate additional clarification of the Adopted Guidelines including general information on PU Code Section 851 procedures and GO 173 advice letter filings.

Finally, once these Guidelines have been in place long enough to give the CPUC and parties some experience with how the Guidelines play in real life, the CPUC believes it may make sense to undertake a more formal review. This more formal review may consider expanding the mandatory nature of this policy to small water utilities, telecommunication utilities, and other relevant entities. Therefore, the CPUC will direct CPUC staff, within two years of the date of this Resolution, to prepare, and to place on the Commission's agenda, a proposed Order Instituting Rulemaking to consider revisions to these Guidelines.

FINDINGS

1. On September 19, 2011 Governor Brown issued Executive Order B-10-11 which stated that the State of California is committed to strengthening government to government relationships with California Native American Tribes.
2. On June 18, 2019 Governor Gavin Newsom reaffirmed Governor Brown's Order with Executive Order N-15-19.
3. On April 6, 2018, the CPUC formally adopted the Tribal Consultation Policy to ensure meaningful consideration of Tribal interests within CPUC programs.
4. On December 5, 2019, the CPUC formally adopted the Tribal Land Transfer Policy (TLTP) which provides additional protections for California Native American cultural resources by providing an opportunity for Tribes to regain ownership of lands within their ancestral territory.
5. Informal comments were received by the CPUC on the TLTP from various interested parties including IOUs and Tribes, from June through October of 2019.
6. To further the goals of the TLTP, the CPUC issued Draft Guidelines to Implement the CPUC Tribal Land Transfer Policy (Draft Guidelines).
7. On March 24, 2020, an informational workshop was held by CPUC staff and Commissioners to offer clarification of the Guidelines. Due to COVID-19, the workshop was held via webinar. Informal comments were accepted via the web chat feature.
8. Draft Resolution E-5076 was originally circulated on July 31, and the initially established comment period was for opening comments to be received by August 24, 2020 with reply comments to be received by September 3.
9. Draft Resolution E-5076 expressly sought additional public comment on the Draft Guidelines applicability to GO 173 and GO 69-C conveyances.
10. During the comment period ending on October 8, 2020 numerous comments were received from interested parties addressing the applicability of GO 173 and GO 69-C conveyances and other issues related to the TLTP Draft Implementation Guidelines.

11. On September 2, the September 3 due date for comments was suspended and the comment period was extended to September 24, 2020, with reply comments due October 8, 2020. After that comment period closed,
12. As a result of comments received on Draft Resolution E-5076, the Draft Resolution was revised to provide an exemption for all less-than-fee conveyances of interest in real property, including Section 851 and GO 173 conveyances of easements over real property, and GO 69-C licenses.
13. PU Code Section 851 conveyances of fee interests in real property, including fee interest conveyances subject to GO 173, are subject to the TLTP.
14. PG&E retained watershed lands conveyances subject to PU Code Section 851 or GO 173 are not exempt from the TLTP.
15. PG&E Watershed Lands LCC protected by Conservation Easement and designated by the Stewardship Council for fee donation are exempt from the TLTP.
16. PG&E watershed lands retained by PG&E will remain subject to the TLTP following the approval of donation of Conservation Easement over those retained parcels in accordance with D.03-12-035, and the dissolution of the Stewardship Council.
17. The different treatment of Tribes as a class of customers in the TLTP Guidelines herein is reasonably tailored to advance a litigate state interest in addressing past harms to Tribes.
18. Draft Resolution E-5076 and the appended Draft Guidelines received substantive amendments, and Draft Resolution E-5076 was re-circulated for an additional comment period on December 11, 2020.

THEREFORE, it is ordered that:

1. The Tribal Land Transfer Policy Guidelines are approved, with revisions described in this resolution and attached herein as Appendix A.
2. The CPUC will hold a public workshop with Investor Owned Utilities (IOUs) and interested Tribes as soon as practical after the adoption of this Resolution to discuss implementation issues with the Tribes and IOUs.
3. Within two years of the date of this Resolution, staff shall prepare, and shall place on the Commission's agenda, a proposed Order Instituting Rulemaking to consider revisions to these Guidelines.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held January 14, 2021; the following Commissioners voting favorably thereon:

/s/Rachel Peterson
Rachel Peterson
Executive Director

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

ATTACHMENT A

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 and acknowledge the need for the CPUC and the IOUs to respect the sovereignty of the Tribes, and to show respect and consideration of spiritual beliefs, and cultural values, by providing timely information

ii. To acknowledge Tribes' entitlement to a government to government relationship with the State of California

iii. To protect Tribal sacred places and cultural resources on all ancestral lands deemed important to the Tribe.

iv. To Ensure meaningful consideration of Tribal interests and the return of lands within the ancestral territory to the appropriate Tribe; and

v. 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.

d. In the event of a conflict between the requirements contained in the Tribal Land Policy Transfer Policy and the requirements adopted in these Guidelines, the requirements set forth in these guidelines shall prevail.

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.** These guidelines do not address whether an Investor Owned Utility should place an easement on utility-owned land before disposing of that land. The Commission will consider whether an easement should be placed on any particular land on a case-by-case basis when the Utility asks for authority to dispose of the land.
- **d.** In the event of a conflict between the requirements contained in the Tribal Land Policy Transfer Policy and the requirements adopted in these Guidelines, the requirements set forth in these Guidelines shall prevail.

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 Alfred Kroeber's "Handbook of the Indians of California, 1925".
- **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.** "Chairperson" means a Tribe's highest elected or appointed decision-making official, whether that person is called chairperson, or president, or some other title.

d. "Disposition" means the transfer, sale, donation, or disposition by any other means of a fee interest in real property. Easements, licenses, and leases are not considered "dispositions" subject to the Tribal Land Transfer Policy.

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.)

f. "Investor-owned utility" (IOU) means any electrical corporation (Pub. Util. Code, § 218), gas corporation (Pub. Util. Code, § 222) — but excluding corporations that only operate independent gas storage facilities or common carrier pipeline corporations — and water corporations (Pub. Util. Code, § 241) – but excluding those with fewer than 2,000 service connections.

g. "Real property" means any IOU real property owned in fee simple whose disposition is subject to approval under Section 851 of the Public Utilities Code.

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 offer" means that the IOU disposing of real property must contact the Tribe or Tribes whose ancestral territory is on or abutting the 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.

j. "Meaningful consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American Tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the Tribes' potential needs for confidentiality with respect to places that have traditional Tribal cultural significance. (California Government Code Section 65352.4

1.4. IOU Tribal Website

Each IOU shall create and maintain a readily-accessible public website that will serve as a repository for the documentation described in these guidelines.

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. For property within the coastal zone, the IOU shall also notify the Coastal Commission and any relevant local governments.

2.2. IOU to Identify Relevant Tribe or Tribes

a. The IOU shall submit a written request to the NAHC to identify Tribes relevant to the territory on which the real property lies.

b. If the NAHC fails to respond within 30 days, or if the NAHC's response is inconclusive:

i. If the real property is located within or abuts a federally recognized Tribe's Indian country, the IOU shall provide notice to that Tribe.

ii. If the real property is not located within or abutting 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.

c. Following IOU notification, the Tribe shall have 30 days to express interest in acquiring the real property. If a Tribe fails to respond in 30 days, the IOU shall send a second notice. If a Tribe fails to respond to the second notice within an additional 30 days, the IOU has satisfied its noticing responsibility.
d. If the Tribe responds to the IOU notice indicating interest in acquiring the real property, a further 60 days is allotted for Tribal due diligence and good-faith negotiation with the notifying IOU.

e. At the conclusion of the 60-day period, if the IOU and the Tribe have not reached an agreement in principle, and if such an agreement does not look reasonably imminent despite good-faith negotiation, the noticing IOU may seek third-party purchasers for the real property.

2.3. To Whom Notice Directed

The IOU shall notify the Tribal chairperson of any relevant Tribes, or the chairperson's designee, as identified by authorized Tribal leadership.

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 offer on the real property before the IOU may put the real property on the market;
d. An offer of initial terms of sale of the real property;
e. An offer to consult in accordance with California Government Code Section 65352.4, with the Tribe regarding the Tribe's interest in acquiring 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.

Notice shall be delivered by USPS certified mail, return receipt.

2.5. Notice to be Publicly Available

When the IOU sends notice to a relevant Tribe, the IOU shall also post the notice on its Tribal website.

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. The required showing includes:

- **i.** A copy of the IOU's written request to the NAHC to identify interested Tribes;
- **ii.** A copy of the IOU's written notice to any interested Tribal chairperson or their designee with USPS return receipt;
- **iii.** Documentation of any consultation between the IOU and the Tribe or Tribes, including a written record of whether the Tribe was interested in acquiring the real property, the initial terms of sale offered to the Tribe, and any subsequent terms offered to the Tribe more favorable than the initial terms.

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 acquire the real property in accordance with terms of these guidelines; ;

- **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.** Commission 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.

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 regulation; or
- **d.** That transfer of the real property to another entity would be in the greater public interest.
- **e.** Should subsections (b) or (d) apply, the IOU must file a formal Section 851 application with the Commission seeking approval for the conveyance of the real property.

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 to 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 and, when necessary, with the CPUC's Tribal Advisor.

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 ancestral territory, the IOU shall provide notice to all Tribes who claim the property as within their ancestral territory and 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.

4.3. Multiple Interested Tribes

a. If more than one Tribe seeks ownership of available real property, and if the Tribes are unable to resolve the dispute themselves, the IOU shall submit a written request to the NAHC for voluntary assistance in mediating the dispute. Any findings made by the NAHC as part of the mediation shall be included in the IOUs request for approval.

b. If the NAHC fails to respond within 30 days, or is unwilling to assist in mediating the dispute, the IOU shall engage in meaningful consultation with the Tribes to attempt to resolve the dispute. The IOU shall document any steps it takes to resolve the dispute and shall include such documentation in its request for approval.

c. It remains the IOU's responsibility to identify a buyer and to present a proposed transaction to the CPUC for its review.

d. The CPUC shall ultimately settle the dispute, recognizing that Tribes are the primary source for identifying ancestral territory, and utilizing the findings of the NAHC and/or the IOUs documentation of its consultation with the Tribes. The CPUC, in consultation with the Tribes, shall propose a reasonable resolution to the dispute as part of its approval process. The CPUC will take into consideration each Tribe's connection to the 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. QUARTERLY REPORTS

5.1. Quarterly Reports

a. The IOUs shall, every quarter, provide the Commission with 1) an updated list of recent real property dispositions; 2) a list of in-process real property dispositions; and 3) a summary of Tribal contacts and consultations (including the outcome of those consultations) they have undertaken over the previous quarter.

b. These reports shall be due on January 1, April 1, July 1, and October 1. If the due date falls on a weekend or holiday, the report shall be due the following business day.

c. The IOUs shall post these reports to their Tribal website. The Commission will also post the reports on its own website.

Appendix C

CPUC ESJ Action Plan

Environmental & Social Justice Action Plan

Version 2.0

April 7, 2022

California Public
Utilities Commission

Contents

Executive Summary

Background & Progress on Implementation

The CPUC's Environmental and Social Justice (ESJ) Action Plan serves as both a commitment to furthering principles of environmental and social justice, as well as an operating framework with which to integrate ESJ considerations throughout the agency's work. Version 1.0 of the CPUC's ESJ Action Plan, adopted in February 2019 consisted of nine overarching goals, clear objectives, and 95 concrete action items to ensure agency-wide collaboration, accountability, and forward movement in meeting ESJ principles.

The ESJ Action Plan 1.0 also established a definition of "Environmental and Social Justice (ESJ) Communities" for the purposes of CPUC policy and programs, as predominantly communities of color or low-income communities that are underrepresented in the policy setting or decision-making process, subject to a disproportionate impact from one or more environmental hazards, and are likely to experience disparate implementation of environmental regulations and socioeconomic investments in their communities. Under this definition the CPUC aimed to target the following communities:

- Disadvantaged Communities, defined as census tracts that score in the top 25% of CalEnviroScreen 3.0, along with those that score within the highest 5% of CalEnviroScreen 3.0's Pollution Burden but do not receive an overall CalEnviroScreen score; [1][2]
- All Tribal lands[3];
- Low-income households (Household incomes below 80 percent of the area median income); and
- Low-income census tracts (Census tracts where aggregated household incomes are less than 80 percent of area or state median income).

Since adopting Version 1.0 of the ESJ Action Plan, the CPUC has made significant progress in incorporating ESJ considerations into its work, as well as creating a culture that takes into serious account the lived experiences of ESJ communities. Version 2.0 of the ESJ Action Plan is updated to reflect a continuation of efforts to systematize the consideration of ESJ principles across Commission activities and incorporates two years of learnings from engagement with ESJ communities, advocates, and other stakeholders.

---

[1] https://calepa.ca.gov/wp-content/uploads/sites/6/2017/04/SB-535-Designation-Final.pdf

[2] This definition of "Disadvantaged Communities" reflects a small change from Version 1.0 of the ESJ Action Plan to reflect the most recent designation of "Disadvantaged Communities" by the California Environmental Protection Agency (CalEPA) in CalEnviroScreen, Version 3.0,. A new version of CalEnviroScreen, Version 4.0, was finalized in October 2021 and CalEPA will make a subsequent designation of "Disadvantaged Community" given the new data. The definition in the ESJ Action Plan will be subsequently updated to reflect this change once it is in effect.

[3] Land within any Indian reservation as defined in 18 U.S.C. 1151 subsection (a)

from two feedback internal implementation structure has been established, consisting of a Core Team and ESJ Liaisons from each of the CPUC's divisions. A Status Report on Version 1.0 was published in May 2020, outlining progress made on implementing each of the action items in the ESJ Action Plan. A few highlights of progress thus far include:

- Goal 1: Established internal guidance for staff to scope ESJ issues into all proceedings;
- Goal 3: Ordered significant investments in ESJ communities including transportation electrification investments in Disadvantaged Communities through Southern California Edison's Charge Ready 2 Infrastructure Program;
- Goal 1 and 4: Continued and deepened prioritization of ESJ communities and related issues in key proceedings and programs, including the Climate Adaptation proceeding (R.18-04-019) and the Affordability proceeding (R. 18-07-006);
- Goal 5: Added a new Public Comment feature to the CPUC Docket Card to encourage wider public participation;
- Goal 5: Continued to improve outreach and engagement with community-based organizations and the public;
- Goal 5: Launched an overhauled, consumer focused CPUC website;
- Goal 5 and 6: Established new requirements for utilities to conduct in-language[4] outreach in the instance of wildfire in D. 20-03-004 of the Wildfire Mitigation Plans proceeding;
- Goal 7: Entered into a Memorandum of Understanding (MOU) with the California Workforce Development Board (CWDB) to receive their expertise and recommendations on maximizing access to good jobs for individuals in ESJ communities;
- Goal 7: Published "Economic Opportunities in Environmental and Social Justice Communities," outlining the success of the Utility Supplier Diversity Program in reaching ESJ communities;
- Goal 8: Established an introduction to ESJ session for the CPUC's New Employee Orientation; and
- Goal 9: Staff and management participated in the Capitol Collaborative on Race and Equity (CCORE).

Critical Topics for Consideration in Version 2.0

In addition to incorporating learnings from ongoing implementation activities, national discussions to address race based disparities, which often align with disparities experienced in ESJ communities social and political events, alongside other parallel efforts that occurred between 2019 and 2021 served as

[4] Decision 20-03-002: Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018). 329824881.PDF (ca.gov)

opportunities to deepen and enhance the goals of the ESJ Action Plan. Version 2.0 of the ESJ Action Plan includes:

- **Racial Equity + Diversity, Equity, and Inclusion (DEI):** Acknowledging solidarity and alignment with broader racial equity work, specifically the CCORE cohort and the DEI Working Group, being led concurrently with the implementation of the ESJ Action Plan.
- **Engagement with California Native American Tribes:** Working alongside the CPUC Tribal Office to implement the Tribal Land Transfer Policy and the Tribal Consultation Policy.
- **Individuals with Access and Functional Needs (AFN):** Collaborating with communities with AFN to understand and ensure CPUC efforts serve their needs.
- **COVID-19 Pandemic: Immediate Response and the "New Normal":** Taking action to protect the state's most vulnerable residents with measures such as disconnection moratoriums, arrearage management, and increased access to public meetings and hearings.
- **Wildfire Events:** Continuing to incorporate the needs of ESJ communities in high fire threat districts.
- **Workforce Development and the High Road Transition:** Delivering on principles of economic equity and focusing workforce-related provisions on job quality and access.
- **Priority Populations for Future Consideration in the Definition of "Environmental and Social Justice Communities":** Acknowledging potential gaps in the current definition of "ESJ communities" and consider updating the definition in the future.
- **Considerations of Rate Burdens on Low-Income Customers:** Ensuring the clean energy transition does not unduly increase rate burdens on lower income communities nor increase existing disparities between lower-income communities and others.
- **Timeline for Providing ESJ Action Plan Status Reports and Updates:** Ensure that the ESJ Action Plan is an iterative document with a three-year time frame between adopting proposed revisions and should include a mid-point Status Report.

ESJ Action Plan 2.0: Updated Goals & Objectives

The inaugural version of the ESJ Action plan served as a foundation upon which to build the consideration of ESJ principles into the agency's work. Included in Version 1.0 was a requirement to update the plan every two years through an informal public process. For Version 2.0 of ESJ Action Plan, revisions to eight of the nine goals clarify existing language; and Goal 7, related to workforce development, has been revised to include an emphasis on job quality and access. Appendix A lists 91 new action items that reflect present-day priorities and efforts.

Goal 1: Consistently integrate equity and access considerations throughout CPUC regulatory activities.

1.1 Build Systematic Approaches for ESJ Priorities

1.2 Expand Opportunities for Access

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health.

2.1 Enhance Outreach & Engagement

2.2 Continue Research & Analysis to Understand Impact

2.3 Move Towards Mutual Eligibility & Maximizing Impact

2.4 Address Impacts in ESJ Communities

2.5 Continue Ongoing Investment

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities.

3.1 Ensure Equitable Clean Transportation

3.2 Ensure Water Customer Resilience

3.3 Extend Rail Safety to ESJ Communities

3.4 Extend Essential Communications Services to ESJ Communities

Goal 4: Increase climate resiliency in ESJ communities.

4.1 Emphasize Adaptive Capacity

Goal 5: Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit from CPUC programs.

5.1 Improve Communication with ESJ Lens

5.2 Continue to Emphasize Engagement with CBOs

5.3 Build Pathways for Public Participation

5.4 Enhance Engagement with Particular ESJ Communities and Individuals

Goal 6: Enhance enforcement to ensure safety and consumer protection for all, especially for ESJ communities.

6.1 Protect ESJ Consumers

6.2 Conduct Proactive Action & Analysis in Transportation and Utility Enforcement

6.3 Apply ESJ Lens to CPUC Enforcement Policy

6.4 Maximize Opportunities within Utility Audits

Goal 7: Promote high road[5] career paths and economic opportunity for residents of ESJ communities.

7.1 Maximize Authority to Promote High Road

7.2 Educate on High Road Careers

7.3 Partner with Utilities and Sister Agencies

Goal 8: Improve training and staff development related to environmental and social justice issues within the CPUC's jurisdiction.

8.1 Bolster Staff Knowledge on ESJ Issues and Resources

8.2 Support Emerging Priorities and Skill Needs

Goal 9: Monitor the CPUC's environmental and social justice efforts to evaluate how they are achieving their objectives.

9.1 Establish Consistent Quantitative Metrics

9.2 Promote Meaningful Feedback Loops

9.3 Establish Accountability Measures

Utilizing the ESJ Plan as Resource

The ESJ Action Plan is intended to serve as a resource for CPUC staff, intervenors, stakeholders, and the public. The goals and objectives provide the broad vision and steps the CPUC will take to ensure equity in its programs and services. The action items serve as a tracking mechanism to remain transparent about the concrete actions the CPUC is taking with regards to embedding ESJ principles into its work. Finally, the appendices which include definitions, program criteria, and examples of past decisions are included as reference materials to be cited or used as reference material by CPUC staff and/or any individual or organization that interacts with the CPUC.

[5] https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=UIC&division=7.&title=&part=&chapter=2.

THIS PAGE LEFT INTENTIONALLY BLANK

Introduction & Background

Need for the Environmental & Social Justice (ESJ) Action Plan

The mission of the California Public Utilities Commission (CPUC) is to regulate essential utility services to protect consumers and safeguard the environment, assuring safe and reliable access to all Californians. In accordance with the CPUC's institutional values of accountability, excellence, integrity, open communication, and stewardship, the CPUC has created the Environmental and Social Justice (ESJ) Action Plan to serve as both a commitment to furthering ESJ principles, as well as an operating framework with which to integrate ESJ considerations throughout the agency's work.

"Environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.[6] Because the CPUC regulates utility services beyond those tied to the environment, the term "environmental and social justice" has been adopted to capture a broader effort and potential population.

What do you think of when you hear Environmental Justice?

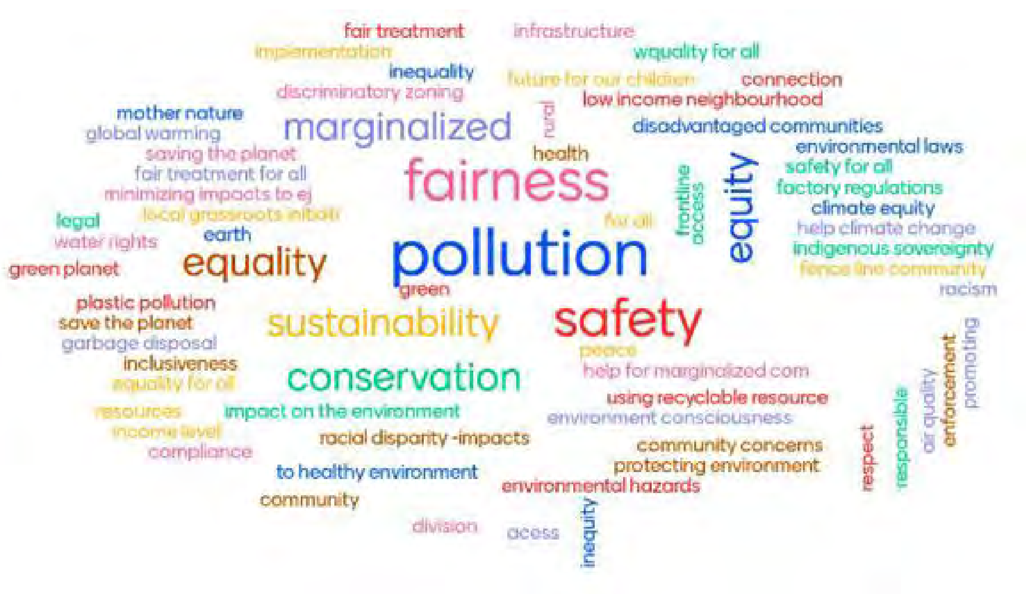


Image 1: Word Cloud from New Employee Orientation. May 2021.

Additional and equally important concepts are - "equity," which involves "increasing access to power, redistributing and providing additional resources, and eliminating barriers to opportunity, to empower low-income communities of color to thrive and reach full potential;"[7] and "inclusion" which involves active and

[6] Gov. Code, § 65040.12, subd. (e)

[7] https://greenlining.org/publications/reports/2019/making-equity-real-in-mobility-pilots-toolkit/

intentional efforts to ensure all individuals and communities can participate in policy development activities that impact their everyday lives. Environmental and social justice efforts seek to foster equity for marginalized communities, including addressing historic underinvestment and exclusionary policies and practices that have allowed inequity to flourish.

The CPUC is tasked with serving all Californians, and to do so equitably while reaching the state's climate goals, it must acknowledge that some populations in California face higher barriers to access to clean, safe, and affordable utility services. To fulfill its mission, the CPUC acknowledges it must focus resources on communities that have been underserved, as this plan outlines. Additionally, the CPUC acknowledges that its decisions have the potential to perpetuate and exacerbate existing disparities in ESJ communities. As such, the ESJ Plan serves as an ongoing commitment to mitigate and eliminate, harms to these communities. As the CPUC fulfills the goals and objectives listed in this ESJ Action Plan and improves its ability to serve ESJ communities, it will become even more transparent, accessible, and effective for all the communities it serves.

Purpose of the ESJ Action Plan

The ESJ Action Plan is intended to serve as a resource for CPUC staff, intervenors, stakeholders, and the public. The goals and objectives provide the broad vision and steps the CPUC will take to ensure equity in its programs and services. The action items serve as a tracking mechanism to remain transparent about the concrete actions the CPUC is taking with regards to embedding ESJ principles into its work. Finally, the appendices which include definitions, program criteria, and examples of past decisions are included as reference materials to be used by CPUC staff and/or any individual or organization that interacts with the CPUC.

Origins of the ESJ Action Plan – Past Leadership and Version 1.0

PAST LEADERSHIP

The CPUC has broad authority and the administrative discretion to shape programs and direct resources in a manner that furthers its equity objectives. The CPUC has issued directives and programs to invest in ESJ and disadvantaged communities (DACs) more broadly since the 1990s. The adoption of the original ESJ Action Plan in 2019 builds on many years of leadership from the California Legislature and the CPUC on environmental justice and broader social justice issues. Key efforts that demonstrate this leadership include, but are not limited to:

- Under General Order 156, the CPUC's Utility Supplier Diversity Program [8] monitors supplier diversity in procurement by participating utilities and oversees a clearinghouse of women, minority, lesbian, gay, bisexual, and transgender (LGBT), and disabled veteran-owned business enterprises.

[8] https://www.cpuc.ca.gov/supplierdiversity/

- Since 2001, the CPUC has convened the Low-Income Oversight Board (LIOB)[9] which advises the CPUC on low-income electric and gas customer issues and serves as a liaison for the CPUC to low-income ratepayers and representatives.
- The CPUC has provided utility bill assistance and consumer education to Californians with limited English proficiency via the TEAM (Telecommunications Education and Assistance in Multiple-Languages) and CHANGES (Community Help and Awareness of Natural Gas and Electric Services) Programs,[10] which were founded in 2006 and 2015, respectively. These programs leverage a statewide network of community-based organizations (CBOs) to provide services in over a dozen commonly spoken languages.
- Many of the CPUC's energy-related programs use the CalEnviroScreen tool, [11] developed by the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency (CalEPA), as a means of focusing efforts and prioritizing investment in communities disproportionately affected by air pollution and facing socioeconomic burdens. CalEnviroScreen identifies "disadvantaged communities," (DACs) [12] using indicators such as environmental, health, and socio-economic burdens. While the list of indicators is not exhaustive, CalEnviroScreen is one of several tools available for identifying ESJ communities. The DAC-Single Family Affordable Solar Homes (DAC-SASH) Program, the Solar on Multifamily Affordable Housing (SOMAH) Program, the DAC-Community Solar, and DAC-Green Tariff Programs, as well as the Self-Generation Incentive Program (SGIP) Are among a few programs that utilize CalEnviroScreen to prioritize investments.
- In 2012, California officially passed the Human Right to Water Act, [13] providing that, "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." [14] The CPUC continues to act for all Californians to have access to clean, safe, and affordable water supplies.
- The Clean Energy and Pollution Reduction Act of 2015 [15] requires a reduction in greenhouse gases in California by increasing the procurement of renewables and other clean energy resources. The Act also requires the CPUC to prioritize disadvantaged communities in its integrated energy resources planning processes. The statute further requires the establishment of a Disadvantaged Communities Advisory Group (DACAG) [16] which advises the CPUC and the California Energy Commission (CEC) on clean energy and pollution reduction programs. The 11-member group meets several times a year to review CEC and CPUC clean energy programs and policies to ensure that disadvantaged communities,

---

9 https://liob.cpuc.ca.gov/

10 https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/consumer-affairs-branch/team-and-changes-programs

11 https://oehha.ca.gov/calenviroscreen

12 California Health and Safety Code Section 39711

13 California Water Code Section 106.3

14 AB 685 (Eng, 2012)

15 Senate Bill 350 (de Leon, 2015).

16 https://www.cpuc.ca.gov/dacag

including tribal and rural communities, benefit from proposed clean energy and pollution reduction programs. Group members are either from or represent disadvantaged communities.

- Governor Gavin Newsom's 2020 Broadband for All Executive Order aims to provide high speed broadband to all Californians, with a focus on reaching previously underserved communities. [17] The goal is to eliminate the "digital divide" by enhancing broadband infrastructure and access of service via key public purpose programs such as California Lifeline and the California Advanced Services Fund.

ESJ Plan Version 1.0 [18]

In addition to implementing legislation and spearheading programs, such as those outlined above, the CPUC further sought to achieve environmental and social justice goals by strategically targeting investment, engagement, and enforcement efforts in ESJ communities. Under the leadership of Commissioner Guzman Aceves and Commissioner Rechtschaffen. the ESJ Action Plan Version 1.0 was adopted in February 2019 and provided the CPUC with a roadmap for advancing these equity-related goals across the agency's industry areas and create a culture that takes into serious account the lived experiences of ESJ communities.

The ESJ Action plan's framework of nine overarching goals, clear objectives, and 95 concrete action items was developed with input from stakeholders, including community-based organizations serving ESJ communities, sister state agencies, and the DACAG. The public process ensured agency-wide collaboration, accountability, and forward movement in meeting ESJ principles.

Critical to the ESJ Action Plan was the establishment of a definition of **"Environmental and Social Justice Communities" or "ESJ Communities"** [19] as low-income or communities of color that have been underrepresented in the policy setting or decision-making process, are subject to a disproportionate impact from one or more environmental hazards, and likely to experience disparate implementation of environmental regulations and socio-economic investments in their communities. In addition, ESJ communities include: Disadvantaged Communities, defined as census tracts that score in the top 25% of CalEnviroScreen 3.0, along with those that score within the highest 5% of CalEnviroScreen 3.0's Pollution

---

[17] AB 1665 (Garcia, 2017)

[18] See ESJ Plan Version 1.0 Microsoft Word - Env and Social Justice Action Plan _2019-02-21.docx (ca.gov)

[19] Use of the term "environmental and social justice" is not intended to create a new class of customers. Individual CPUC programs may focus on environmental and social justice communities in different ways.

Burden but do not receive an overall CalEnviroScreen score [20] [21]; all Tribal lands [22]; low-income households [23]; and low-income census tracts [24].

Image 2: Residents from the San Joaquin Valley attend CPUC Voting Meeting. December 2018.

---

20 https://calepa.ca.gov/wp-content/uploads/sites/6/2017/04/SB-535-Designation-Final.pdf

21 This definition of "Disadvantaged Communities" reflects a small change from Version 1.0 of the ESJ Action Plan and is changed to reflect the most recent designation of "Disadvantaged Communities" by the California Environmental Protection Agency (CalEPA). A new version of CalEnviroScreen, Version 4.0, was finalized in October 2021 and CalEPA will make a subsequent designation of "Disadvantaged Community" given the new data. This definition in the ESJ Action Plan will be subsequently updated to reflect this change once it is in effect.

22 Can utilize definition of "California Indian Country" https://www.courts.ca.gov/8710.htm .

23 Household incomes below 80 percent of the area median income.

24 Census tracts with household incomes less than 80 percent area or state median income.

Progress on Implementation

Since the adoption of Version 1.0 of the ESJ Action Plan, the CPUC has made significant progress in incorporating ESJ considerations into its work, as well as creating a culture that takes into serious account the lived experiences of ESJ communities.

Implementation Structure

To ensure compliance with the actions outlined in the ESJ Action Plan, the CPUC created an implementation structure to maximize effective coordination and sharing of lessons learned across the agency. Staff from the Executive Division serves as the primary staff lead, as they can work and communicate with staff and leadership across the CPUC. Advisory staff from the Office of the Commission, Executive Office, and Commissioner offices support the lead staff. Together, these individuals make up the "Core Team" implementing the ESJ Action Plan and work together on coordination and strategic planning.

For the purposes of industry division coordination, the Core Team established "ESJ Liaisons" in each Division across the CPUC. These ESJ Liaisons provide status updates on action items listed in the ESJ Action Plan. Alongside the Core Team, ESJ Liaisons participate in an ESJ Working Group which promotes the goals of the plan across the CPUC and increases staff capacity to addresses ESJ issues in their daily work.

Table 1: ESJ Working Group Structure[25]

Core Team and Cross- Commission ESJ Liaisons	Industry Division ESJ Liaisons
Lead: News and Outreach Office (NOO)	Communications Division (CD)
Commissioner Offices	Consumer Protection and Enforcement Division (CPED)
Executive Office	Energy Division (ED)
Office of the Commission	Rail Safety Division
Administrative Law Judge Division (ALJ)	Safety and Enforcement Division (SED)
Legal Division	Safety Policy Division (SPD)
Office of Governmental Affairs (OGA)	Water Division (WD)

[25] The following Divisions serve in an advisory capacity and do not have ESJ Liaisons: Human Resources Division (HR), Information Technology Services Division (ITSD), Administrative Services, Office of Internal Audits, Utility Audits, Risk & Compliance.

Image 6: CPUC ESJ Liaisons. January 2020.

Status Report and Accomplishments Thus Far

As a means of ensuring proper accountability to the commitments made within the ESJ Action Plan, the ESJ Working Group published a Status Report [26] in May 2020, which documented progress on implementing each of the ESJ Action Plan's 95 action items. The Core Team also provided a presentation to the Commission on this progress, alongside lessons learned and opportunities for continued prioritization of ESJ-related work.

The accomplishments highlighted below demonstrate efforts to systemically instill ESJ considerations into CPUC work and culture.

- The CPUC encourages its staff to consider ESJ issues at the beginning of all proceedings to ensure the proceeding record incorporates meaningful discussion regarding potential impacts to ESJ communities. Internal guidance has been circulated to CPUC staff and technical assistance is being provided to CPUC staff by the Core Team and ESJ Liaisons.

Figure 1: Steps for Incorporating ESJ Considerations into CPUC Proceedings

[26] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-status-update-presentation-2020.pdf

- With the introduction of a new Public Comment feature on the CPUC Docket Card in February 2020,[27] as well as the introduction of remote access for all CPUC meetings in the wake of the COVID-19 pandemic, there has been a significant increase in the ability of people from ESJ communities and the public-at-large to provide public comment and inform CPUC decision-making.
- In Decision 20-08-046 from the Climate Change Adaptation[28] proceeding," Decision on energy utility climate change vulnerability assessments and climate adaptation in disadvantaged communities, "the CPUC established a new definition of "disadvantaged vulnerable communities" introducing the concept of adaptive capacity and investigating the specific needs of these communities in the face of climate change. Utilities are required to conduct robust community engagement as part of the process of preparing climate vulnerability assessments.
- Decision 20-07-032 from the Affordability[29] proceeding, "Decision adopting metrics and methodologies for assessing the relative affordability of utility service," offers new affordability metrics that can be utilized across energy, water, and communications industries to understand the impact[30] of potential rate changes and highlights the geographic concentration of unaffordability of key utility services.
- In Decision 20-03-004, "Community Awareness and Public Outreach Before, During, and After a Wildfire," utilities are required to perform in-depth analysis to understand language needs in their service territories, and to extend communication to include indigenous languages. Utilities are also required to perform quantitative and qualitative evaluations concerning the reach and impact of their outreach.
- A new CPUC website[31] launched in July 2021 with a focus on the consumer as the primary audience, presenting easy access to information related to low-income programs and filing complaints.

---

27 https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/public-advisors-office/providing-public-comments-at-the-cpuc

28 https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/climate-change

29 https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/affordability

30 https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/reports/2019-annual-affordability-report.pdf

31 https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-unveils-new-website-to-better-serve-californians

- CPUC Local Government and Community Liaisons have continued to emphasize relationship-building with grassroots community-based organizations and introducing them to the CPUC process. Their activities have included spearheading a quarterly webinar series highlighting CPUC efforts and organizing tours with CPUC leadership in ESJ communities.
- The CPUC has entered a Memorandum of Understanding (MOU) with the California Workforce Development Board (CWDB) to provide expertise and recommendations on how the CPUC can maximize workforce development opportunities in ESJ communities. Recommendations have been incorporated into several rulings, including the Transportation Electrification Framework (R.18-12-006) and Self-Generation Incentive Program proceeding (R.20-05-012).

Image 3: Representatives from Community-Based Organizations discuss the need for in-language outreach. September 2019.

Image 4: CPUC staff attend a Community Engagement and Outreach Workshop in Sacramento. February 2020.

- The Utility Supplier Diversity Program's July 2021 whitepaper, "Economic Opportunities in Environmental and Social Justice Communities," found that significant investment has been made in ESJ communities on the part of utilities, with 42.2 percent of utility spending with diverse firms is within ESJ communities. [32]

---

[32] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/bco/utility-supplier-diversity-program/economic-opportunities-in-esj-communities-paper.pdf

- In May 2021, the CPUC's New Employee Orientation established a 2-hour session focused entirely focused on ESJ issues, providing incoming staff with a brief history of redlining and the environmental justice movement, an introduction to the ESJ Action Plan, and offers resources to staff to implement ESJ priorities in their work.
- CPUC staff participated in the Capitol Collaborative on Race and Equity (CCORE), which provides in-depth training to state agency cohorts on racial inequities and equips staff with tools and resources to further racial justice within their organizations. [33] The CPUC cohort will produce a Racial Equity Action Plan for the agency in 2022.

---

33 https://sgc.ca.gov/programs/hiap/racial-equity/

Critical Topics for Consideration for Version 2.0

The ESJ plan is an iterative document. As such, the CPUC applied learnings from ongoing implementation activities outlined in Version 1.0, social and political events, and other parallel efforts that occurred between 2019 and 2021, as opportunities to deepen and enhance the goals of the ESJ Action Plan.

Racial Equity + Diversity, Equity & Inclusion

Given that ESJ Communities include communities of color, it is critical for the ESJ Action Plan to both acknowledge solidarity and align with broader racial equity work being led concurrently with the implementation of the ESJ Action Plan.

In 2020, CPUC staff began participating in California's Capitol Collaborative on Race and Equity (CCORE) program. 16 CPUC staff members, representing different divisions across the agency, constitute a cohort that is building a Racial Equity Action Plan for the CPUC with the support of executive sponsors.

In addition to participating in CCORE, the murder of George Floyd in the summer of 2020 centered the Black Lives Matter movement in the consciousness of our society and created a sense of urgency and necessity within the CPUC to embody diversity, equity, and inclusion. This has included the establishment of the staff led Diversity, Equity, and Inclusion (DEI) Working Group, which helps identify, propose, and assist with efforts to achieve diversity, equity, inclusion, and cultural competence at the CPUC. The DEI Working Group implemented several initiatives to celebrate diverse communities, highlight their challenges, and improve diversity of recruitment and hiring through training for all CPUC management, hiring panels with diverse representation, and increased recruitment from diverse professional associations.

While the ESJ Action Plan certainly prioritizes communities of color and principles of racial equity, the Plan should not be considered the CPUC's primary effort to further racial equity work. CPUC staff working on implementing the ESJ Action Plan will work alongside and in solidarity with the CCORE cohort and the DEI Working Group to ensure shared goals and efforts are accomplished.

Engagement with California Native American Tribes

While the CPUC has had a Tribal Liaison for several years, since 2019 the work of the agency with tribes has expanded and deepened. The CPUC welcomed a Governor-appointed Tribal Advisor in 2020 to provide executive-level direction on how to effectively engage with tribal governments. Additionally, the establishment of the Tribal Land Transfer Policy [34], which allows for the transfer of land from investor-owned utilities to Native American tribes with a historical interest in the land, as well as the continued

[34] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/bco/tribal/final-land-transfer-policy-116.pdf

implementation of the Tribal Consultation Policy [35], which provides a framework to establish and maintain effective relationships with Tribes while respecting sovereignty, have deepened the CPUC's relationships in Indian Country and have offered increasing insight into how to further adapt and learn.

Individuals and Communities with Access & Functional Needs

On November 22, 2016, the California Legislature and Governor approved AB 2311, [36] which required emergency plans to integrate the needs of populations with access and functional needs (AFN). This population includes individuals who live with developmental or intellectual disabilities, physical disabilities, chronic conditions, injuries, limited English proficiency or who are non-English speaking, are older adults, children, people living in institutionalized settings, or those who are low income, homeless, or transportation disadvantaged, including, but not limited to, those who are dependent on public transit or those who are pregnant. [37]

In late 2019, communities across California experienced unprecedented use of Public Safety Power Shutoff (PSPS) events, with over 975,000 customer accounts in 38 counties being affected in PG&E territory with many customers losing power for nearly a week. [38] While electric utilities are to use PSPS events as a tool of last resort only in the highest risk of infrastructure-ignited fire, the impacts of PSPS events can be perilous to individuals with access and functional needs. In order to collaborate with communities with AFN to understand and ensure CPUC efforts serve their needs, the CPUC hired a designated Senior Analyst for Resilient Communities with Access and Functional Needs within the Safety Policy Division to focus on ensuring proceedings, policies, and programs meaningfully account for and include the needs of people with AFN.

COVID-19 Pandemic: Immediate Response and the "New Normal"

On March 4, 2020, California Governor Newsom declared a State of Emergency to prepare additional resources in light of rising case numbers due to the COVID-19 pandemic. [39] Given the immediate threat of the global pandemic to the existence and livelihoods of millions of Californians, the Governor issued a "Stay

[35] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/bco/tribal/tribal-consultation-policy-approved.pdf

[36] CA Govt Code § 8593

[37] AB 2311. https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2311&showamends=false

[38] Presiding Officer's Decision 2021. https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M385/K400/385400379.PDF

[39] Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19 | California Governor. https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/

at Home" order on March 19, 2020.[40] In light of this emergency, the CPUC took immediate action to protect the state's most vulnerable residents:[41]

1. The CPUC issued moratoriums on disconnections for nonpayment of service, which continued through 2021.
2. In February 2021, the CPUC opened a proceeding (R.21-02-014) to address the energy utility customer bill debt accumulated during the COVID-19 pandemic. In October 2021, the CPUC ordered investor-owned utilities to implement Percentage of Income Payment Plan (PIPP) pilot programs, which allow a participant to pay a predetermined affordable percentage of their monthly income toward their electricity or natural gas bill, in order to reduce residential disconnections.
3. Moving forward, the CPUC is proactively considering how to ensure Californians disproportionately impacted, such as those in ESJ communities, continue to safely receive reliable utility service.
4. Additionally, the CPUC shifted all CPUC business to virtual platforms, which has facilitated significantly more public access to CPUC meetings and hearings. If the future allows for the opportunity to hold meetings in-person once again, it is likely that virtual engagement opportunities will remain to ensure enhanced and broader access is still available to ESJ communities and the public.

Image 5: Community Meeting regarding Disconnection in San Bernardino. June 2019.

[40] Governor Gavin Newsom Issues Stay at Home Order | California Governor. https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-issues-stay-at-home-order/

[41] CPUC COVID-19 Actions. https://www.cpuc.ca.gov/news-and-updates/newsroom/covid-19

Wildfire Events

Since Version 1.0 of the ESJ Action Plan, California has experienced the largest wildfires in state history.[42] Additionally, electric utilities have used de-energization strategies more frequently to prevent ignition of wildfires by electric utility infrastructure. These events have had massive implications for ESJ communities, particularly low-income people in rural, high fire threat areas including people with access and functional needs. While the CPUC oversaw the creation of the Wildfire Safety Division and its subsequent move to the California Natural Resources Agency, CPUC staff continue to incorporate the needs of ESJ communities in high fire threat districts as it advises the Commission and evaluates safety compliance and efficacy of wildfire prevention work of the utilities.

Workforce Development and the High Road Transition

With the implementation of the ESJ Action Plan, the CPUC entered a Memorandum of Understanding (MoU) with the California Workforce Development Board (CWDB) in October 2020 in order to receive expertise from the CWDB about implementing Goal 7, "promoting economic and workforce development opportunities in ESJ communities." Energy efficiency, renewable energy, transportation electrification, building decarbonization, and vegetation management are the five areas or topics of interagency collaboration listed in the MoU, with the first three having been the immediate priority. In developing the MoU, the agencies realized their shared interest in leveraging CPUC policies (e.g., incentive programs, regulations and rulemakings, strategic plans, research studies, etc.) to deliver economic equity – i.e., the elimination or reduction in income inequality and other economic disparities between ESJ and non-ESJ communities.

Through the partnership, the CPUC has gained a much deeper and clearer understanding of the need to leverage its authority and jurisdiction to focus on the jobs created or supported by CPUC policies, as well as the training and services needed to develop a skilled and diverse workforce, addressing issues of quality and access on both fronts. In other words, improving ESJ communities' economic well-being, and advancing economic equity in California, will require more of the CPUC than the conventional approach of simply promoting job training or skill acquisition. As a result, Goal 7 of the ESJ Action Plan is updated to better reflect the imperatives of quality and access in both employment and training, and further promote the high road principles of equity, sustainability, and job quality across the CPUC.

Priority Populations for Future Consideration in the Definition of "Environmental and Social Justice Communities"

Version 1.0 of the ESJ Action Plan established a definition for "ESJ communities," which includes: (1) Disadvantaged Communities; (2) Low Income Census Tracts; (3) Low Income Households; and (4) Tribal Lands. While this definition captures a diverse group of communities in need of prioritization, some additional priority communities are not specifically named. Notably, communities with AFN and those with other medical vulnerabilities are not specifically captured, nor are communities that experience

[42] Cal FIRE Stats and Events. https://www.fire.ca.gov/stats-events/

disproportionate challenges with affording utility service, unhoused individuals, or indigenous populations living off tribal lands. Version 2.0 of the ESJ Action Plan does not propose a revised definition of "ESJ communities," as we recognize there is not a one-size-fits-all definition of what encompasses a potential ESJ community. Rather, we encourage CPUC initiatives to critically consider all the various kinds of populations that warrant prioritization in policies and programs.

Considerations of Rate Burdens on Low-Income Customers

Ensuring the development of environmentally friendly and resource-responsible policies are essential to maintaining a resilient utility service network, especially within the current climate change crisis. These programs will provide substantial benefits to ESJ communities that are most harmed by pollution and climate change impacts. However, as California transitions to a cleaner grid, the risk of a smaller number of households, likely lower income households who cannot afford to upgrade their existing household appliances to energy efficient and/or all electric, becoming increasingly financially responsible for maintaining legacy infrastructure.

This is in addition to the overall utility rate increases residents are experiencing due to a variety of factors. The CPUC acknowledges that increased rates place a large burden on ESJ communities who participate in clean energy programs at a lower rate than others. Continuing to assess the cumulative impact of rates on households and working to mitigate these impacts on the most burdened households will remain a priority in all actions the CPUC takes.

Timeline for Providing ESJ Action Plan Status Reports and Updates

Version 1.0 of the ESJ Action Plan calls for it to be an iterative document with a two-year update cycle. Through implementation of the first iteration of the Plan, the ESJ Core Team organized a Status Report delivered to the Commissioners in May 2020 on implementation of the action items. The Status Report outlined forward movement in implementing the Action Items in the ESJ Action Plan and acknowledged opportunities for improvement. This was an effective exercise to ensure accountability for the commitments made in the Plan, empower the ESJ Liaisons in each Division to understand ESJ priorities in their division, and understand where more energy needs to be focused to make strong progress on ESJ Action Plan implementation.

Based on experience implementing the ESJ Action Plan and putting together the Status Report, staff propose for the ESJ Action Plan to aim for a three-year time horizon for an update, with a mid-point status report to the Commission. This will allow for a more reasonable timeframe with which to revisit action items and ensure their proper implementation.

ESJ Action Plan 2.0: Updated Goals & Objectives

For Version 2.0 of ESJ Action Plan, revisions to eight of the nine goals clarify existing language; and Goal 7, related to workforce development, has been revised to include an emphasis on job quality and access. The objectives related to each goal have been revised to reflect the work of the CPUC for the upcoming three years particularly related to institutionalizing ESJ considerations into the Commission's decision-making processes.

Finally, Version 2.0 of the ESJ Action Plan includes additional narratives. These sections clarify the CPUC's intent of the ESJ Plan to be used by staff and stakeholders as a reference document when developing or responding to policies and programs under development, or as a resource document to gain a better understanding of key definitions, eligibility criteria, and how the plan has been referenced in past proceedings. Additional language reiterates that regulated entities under the CPUC's jurisdiction continue to be required to abide by all policy directives in the CPUC's final decisions.

Appendix A includes a detailed list of action items, lead staff, and tentative work plans. The list remains robust and demonstrates commitments from across our various offices and divisions, with an emphasis on more cross-agency activities to deepen impact on ESJ issues.

Goal 1: Consistently integrate equity and access considerations throughout CPUC regulatory activities.

Revised Objectives:

1.1 Build Systematic Approaches for ESJ Priorities: Continue building systematic approaches for considering ESJ issues in proceedings and decisions, as well as implementation processes included in advice letters, general orders, and resolutions. Build understanding of critical ESJ concepts and definitions to ensure alignment and deepen impact.

1.2 Expand Opportunities for Access: Continue pursuing innovative approaches to broadening access to CPUC activities and decision-making.

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health.

Revised Objectives:

2.1 Outreach & Engagement: Broaden and deepen outreach and engagement with ESJ communities early in proceedings and processes related to resilient, clean energy.

2.2 Research & Analysis to Understand Impact: Further research and analytical opportunities to understand impacts in ESJ communities.

2.3 Move Towards Mutual Eligibility & Maximizing Impact: Better leverage ongoing work by fostering cross-division, cross-Commission, and cross-agency dialogues to move towards mutual eligibility and maximizing impact.

2.4 Address Impacts in ESJ Communities: Continue to address ongoing and legacy impacts in ESJ communities in the resilient, clean energy space.

2.5 Continue Ongoing Investment: Continue to make prioritized resilient, clean energy investments in ESJ communities.

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities.

Revised Objectives:

3.1 Equitable Clean Transportation: Pursue opportunities for ESJ communities to access clean vehicles and services from Transportation Network Companies (TNCs).

3.2 Water Customer Resilience: Support ESJ customers and communities with discounted rates for low-income customers and sustainable systems.

3.3 Extend Rail Safety to ESJ Communities: Pursue opportunities to bolster safety along rail lines in ESJ communities.

3.4 Extend Essential Communications Services to ESJ Communities: Ensure implementation of new investments that offer ESJ communities' access to essential[43] communications services at affordable rates.

Goal 4: Increase climate resiliency in ESJ communities.

Revised Objectives:

4.1 Emphasize Adaptive Capacity: Ensure ESJ communities and considerations around their adaptive capacity is incorporated into relevant programs and activities.

Goal 5: Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit from CPUC programs.

Revised Objectives:

5.1 Improve Communication with ESJ Lens: Continue to build and improve CPUC communications methods and materials to ensure ESJ audiences can better participate.

5.2 Continue to Emphasize Engagement with CBOs: Deepen relationships and network connections with community-based organizations throughout the state.

---

[43] [43] Decision 20-07-032 http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=344049206

5.3 Build Pathways for Public Participation: Based on lessons learned and areas of improvement, build additional and enhanced pathways to welcome and involve ESJ stakeholders into CPUC processes.

5.4 Enhance Engagement with Particular ESJ Communities: Consider the specific needs of particular populations and work to create targeted engagement opportunities.

Goal 6: Enhance enforcement to ensure safety and consumer protection for all, especially for ESJ communities.

Revised Objectives:

6.1 Protect ESJ Consumers: Track complaints from ESJ communities and protect against fraud and unfair business practices in CPUC-regulated industries.

6.2 Conduct Proactive Action & Analysis in Transportation and Utility Enforcement: Utilize existing data and enforcement authority to focus on serving ESJ communities and understanding their needs.

6.3 Apply ESJ Lens to CPUC Enforcement Policy: Ensure implementation of Enforcement Policy includes opportunities for ESJ communities to benefit from maximum compliance with CPUC rules and regulations.

6.4 Maximize Opportunities within Utility Audits: Incorporate strategies for engaging with ESJ communities and understanding cumulative impact.

REVISED Goal 7: Promote high road[44] career paths and economic opportunity for residents of ESJ communities.

Revised Objectives:

7.1 Maximize Authority to Promote High Road: Continue implementing MOU with CA Workforce Development Board to develop proceeding record and outreach to nontraditional partners to understand opportunities for CPUC to maximize jurisdiction and authority to promote high road careers.

7.2 Educate on High Road Careers: Provide opportunities to educate CPUC staff on high road career paths, best practices, and opportunities to integrate into CPUC programs.

7.3 Partner with Utilities and Sister Agencies: Engage sister agencies with authority and expertise on workforce-related issues and regulated utilities in promoting economic opportunity for ESJ communities.

---

[44] https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=UIC&division=7.&title=&part=&chapter=2.&article

Goal 8: Improve training and staff development related to environmental and social justice issues within the CPUC's jurisdiction.

Revised Objectives:

8.1 Bolster Staff Knowledge on ESJ Issues and Resources: Provide ongoing training to new and existing employees on ESJ issues and continue to offer resources and tools to support staff learning.

8.2 Support Emerging Priorities and Skill Needs: Work in solidarity with other ESJ-aligned plans and efforts and offer new training opportunities to support shared goals.

Goal 9: Monitor the CPUC's environmental and social justice efforts to evaluate how they are achieving their objectives.

Revised Objectives:

9.1 Establish Consistent Quantitative Metrics: Pursue opportunities to standardize metrics related to ESJ communities in CPUC programs and proceedings.

9.2 Promote Meaningful Feedback Loops: Cultivate and deepen avenues to receive feedback from the public and demonstrate resulting impact back to members of the public.

9.3 Establish Accountability Measures: Establish a public mechanism for reporting the CPUC's progress towards achieving goals of the ESJ Action Plan.

Utilizing the ESJ Plan as Resource

The ESJ Action Plan is intended to serve as a resource for CPUC staff, intervenors, stakeholders, and the public. The goals and objectives provide the broad vision and steps the CPUC will take to ensure equity in its programs and services. The action items serve as a tracking mechanism to remain transparent about the concrete actions the CPUC is taking with regards to embedding ESJ principles into its work. Finally, the appendices which include definitions, program criteria, and examples of past decisions are included as reference materials to be cited or used as reference material by CPUC staff and/or any individual or organization that interacts with the CPUC.

Compliance and Enforcement

The CPUC expects regulated entities to conform to the goals and principles outlined in the ESJ Action Plan. As the goals and objectives in the plan, or the plan itself, will be referenced and cited in Commission decisions, when appropriate, regulated entities are expected to continue to abide by language in final decisions. The CPUC will continue to use its discretion and broad authority to take enforcement actions as appropriate.

APPENDICES

Appendix A: ESJ Action Items

This Appendix includes 93 specific Action Items in service of fulfilling the Goals and Objectives of Version 2.0 of the ESJ Action Plan. Each Action Item includes a title, brief description, identified lead implementor, and a tentative work plan.

Goal 1: Consistently integrate equity and access considerations throughout CPUC proceedings and other efforts. (11 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
1.1 Build Systemic Approaches for ESJ Priorities					
1.1.1	**ESJ Impacts in CPUC Processes**	Continue to systematically incorporate ESJ considerations into proceedings, and further pursue opportunities to incorporate ESJ into Advice Letters, Resolutions, and other processes.	Cross-Commission	ESJ Core Team	1- Create guidance for incorporating ESJ into Advice Letters; 2- Consider a designated section on ESJ impacts in decisions, resolutions, and advice letters that impact customers, residents, or small businesses in ESJ communities; 3- Explore mechanisms to ensure applicants include ESJ consideration in application.
1.1.2	**Institutionalize Implementation of ESJ Action Plan within Divisions**	Continue ongoing recruitment of ESJ Liaisons to ensure representation from all CPUC Divisions. Bolster opportunities for ESJ Liaisons to lead ESJ Action Plan implementation within their divisions. Ensure staff-level ownership of implementation.	Cross-Commission	ESJ Core Team	1- Continue recruiting ESJ Liaisons for unrepresented Divisions 2- Ensure administrative Divisions receive biannual updates on implementation 3- Provide opportunities for ESJ Liaisons to lead ESJ-related work within their divisions. 4- Provide a mid-point status update on implementation of ESJ Action Plan to Commissioners and the public
1.1.3	**Tracking Federal Initiatives Related to Environmental Justice**	Follow actions of the Biden Administration that relate to the goals of the ESJ Action Plan. Share with ESJ Liaisons and broader CPUC staff opportunities to inform, engage and participate.	Cross-Commission	Office of the Commission	1- Create tracking mechanism for federal environmental justice actions 2- Develop internal information sharing system
1.1.4	**Coordination with ESJ-focused Staff at Regulated Utilities**	Convene and explore opportunities for coordination and collaboration with regulated utility staff that focus on ESJ-related issues. Build understanding across various program and policy areas on shared ESJ-related priorities and work together to ensure strong implementation of the CPUC ESJ Action Plan.	Cross-Commission	ESJ Core Team	1- Outreach to utilities to connect with staff focused on ESJ-related issues; 2- Consider establishing an informal working group to foster conversation and collaboration; 3- Pinpoint priority areas for coordination; 4- Leverage opportunities to meet key ESJ Action Plan goals, such as those related to staff training

Goal 1: Consistently integrate equity and access considerations throughout CPUC proceedings and other efforts. (11 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
1.1.5	**ESJ Definitions: Catalogue and Assess Opportunities for Mutual Eligibility**	Catalogue definitions being used across the CPUC for ESJ purposes and create a framework for the creation of future definitions. Consider opportunities for alignment and mutual eligibility in coordination with industry divisions.	Cross-Commission	Office of the Commission	1- Build upon Appendix B of ESJ Action Plan and create consistently updated catalogue of ESJ-related definitions that is accessible to staff; 2- Create an ESJ Definition Framework that helps with decision-making related to program targets; 3- Work with industry divisions and CPUC leadership to consider opportunities for potential alignment and mutual eligibility of programs, in coordination with Energy Division efforts
1.2 Expand Opportunities for Access					
1.2.1	**Evaluation of Intervenor Compensation Program (ICOMP)**	Assess the current ICOMP successes and challenges, and propose recommendations for future improvements, both administrative and statutory.	Cross-Commission	Office of the Commission	1- Using monthly ICOMP analysis, perform evaluation of existing ICOMP, including stakeholder experience, diversity of intervenors, timeframe for awards to be made, common intervenor errors, among other metrics; 2- Present results of evaluation at a Commission Committee Meeting
1.2.2	**Consider Funded Community Based Organization (CBO) Program**	Explore concept of a paid CBO pilot program that aims to facilitate deeper involvement of CBOs in CPUC programs and processes.	Cross-Commission	News & Outreach Office	1- Explore and identify need and staffing sources for the purposes of a pilot program; 2- Understand best practices in CBO programs from sister agencies; 3- Consider development and deployment of a pilot program, including funding and authority; 4- Identify any lessons learned and opportunities for a permanent program
1.2.3	**Implementation of Tribal Consultation Policy**	Continue to educate CPUC staff and stakeholders on Tribal Consultation Policy and pursue opportunities for updates and deeper engagement with tribal communities.	Cross-Commission	Executive Office - Tribal Advisor	1- Offer presentation to CPUC staff and stakeholders on Tribal Consultation Policy, as well as assistance in implementation; 2-Consider opportunities for updates and/or revisions
1.2.4	**ADA Accessibility of CPUC Internet**	Ensure that CPUC internet and public documents meets all accessibility-related requirements.	Cross-Commission	Executive Office - ADA Coordinator	1- Perform analysis on accessibility of CPUC internet and public documents 2- Remediate documents as necessary 3- Educate and train CPUC staff on accessibility requirements 4- Perform ongoing maintenance

Goal 1: Consistently integrate equity and access considerations throughout CPUC proceedings and other efforts. (11 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
1.2.5	**Provide "Participate in CPUC" training via various methods**	Provide information on "Participating in CPUC Processes" to provide education on proceedings, processes, programs, how to engage, etc.	Cross-Commission	News & Outreach Office	1- Develop presentations and materials ; 2- Post recording to CPUC YouTube and advertise availability to stakeholders
1.2.6	**Explore Capacity Building Initiatives**	Explore methods of educating ESJ communities on fundamental principles of utility regulation and impacted industries	Cross-Commission	ESJ Core Team	1- Explore the feasibility of developing educational materials for ESJ communities on the fundamentals of utility regulation including an overview of emerging and key issues facing ESJ communities; 2- Explore developing a public repository of ESJ-related reports or other resources.

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health. (25 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
2.1 Outreach & Engagement					
2.1.1	**Alignment & Coordination Across Marketing, Education & Outreach (ME&O) Plans**	Leverage ongoing work across a multitude of investor-owned utilities (IOU) initiatives and programs to create synergy and deepen impact in ESJ communities, especially related to partnerships with community-based organizations (CBOs).	Energy Division	ESJ Core Team	1- Compare ME&O plans of utilities and look for commonality in approach and CBOs involved 2- Share best practices in ME&O plans across utilities and, if/when appropriate, create template guidance to ensure future alignment; 3- Explore opportunities to diversify CBOs with which IOUs work with for ME&O
2.1.2	**Improve Feedback Loop from Customers to Foster Iterative Process in Program Design**	Conduct more robust outreach to specific ESJ customer segments including households, businesses, and communities to understand program interest and satisfaction. Set mechanisms into place to adjust programs on an ongoing basis based on this feedback. Ensure appropriate data and metrics are utilized that can be built into program design.	Energy Division	Energy Efficiency Procurement & Portfolio Management	1- Conduct workshop with program, community, and customer stakeholders to help inform new customer-centric Pilot Plus/Pilot Deep ESA program design that will target customers with greatest need and that can benefit most from deeper energy savings 2- Identify and track new metrics on customer segments eligible for programs and leverage data to target customer segments that can be better served by and continue to shape the new program design

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health. (25 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
2.1.3	**Continue Support and Coordination of the Disadvantaged Communities Advisory Group (DACAG)**	Work alongside the California Energy Commission (CEC) to continue convening the DACAG and maximize opportunities to provide feedback to CPUC proceedings, programs, and processes.	Energy Division	Climate & Equity	1- Support regular public meetings of the DACAG, including broad outreach for attendance 2- Continue to build pathways for DACAG feedback to inform CPUC proceedings and programs 3- Coordinate with Low Income Oversight Board (LIOB) on shared interests
2.2 Research & Analysis to Understand Impact					
2.2.1	**Study: Reliability and Emissions Impacts of Fossil Generation In and Around Disadvantaged Communities, including the Impact of Storage Alternatives**	Conduct study within the Integrated Resource Planning (IRP) proceeding related to the retirement of gas resources and ensure considerations for ESJ communities are incorporated, including the role of energy storage technologies to ensure local reliability and reduce emissions.	Energy Division	Generation & Transmission Planning	1- Conduct study as outlined 2- Ensure IRP parties are interviewed for the purposes of the study 3- Consider recommendations that take into account the particular experience of ESJ communities
2.2.2	**Study: Societal Cost Test in Integrated Resource Plans**	Study a three-part Societal Cost Test (SCT) as ordered by Integrated Distributed Energy Resources (IDER) decision including Social Cost of Carbon, Air Quality Adder, and Social discount rate to study the impact of these societal costs on resource procurement.	Energy Division	Generation & Transmission Planning	1- Conduct study as outlined by the IDER proceeding 2- Consider recommendations related to health and air quality in ESJ communities
2.2.3	**Study: Quantifying the Air Quality Impacts of Decarbonization in California**	Conduct a sector-specific study of the air quality impacts of Transportation Electrification, Building Electrification, and other Distributed Energy Resources and ensure considerations for ESJ communities are incorporated.	Energy Division	Generation & Transmission Planning	1- Conduct study as outlined 2- Consider recommendations related to health and air quality in ESJ communities
2.2.4	**Study: Baseline of Greenhouse Gas Emissions of Small-Scale Biomass**	Conduct study on emissions of small-scale biomass facilities to understand greenhouse gas and air emission impacts.	Energy Division	Renewable Procurement & Market Development	1- Conduct study 2- Ensure ESJ community representatives are interviewed for the purposes of the study 3- Consider recommendations that take into account the particular experience of ESJ communities

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health. (25 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
2.2.5	**Providing Electric Program Investment Charge (EPIC) Research and Development Program Benefits to ESJ Communities**	In implementing EPIC projects, the CPUC will ensure administrators place increasing emphasis on: early engagement with vulnerable communities, ensuring projects benefit California ratepayers, and identify creative ways of engagement and compensation.	Energy Division	Climate & Equity	1- Understand community needs as they relate to energy research 2- Create events, platforms, or other means to increase coordination between researchers and communities
2.3 Move Towards Mutual Eligibility & Maximizing Impact					
2.3.1	**Distributed Energy Resources (DER) Action Plan**	Ensure a strong ESJ lens in the creation of the plan, particularly in the Vision and Action elements.	Energy Division	Grid Planning & Reliability	1- Complete Plan 2- Ensure inclusion of recommendations related to potential impact and benefit to ESJ communities
2.3.2	**Consider Streamlined Application Processes and Enhance Coordination for Low Income and Clean Energy Programs**	Provide customers a single statewide application to enroll in CARE, FERA, ESA programs and explore additional coordination opportunities with other income-qualified and clean energy programs and statewide efforts, including California Air Resource Board's (CARB) Access Clean California (ACC) platform.	Energy Division	Energy Efficiency Procurement & Portfolio Management and Customer Generation	1- Establish a working group to define goals for a Universal Application System, system requirements, and opportunities for inter- and intra-agency solutions with involvement from program and community stakeholders. 2- Define a recommended path forward to develop a Universal Application System solution as a result of working group discussions 3- Conduct public workshop to explore how program administrators can enhance coordination through aligning customer eligibility and increasing referrals and enrollment across multiple programs 4-Coordinate with ESJ Core Team on Commission-wide ESJ definitions and alignment work
2.3.3	**Leverage Scale of California Alternative Rates for Energy (CARE) and Energy Savings Assistance (ESA) Programs to Cross-Refer to Other CPUC Initiatives**	Regulated entities are directed to share information with customers about affordable broadband plans and other clean energy programs. Additionally, energy and water investor-owned utilities (IOUs) are encouraged to exchange information in order to facilitate more enrollment in low-income water assistance programs. Follow implementation and pursue additional	Cross-Commission	Energy Efficiency Procurement & Portfolio Management	1- Track effectiveness of cross-marketing and cross-referral efforts 2- Consider opportunities to deepen coordination efforts to maximize program uptake of income qualified, disadvantaged, and hard-to-reach customers, many of which reside in ESJ communities

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health. (25 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
		opportunities for customer-focused coordination.			
2.4 Address Impacts in ESJ Communities					
2.4.1	**Understanding Impacts to ESJ Communities in Biomethane Procurement**	Assess potential impacts to ESJ communities when considering and recommending strategies for biomethane procurement.	Energy Division	Building Decarbonization & Renewable Gas	1 - Conduct outreach to ESJ communities to understand issues related to biomethane production 2- Understand impacts and potential benefits of biomethane production 3- Consider recommendations that take into account the particular experiences of ESJ communities
2.4.2	**Long Term Relief Due to COVID-19 Pandemic: Arrears & Disconnections**	Taking lessons learned from the Covid-19 pandemic, pursue opportunities to continue providing bill relief for ESJ customers struggling with arrears and disconnections.	Energy Division	Retail Rates	1- Ensure ESJ communities are meaningfully included in relevant proceedings and their lived experiences documented in the proceeding record 2- Work alongside sister agencies to maximize opportunities to provide bill relief 3- Establish capacity funding for CBOs to assist customers with arrears management
2.4.3	**Pilot Utilization of Affordability Metrics in CPUC Proceeding**	Pilot the use of affordability metrics in a General Rate Case (GRC). Develop pathway for including affordability metrics in future GRCs and consider geographically deaveraged or location marginal pricing.	Energy Division	Retail Rates	1- Select pilot GRC for use of affordability metrics 2- Share lessons learned regarding how affordability metrics impact costs and rates 3- Explore opportunities for wider adoption in CPUC proceedings 4- Coordinate with internal electric costs and retail rate design groups to understand overlap between affordability and the approval of utility revenue requirements and retail rate designs

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health. (25 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
2.4.4	**Net Energy Metering (NEM): Ensuring Equitable Incentives**	As changes to the NEM tariff are put forth, ensure that non-participating ESJ ratepayers will not be detrimentally impacted by changes to the tariff and will instead benefit.	Energy Division	Customer Generation	1- Ensure meaningful involvement of ESJ communities in relevant proceeding and that potential impacts are thoroughly explored
2.4.5	**Dynamic Pricing: Implementing Rate Flexibility & Management**	In recognition of the need to protect ESJ customers, pursue opportunities to implement dynamic pricing to create more equitable rate structures.	Energy Division	Retail Rates	1- Ensure meaningful involvement of ESJ communities in relevant proceeding and that potential impacts are thoroughly explored
2.4.6	**Long Term Gas Planning**	In the Long-Term Gas Planning Rulemaking, ensure meaningful stakeholder involvement and thorough exploration of ESJ-related issues.	Energy Division	Gas Policy & Reliability	1- Conduct proactive outreach to ESJ communities and organizations to encourage becoming a party to the proceeding or submitting public comment 2- Provide expanded opportunities for dialogue related to the existing gas infrastructure landscape and key considerations to be made in the rulemaking
2.4.7	**Understanding Diesel Back Up Generators (BUGs) and Potential Impacts on ESJ Communities**	Assist state and local agencies with BUG data to the extent the CPUC has access to such information.	Energy Division	Demand Response	1- Work alongside stakeholders and state agencies to understand potential impacts
2.4.8	**California Environmental Quality Act (CEQA): Opportunities for Alignment with Local Planning**	As it makes sense within the CPUC's CEQA authority, highlight ESJ considerations in preparation of comments. Consider what local planning efforts have included environmental justice or other social justice elements and ensure that CPUC review takes this into account.	Energy Division	Infrastructure Planning & CEQA	1- On a case-by-case basis, research local General Plans and other key planning documents include an environmental justice element or related component 2- Consider additional opportunities to address ESJ issues in CEQA review 3- Work alongside sister agencies, such as the Office of Planning and Research, to understand how to maximize CPUC effectiveness in this regard
2.5 Continue Ongoing Investment					

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health. (25 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
2.5.1	**Establish Equity Segment of Program Administrators' Energy Efficiency (EE) Portfolios**	Within EE Portfolios – Implement an Equity Segment that does not have to meet cost effectiveness criteria comprised of programs that provide energy, greenhouse gas, and non-energy benefits to hard-to-reach and underserved customers as well as disadvantaged communities, with the intention of serving households, businesses, and communities that are historically or currently marginalized.	Energy Division	Energy Efficiency	1- Establish working group (WG) comprised of California Energy Efficiency Coordinating Committee (CAEECC) stakeholders and organizations championing ESJ principles 2- WG develop objectives that define success for the Equity segment and its programs 3- Conduct public workshop to engage diverse community members and obtain feedback on important topics, actions, and customer groups 4- WG develop metrics that measure progress toward achieving success 5- Consider opportunities for Equity offerings to enhance the societal benefit of offerings within the Market Support Segment
2.5.2	**Continue Prioritization of ESJ Communities in Building Decarbonization Programs**	Ensure that funding for ESJ communities continues to be prioritized in BUILD and TECH.	Energy Division	Building Decarbonization & Renewable Gas	1- Incorporate definitions that prioritize ESJ communities in new phases of programs
2.5.3	**Document Analysis of Investment in Electrification in San Joaquin Valley proceeding**	Follow ongoing implementation of the San Joaquin Valley Affordable Energy program to document engagement, awareness, and capacity building lessons learned in working with CBOs and ESJ communities on an electrification process and determine how to best invest in remaining communities in Phase 3.	Energy Division	Building Decarbonization & Renewable Gas	1- Share lessons learned, especially related to community engagement led by CBOs and how to reach residents of ESJ communities, with broader CPUC staff; 2- Consider expanding pilot to remainder of communities or consider how to merge with the other electrification efforts at the commission; 3- Develop statewide strategies to barriers encountered in SJV communities
2.5.4	**Continued Prioritization of ESJ Communities in Microgrid Incentive Program**	Disseminate $200 million to vulnerable areas and ensure criteria bolsters opportunities for low-income and vulnerable communities, people with access and functional needs, tribal, and people who are on medical baseline or electrically dependent to access funding.	Energy Division	Microgrids & Resiliency	1- Monitor implementation of program, including effectiveness in reaching ESJ communities and those at high risk of electrical outage 2- Ensure proper outreach is conducted to targeted communities

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health. (25 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
2.5.5	**Improving Access to Electric Vehicle Charging for ESJ Communities**	Between investments made via ratepayer funded transportation electrification (TE) programs and funding the IOUs oversee from Low Carbon Fuel Standard (LCFS) credit revenue, ensure robust equity requirements are incorporated and are in alignment with sister agencies like the California Air Resources Board (CARB) and the California Energy Commission (CEC).	Energy Division	Transportation Electrification	Building on past track record, consider incorporating higher set-asides and prioritization of ESJ and underserved communities for investments 2- Ensure communities are meaningfully involved in the development of program proposals as well as program implementation to ensure buy-in and strong utilization of charging infrastructure in the future
2.5.6	**Continue Tracking and Evaluation of Customer Generation Programs and Improve Effectiveness in Reaching ESJ Communities**	Track outcomes and lessons learned from the following programs to better understand effectiveness of incentive programs and how to ensure maximum impact: Multi-family Affordable Solar Housing (MASH), Single-family Affordable Solar Homes (SASH), Disadvantaged Communities-Single-family Affordable Solar Homes (DAC-SASH), Solar on Multi-family Affordable Housing (SOMAH), Self-Generation Incentive Program (SGIP), Green Tariff (GT), Disadvantaged Communities - Green-Tariff (DAC-GT), Community Solar Green Tariff (CSGT)	Energy Division	Customer Generation	1- Monitor metrics and outcomes of customer generation programs, both those specific to ESJ communities and those that are more broadly available 2- Consider conducting geospatial analysis to understand concentration of program uptake in ESJ communities 3- Explore opportunities for program modifications, stacking incentives, auto-enrollment, and improved outreach to best reach ESJ communities

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities. (17 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
3.1 Equitable Clean Transportation					

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities. (17 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
3.1.1	**Implementation and Monitoring of Accessibility of TNCs and AVs**	Identify opportunities through transportation proceedings and their implementation to improve transportation accessibility for ESJ communities	Consumer Protection & Enforcement Division	Transportation Licensing & Analysis	1- Share all TNC Access for All Staff Reports with the ESJ Action Plan Committee (as ordered in Decisions) 2- Summarize Accessibility data collected in TNCs' Annual Reports and AVs' Quarterly Reports annually
3.1.2	**Implementation of Clean Mile Standard and Impact on Drivers from ESJ Communities**	Consider how TNC drivers from ESJ communities and the communities who rely on TNC transportation will be impacted by the Clean Miles Standard	Consumer Protection & Enforcement Division	Transportation Licensing & Analysis and Administrative Law Judge Division	1- Seek feedback from drivers in ESJ communities as part of the development of Clean Mile Standard 2- Assess CMS impacts on ESJ communities as data become available throughout the life of the program.
3.2 Water Customer Resilience					
3.2.1	**Maximize Customer Assistance Programs (CAPs) and Arrearage Management Plans (AMPs) for Low-Income Water Customers**	Ensure that CAPs and AMPs are appropriately and effectively marketed to ESJ communities. Given the realities of the Covid-19 pandemic, consider new strategies for assisting low-income water customers with water bill payment.	Water Division	Small Company & Compliance	1- Track implementation and outreach efforts of water company CAPs and AMPs 2- Encourage sharing of best practices and lessons learned 3- Explore additional opportunities to assist low-income water customers
3.2.2	**Understanding and Acting on Affordability of Water Rates**	Given both the opportunity to utilize new affordability metrics and information from the Drinking Water Needs Assessment from the State Water Resources Control Board (SWRCB), continue to understand where ESJ customers are experiencing disproportionately high water rates.	Water Division	ALJ Support & Compliance	1- Consider affordability metrics in water General Rate Cases (GRCs) 2- With the aid of information from the Drinking Water Needs Assessment, evaluate whether there are water systems within CPUC's jurisdiction where customers experience high rates that could be ameliorated with consolidation 3-Consider whether the CPUC should open an OIR on the subject of new standards for consolidation of water utility systems

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities. (17 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
3.2.3	**Water Resilience and Reliability in the Face of Drought**	Work with water utilities to plan for continued conditions of drought, with emphasis on addressing ESJ community needs.	Water Division	ALJ Support & Compliance	1- Consider and evaluate the resilience and reliability challenges of regulated utilities 2- Consider opening an OIR on Water Resiliency and Reliability to have utilities proactively plan for future resilience needs 3- Work with State Water Resources Control Board (SWRCB) and Department of Water Resources (DWR) on overall water resiliency and reliability planning, as well as the Energy Savings Assistance Program (ESA) and the Low Income Home Energy Assistance Program (LIHEAP) on water conservation measures
3.2.4	**Incorporating ESJ Considerations into Consolidations of Small Water Companies**	When reviewing consolidation applications, utilize Cal Enviro Screen water-related indicators, other tools, and local engagement opportunities to understand if consolidation would benefit an ESJ community.	Water Division	Small Company and Compliance	1- Train Water Division staff on Cal Enviro Screen and water-related indicators 2- Run analysis for every consolidation application 3- Incorporate discussion of ESJ issues into decisions and resolutions
3.3 Extend Rail Safety to ESJ Communities					
3.3.1	**Section 190: Grade Separation at Existing Crossings - Outreach & Prioritizing ESJ Communities**	Revise Section 190 formula to include a prioritization for ESJ communities. Ensure ESJ communities and their local governments are aware of opportunity to apply for Section 190 funding.	Rail Safety Division	Rail Crossings & Engineering	1- Meet with sister agencies to understand prioritization of ESJ communities in other formula-based funding programs 2- Do initial mapping to understand overlap between high accident rates and CalEnviroScreen-defined disadvantaged communities 3- Update formula to include some prioritization of ESJ communities 4- Conduct more proactive outreach to local governments to apply for funding
3.3.2	**Homeless Encampments: Continued Collaboration with Local Governments**	Continue collaboration between Rail Safety Division and the News and Outreach Office to meet with local governments and other transportation partners to triage issues related to homeless encampments and accidents along rail lines.	Rail Safety Division	Railroad Operations Safety Branch and News & Outreach Office	1- Create a plan for outreach in key areas where potential strikes along rail lines are increased due to encampments; schools and businesses; any local activities that may create risks along tracks. 2- Ensure a diversity of local government and community organizations are involved alongside regulated railroad companies

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities. (17 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
3.3.3	**Opportunities for ESJ Comments in Environmental Letters**	Explore opportunities to incorporate general comments in environmental letters about assuring the consideration of environmental and social justice issues when designing and approving a project.	Rail Safety Division	Rail Crossings & Engineering and Rail Transit Safety	1- Create boilerplate language that can be adapted by staff that speaks to ESJ issues 2- Disseminate amongst staff and provide resource to assist in incorporating comments
3.3.4	**Involving ESJ Communities in Rail Proceedings**	Work with News and Outreach Office to ensure applications and proceedings are proactively publicized to relevant local governments and CBOs, especially those in ESJ communities.	Rail Safety Division	Rail Crossings & Engineering	1- Contact News and Outreach Office when new rail crossing application is received 2- Promote opportunities to provide public comment in the Docket Card
3.4 Extend Essential Communications Services to ESJ Communities					
3.4.1	**Increase Collaboration and Knowledge Share Across Telecommunications Public Purpose Programs**	Bring together Public Purpose Program staff - including Lifeline, California Advanced Services Fund (CASF), California Teleconnect Fund (CTF), California High Cost Fund (CHCF) Parts A & B, and Deaf and Disabled Telecommunications Program (DDTP) - to talk about shared priorities, lessons learned, opportunities to leverage advisory committees, and to understand programmatic impact in ESJ communities.	Communications Division	Consumer Programs	1- Establish staff-level working group. 2-Host meetings to educate each other about programs and shared issues. 3- Conduct cross-program analyses using GIS to assess program impact across different geographical areas.
3.4.2	**Implementation of $6 billion Broadband Legislation**	Given significant new investment and expansion of programs, ensure that investments are benefiting as many ESJ community members as possible, that essential speeds are more available, and that ESJ communities meaningfully participate in the planning and implementation of the programs and investments.	Communications Division	Consumer Programs; Broadband Deployment Branch	1- Ensure planning and implementation meaningfully involves community-based organizations and representatives from ESJ communities. 2- Use GIS to identify ESJ communities that lack fixed broadband speed of 25/3 or better. 3- Further, for areas that do have 25/3 or better, ensure their rates do not create affordability concerns.

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities. (17 Action Items)					
Index #	Action Item	Description	Coordination Level	Lead	Tentative Work Plan
3.4.3	**Implementation and Lessons Learned from Tribal Technical Assistance (TA) Program**	Continue conducting outreach to California tribes and disbursing funds as part of the Tribal TA Program. Share lessons learned and best practices related to outreach, program structure, and implementation.	Communications Division	Tribal/Rural Area	1 - Per D. 20-08-005, Communications Division is assigned responsibility and authority to use California Advanced Services Fund state operations funds to provide technical assistance for Tribes. 2- Ensure tribes across the state are aware of available grant funds and opportunities to apply 3 - Continue ongoing outreach 4 - Update leadership and CPUC staff on successes and lessons learned from the program, and how to utilize as a model to reach other key ESJ populations
3.4.4	**Continue Understanding Challenges of ESJ Communities with Communications Affordability**	Understand more about concentrations of unaffordability of communications services in ESJ communities. Explore opportunities to leverage new investments to lower costs and increase essential speeds.	Communications Division	Broadband Video Markets; Consumer Programs; [Broadband Deployment Branch	1- Utilize the Commission-adopted Affordability Framework to inform programmatic and investment work moving forward 2- Continue exploring what fixed broadband speed should be deemed as part of essential communications service.
3.4.5	**Phone and Video Service for Incarcerated Persons**	Follow outcomes and lessons learned from the proceeding. Continue to develop innovative outreach, engagement, and regulatory strategies to alleviate cost for the priority population.	Communications Division	Consumer Programs	1- The Commission adopted Interim Rates for Incarcerated Calling Services in D.21-08-037, on August 19, 2021. Service providers were required to submit an Interim Rate Compliance Report to the Communications Division within 45 days of adoption, and on a quarterly basis after that. The report must include the current rate, billed minutes, revenues, and ancillary fees, broken down by interstate and intrastate.
3.4.6	**Lessons Learned from Lifeline Assessment**	Understand lessons learned in conducting a robust program assessment of a public purpose program. Consider recommendations related to prioritizing ESJ communities.	Communications Division	Consumer Programs	1- Complete assessment 2- Understand lessons learned from contractor related to outreach and engagement for the purposes of the assessment 3- Explore opportunities to prioritize ESJ communities in outcomes of assessment
3.4.7	**Continue Efforts to Increase Access to**	Continue to pursue a permanent program to improve access for foster youth, after examining lessons learned from the i-	Communications Division	Consumer Programs	1- Continue monitoring outcomes of extended iFoster pilot program 2-Explore opportunities to partner with state agencies or other organizations to close

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities. (17 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
	Lifeline Program for Vulnerable Populations	Foster pilot program and begin to develop similar programs either pilot or permanent to address special needs of other vulnerable populations such as homeless and recently released incarcerated people.			enrollment gaps for other vulnerable populations 3-Consider permanent program changes to address gaps identified by partners or in the Lifeline Assessment.

Goal 4: Increase climate resiliency in ESJ communities. (4 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
4.1 Emphasize Adaptive Capacity					
4.1.1	**Initiate Climate Change Adaptation Planning with Emphasis on Disadvantaged Vulnerable Communities**	The CPUC will ensure electric and gas utilities engage disadvantaged vulnerable communities and describe specific actions they will take in those communities, as they assess the long-term vulnerabilities to climate change of their infrastructure, services, and operations, as well as share best practices that are developed in the process.	Energy Division	Climate & Equity	1-Begin developing Community Engagement Plans 2-Begin conducting climate change vulnerability assessments with community engagement 3-Summarize lessons learned
4.1.2	**Consider Safety Policy Responses to Climate Change**	Develop a visual tool to make California climate change scenarios more accessible to all in the context of utility infrastructure impacts. Understand downstream consequences to ESJ communities and ensure meaningful collaboration with ESJ representatives in adaptation actions.	Safety Policy Division	Security & Resilience	1- Develop GIS tool 2- Develop situation report 3-Ensure findings incorporate ESJ community considerations based on collaborative community engagement

Goal 4: Increase climate resiliency in ESJ communities. (4 Action Items)					
Index #	Action Item	Description	Coordination Level	Lead	Tentative Work Plan
4.1.3	**Framework for Integrating Resiliency Planning and Evaluation into Current Grid Planning Policy**	Devise a standardized view of the concept of resiliency and adaptive capacity, and how it can be measured.	Energy Division	Microgrids & Resiliency	1- Continue alignment with Climate Adaptation proceeding and subsequent implementation, as well as other key processes such as the Risk Assessment Mitigation Phase (RAMP) and General Rate Cases (GRCs) 2- Develop tools to guide utilities in resilience planning
4.1.4	**Propose new RAMP requirement in the SMAP OIR proceeding to address ESJ in the RAMP reports.**	Require IOU's to overlay planned infrastructure mitigations on the CalEnviroScreen map to identify what portions of the mitigations would occur within disadvantaged communities, when geographic locations of proposed mitigations are known. Include the DAC proportion percentage of the mitigation in the RAMP narrative and what risk reduction is estimated for the DAC portion.	Safety Policy Division	Risk Assessment & Safety Analytics (RASA)	1-Propose this ESJ requirement in the next phase of the SMAP 2.0 OIR proceeding.

Goal 5: Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit from CPUC programs. (10 Action Items)					
Index #	Action Item	Description	Coordination Level	Lead	Tentative Work Plan
5.1 Improve Communication with an ESJ Lens					
5.1.1	**Fact Sheets and Collateral Materials**	Continue to update CPUC Fact Sheets and Brochures to ensure information is up-to-date and accessibly written.	Cross-Commission	News & Outreach Office	1- Ensure CPUC website includes collateral materials for key programs and initiatives 2- Revise and post materials in need of updates 3- Consider developing fact sheets for proceedings that may impact an ESJ community which include key information such as timelines to submit comments.

Goal 5: Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit from CPUC programs. (10 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
5.1.2	**Translation of Key Documents and Collateral Materials**	Translate key Fact Sheets and Brochures, especially those aimed at consumers, into critical languages spoken by Californians, including Spanish, Chinese, and other languages.	Cross-Commission	News & Outreach Office	1- Prioritize what materials are in need of translation 2- Understand what key languages are needed 3- Post to website
5.1.3	**Email Communication and Newsletters**	Explore opportunities to streamline email communications from the CPUC, including establishing a centralized platform for proactive and targeted communication.	Cross-Commission	News & Outreach Office and IT	1- Explore opportunities to expand use of existing email software to meet communications need 2- Understand if existing capacity can handle a centralization process 3-Understand if existing capacity can handle targeted communications using tags on proceeding related documents 3- Roll out any new plan to relevant CPUC staff
5.1.4	**Interpretation Availability at CPUC Meetings**	Pursue standard policy for when to incorporate interpretation services outside of request process.	Cross-Commission	News & Outreach Office	1- Explore the feasibility of providing in-language technical assistance prior to hearings. 2- Draft materials and share with CPUC staff regarding how to request interpretation services, both for internal purposes and for external needs 3- Consider a policy with concrete criteria for when to incorporate interpretation on a proactive basis.
5.2 Continue to Emphasize Engagement with Community Based Organizations (CBOs)					
5.2.1	**Engage CBOs Statewide**	Work alongside utilities to understand partnerships with CBOs, including their statewide spread, funding landscape, and opportunities to deepen engagement in ESJ communities.	News & Outreach Office and Energy Division	News & Outreach Office	1- Gather information related to CBO partnerships and their geographic reach 2- Consider opportunities for deeper engagement in key geographies 3- Explore areas for coordination between CPUC outreach efforts and utility partnerships
5.2.2	**Deepen Relationships with CBOs in TEAM and CHANGES**	Continue to explore opportunities to leverage network of CBOs working under TEAM and CHANGES programs.	News & Outreach Office	News & Outreach Office	1- Continue to work with lead contractor to understand what CBOs are learning on the ground 2- Continue to channel feedback within CPUC 3- Consider convening CBO partners to share insights, lessons learned, and explore further collaboration

Goal 5: Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit from CPUC programs. (10 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
5.3 Build Pathways for Public Participation					
5.3.1	**Best Practices for Virtual and Hybrid Meetings**	Coming out of COVID-19 Pandemic, promote virtual meetings that facilitate broad participation.	Cross-Commission	News & Outreach Office	1- As events return to being conducted in-person, include a remote access option as appropriate and ensure that remote participants can meaningfully participate in event 2- Explore mobility challenges related to accessing in-person events 3- Continually review best practices and lessons learned on hybrid community engagement, including when to incorporate interpretation services, to offer internal guidance for continual improvement
5.3.2	**Public Participation in Transportation Proceedings**	Work to create pathways for CBOs and other intervenors to be able to better participate and provide feedback for proceedings and programs related to transportation network companies (TNCs), autonomous vehicles (AVs), charter-party carriers (TCPs), passenger stage corporates (PSGs), and vessel common carriers (VCCs)	Consumer Protection & Enforcement Division and Administrative Law Judge Division	Transportation Licensing & Analysis	1- Explore opportunities to expand Intervenor Compensation Program (ICOMP) for purposes of funding participation in transportation proceedings 2- Work with the Public Advocates Office (PAO) to identify CBOs for ESJ communities and proactively engage them to participate through CPUC's public comment options and transportation proceedings
5.4 Enhance Engagement with Particular ESJ Communities					
5.4.1	**Engage and Serve Communities with Access and Functional Needs**	Work with AFN representatives to better understand key issues, collaborate with communities with AFN, and serve their needs in CPUC regulatory policy.	Safety Policy Division	Security & Resilience	1 - Continue with baseline work within Safety Policy Division; 2 - Determine overlapping proceeding work and/or outcomes with ESJ priorities 3 - Determine which CPUC regulatory policies at year 1 and year 2 serve the needs of individuals and communities with AFN.
5.4.2	**Bolster CPUC's Tribal Land Transfer Policy**	Via a rulemaking process, revisit the Tribal Land Transfer Policy and ensure lessons learned thus far ensure that tribal communities can maximize benefits and opportunities available.	Executive Office	Executive Office - Tribal Advisor	1- Open rulemaking to consider key questions in updating the Policy 2- Ensure a diversity of tribal perspectives are included in the rulemaking process 3- Maximize opportunities for tribes to take advantage of the Policy

Goal 6: Enhance enforcement to ensure safety and consumer protection for ESJ communities. (10 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
6.1 Protect ESJ Consumers					
6.1.1	**TEAM/CHANGES Program Updates**	Have TEAM/CHANGES contractor present to the Low-Income Oversight Board (LIOB) annually to offer on-the-ground perspectives of customers with Limited English Proficiency (LEP).	News & Outreach Office	News & Outreach Office	1- Work with LIOB to set briefing on calendar 2 - Prepare presentation and post online for remote access 3- Consider other venues and opportunities to share insights
6.1.2	**Strategize Use of Consumer Affairs Data in ESJ Policies**	Work with ESJ liaisons to determine if and how Consumer Affairs Branch (CAB) data can contribute to and inform ESJ policies.	Cross-Commission	News & Outreach Office	1- CAB will present to ESJ liaisons and explain the type of data that is collected 2 - ESJ Liaisons and CAB will brainstorm whether this data could contribute to any existing or future ESJ policies at the CPUC
6.2 Conduct Proactive Action & Analysis in Transportation and Utility Enforcement					
6.2.1	**Proactively Initiate Compliance Checks in ESJ Communities**	Consider opportunities to proactively work in ESJ communities to ensure compliance with CPUC regulations.	Consumer Protection & Enforcement Division	Transportation Licensing & Analysis, Transportation Enforcement, Utility Enforcement	1- Analyze complaint data to understand overlap with ESJ communities and adjust enforcement strategies as appropriate 2- Consider prioritizing ESJ communities when performing compliance checks or conducting field enforcement work
6.2.2	**Include ESJ filters in quarterly scanning of CAB complaints to identify trends and patterns of consumer issues in ESJ communities**	Identify potential targets for inquiries and/or investigations using Census data to identify complaints occurring within ESJ communities.	Consumer Protection & Enforcement Division	Utility Enforcement	UEB analyzes CAB data to identify targets for inquiries and/or investigations. Using Census data, staff will identify ESJ communities to further delineate complaints from these communities 1-Analyze monthly energy and telecommunications CAB complaint data 2-Filter complaints for relating to ESJ communities using census data 3-Identify patterns and changes 4-Target subjects for inquiry or investigation

Goal 6: Enhance enforcement to ensure safety and consumer protection for ESJ communities. (10 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
6.2.3	**Expand Opportunities to Leverage Enforcement Action Settlements for ESJ Purposes**	Building on long-running practice of supporting low-income and ESJ-related programs, consider ESJ communities when considering alternative enforcement options.	Consumer Protection & Enforcement Division	Transportation Enforcement and Utility Enforcement	1- Develop internal CPED guidance on how to optimize settlement agreements to benefit ESJ communities when settlement funds are available stemming from UEB / TEB enforcement actions 2- Implement this practice of considering ESJ communities in all future settlement agreements stemming from enforcement actions when legally permitted
6.2.4	**Analysis of Potential Redlining in ESJ Communities by Transportation Network Companies (TNCs)**	Analyze existing data to understand if passenger carriers are systematically serving ESJ communities differently.	Consumer Protection & Enforcement Division	Transportation Licensing & Analysis Branch	1- Determine if patterns of bias exist in TNC service to ESJ communities compared with others, by analyzing TNC data to include drop-off and pick-up locations, fares charged, and trip acceptance rate 2- Explore opportunities to publish report with findings
6.2.5	**Analysis of Potential Redlining in ESJ Communities by Transportation Network Companies (TNCs)**	Analyze existing data to understand if passenger carriers are systematically serving ESJ communities differently.	Consumer Protection & Enforcement Division	Transportation Enforcement Branch	1- Open an investigation if analysis and report by Transportation, Licensing, and Analysis Branch (TLAB) suggests probable violations 2- Take appropriate enforcement action as warranted by the facts of the investigation
6.3 Apply ESJ Lens to CPUC Enforcement Policy					
6.3.1	**Develop an ESJ Lens for New CPUC Enforcement Policy**	Based on lessons learned from sister agencies, develop a training on ESJ issues and guidance on how to approach enforcement from an ESJ perspective. Consider pilot opportunities.	Cross-Commission	ESJ Core Team	1- Consult sister agencies on opportunities to do targeted enforcement actions in ESJ communities. Gather best practices. 2- Develop ESJ lens for CPUC Enforcement Policy. 3- Consider pilot exercises.
6.4 Maximize Opportunities within Utility Audits					

Goal 6: Enhance enforcement to ensure safety and consumer protection for ESJ communities. (10 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
6.4.1	**Develop a Community Engagement Step to Gas and Electric Infrastructure Safety Inspection Process**	In performing ongoing audits and inspections of both electric and gas infrastructure, add a step that includes outreach and engagement with the community to develop a more holistic picture of on-the-ground safety conditions. Consider specific guidance for conducting safety inspections in ESJ communities.	Safety & Enforcement Division	Electric Safety & Reliability and Gas Safety & Reliability	1. Add a step to existing safety inspections and audits that engages the community to record any experiences and/or concerns with safety of the infrastructure. 2. Ensure SED staff know how to access support resources and consider training on implementation. Involve New & Outreach staff in area for assistance with community outreach.
6.4.2	**Data Analysis and Mapping of Audit Data and Incident Reports to Understand Geographic Distribution and Potential ESJ Cumulative Impact**	Work with existing data from past gas and electric infrastructure audits and inspections to understand if ESJ communities suffer safety burdens or any potential "hotspots" of issues. Consider development of process for ongoing geographic analysis to identify safety problems in these communities.	Safety & Enforcement Division	Electric Safety & Reliability and Gas Safety & Reliability	1. Conduct a pilot to map selected citation data from selected safety inspections and audits, to identify possible correlation with the number of safety citations in a location and the type of community. 2. When an inspection team audits an operator's records and facilities, SED should confirm that it reviewed an adequate number of field facilities located in ESJ communities. 3. Develop an internal process to continue ongoing geographic analysis of safety incidents and how to handle potential identification of "hotspots". 4. Consider opportunities to publish results of analysis.

Goal 7: Promote high road career paths and economic opportunity for residents of ESJ communities. (5 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
7.1 Maximize Authority to Promote High Road					
7.1.1	**Implementation of MOU with CA Workforce Development Board**	Continue working with CWDB to provide recommendations to CPUC proceedings to encourage utilities to foster high road career paths.	Cross-Commission	ESJ Core Team	1- Develop best practices resource with input from stakeholders and ESJ communities 2- Share lessons learned, and best practices developed thus far with CPUC staff and sister agencies 3- Provide direct feedback and recommendations to CPUC staff on what workforce-related components could be incorporated into policies and programs

Goal 7: Promote high road career paths and economic opportunity for residents of ESJ communities. (5 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
7.2 Educate on High Road Careers					
7.2.1	**Share CPUC-specific Best Practices**	Provide presentations, training, and resources to CPUC staff regarding strategies and practices of a high road approach to workforce development, as well as other practices already underway within the CPUC and best practices from other regulatory agencies.	Cross-Commission	ESJ Core Team	1- Develop a brief primer on the high road, including Governor's Executive Orders, key principles and definitions, and examples of incorporation into CPUC programs and/or policies 2- Disseminate across CPUC
7.3 Partner with Utilities and Sister Agencies					
7.3.1	**Expand the Impact of Best Practices**	Provide presentations, training, and resources to regulated utilities and sister agencies in support of replicating the high road measures adopted by the CPUC across California's portfolio of clean energy and transportation investments.	Cross-Commission	ESJ Core Team	1- Develop a brief primer on the high road, including Governor's Executive Orders, key principles and definitions, and examples of incorporation into CPUC programs and/or policies 2- Disseminate across state government
7.3.2	**Leverage Sister Agencies to Maximize High Road Opportunities for ESJ Communities**	Build relationships and partnerships with sister agencies with business-related missions, including the Contractors State Licensing Board (CSLB), to maximize high road job opportunities for ESJ communities in industries under CPUC oversight.	Cross-Commission	ESJ Core Team	1- Work with CWDB to understand sister agencies with potential mission and industry alignment 2- Build relationships and pursue partnership opportunities to improve labor practices and working conditions within industries that are under CPUC oversight and target ESJ communities for services and employment
7.3.3	**Furthering Utility Supplier Diversity**	Examine how proceedings impact supplier and workforce diversity and assess resulting impacts on ESJ communities.	News & Outreach Office	News & Outreach Office	1- Follow outcome of proceedings, especially as it relates to supplier diversity and impacts on ESJ communities

Goal 8: Improve training and staff development related to ESJ issues within the CPUC's jurisdiction. (8 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
8.1 Bolster Staff Knowledge on ESJ Issues and Resources					

Goal 8: Improve training and staff development related to ESJ issues within the CPUC's jurisdiction. (8 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
8.1.1	**Division-Specific Training on Incorporating ESJ Issues into Proceedings**	Work within each CPUC division to provide tailored trainings for staff on how to incorporate ESJ issues into CPUC processes.	Cross-Commission	ESJ Core Team	1- Create a baseline training 2- Engage industry division leadership to schedule training and develop division-specific content 3- Deliver in partnership with ESJ Liaison
8.1.2	**ESJ Session at New Employee Orientation (NEO)**	Continue to host ESJ session at NEO, including background on redlining and the environmental justice movement, key definitions, and where staff can access resources.	Cross-Commission	ESJ Core Team	1- Continue refining curriculum 2- Pursue opportunities to provide similar training to staff that are not new employees
8.1.3	**Web Resources - CPUC ESJ Action Plan Webpage and Internal ESJ Resource Website**	Update and maintain ESJ Action Plan webpage. Build out internal ESJ SharePoint website and ensure it is updated with helpful resources and tools for CPUC staff.	Cross-Commission	ESJ Core Team	1- Update ESJ Action Plan webpage with relevant information and remove old content 2- Update internal ESJ SharePoint to include external guides and resources, as well as library of all internal training materials and additional state resources 3- Ensure staff are aware of different webpages
8.1.4	**Tribal Engagement Training**	Establish commission-wide protocols for training on engaging with tribes.	Cross-Commission	Executive Office - Tribal Advisor	1- Develop training materials to improve staff awareness of best practices for tribal engagement 2- Develop plan for disseminating information to relevant commission staff 3- Consider including Tribal Engagement training in New Employee Orientation or other commission-wide professional development opportunities
8.2 Support Emerging Priorities and Skill Needs					
8.2.1	**Alignment with Upcoming Racial Equity Action Plan (REAP)**	Support CCORE cohort to implement forthcoming CPUC REAP and support any efforts to conduct training for staff on racial equity issues.	Cross-Commission	Office of the Commission	1- Follow development and finalization of Racial Equity Plan 2- Understand where there is alignment with ESJ Action Plan and opportunities for collaboration 3- Be strong, visible allies and proponents of the Racial Equity Plan
8.2.2	**Community Engagement Training for CPUC Staff**	Based on existing Community Engagement and Outreach Curriculum, modify, and implement a training to educate staff on effective and meaningful practices for involving ESJ communities in CPUC efforts.	Cross-Commission	ESJ Core Team	1- Review State Agency CEO Curriculum 2- Confer with CCORE staff on CEO best practices and adapt for CPUC CEO purposes 3- Offer training opportunities on a regular basis 4- Partner with News and Outreach to deliver training

Goal 8: Improve training and staff development related to ESJ issues within the CPUC's jurisdiction. (8 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
8.2.3	**Advance Diversity, Equity, and Inclusion**	Continue to pursue staff training to foster a work culture that values diversity and aims to be representative of California populations.	Cross-Commission	Human Resources Division	1- Continue offering trainings to promote diversity in hiring 2- Detail success, challenges, and opportunities in annual Human Resources Division Annual Review
8.2.4	**Meeting Facilitation Training for Staff**	Offer training to CPUC staff on facilitation and how to run effective workshop and/or community meeting.	Cross-Commission	ESJ Core Team	1- Review existing curricula on effective meetings and workshop ideas 2- Work with HR Training Office to adapt for CPUC purposes 3- Consider having an outside consultant or sister agency deliver components of training 3- Deliver to CPUC staff and offer a virtual option for ongoing access

Goal 9: Monitor the CPUC's ESJ efforts to evaluate how they are achieving their objectives. (4 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
9.1 Establish Consistent Quantitative Metrics					
9.1.1	**Metrics to Measure Impact, Community Outreach & Engagement**	Develop metrics, criteria, and guidance to ensure that programs and/or funds are having the intended effect and measure meaningful and effective outreach and engagement.	Cross-Commission	ESJ Core Team	1-Catalogue the existing set of data and metrics currently being used by utilities to measure community engagement 2- Review best practices in the field and consult sister agencies 3-Develop customizable set of criteria for utility outreach, engagement, and benefit to community 4- Sync with efforts to align Marketing, Education, and Outreach (ME&O) Plans within Energy Division
9.1.2	**Data Collection: Standardizing Data Requests & Key ESJ Indicators**	Create an internal working group to look at issues related to standardization in data requests, the quality of the data, how it can be shared and used given privacy concerns, and how to utilize key indicators to perform equity/ESJ analyses.	Cross-Commission	Office of the Commission	1- Create Working Group; 2- Create data request templates for various categories of data requests; 3- Highlight key indicators/metrics that should be used to understand ESJ impacts; 4- Explore the need for a working group of internal and external stakeholders impacted by CPUC's data collection efforts.

Goal 9: Monitor the CPUC's ESJ efforts to evaluate how they are achieving their objectives. (4 Action Items)					
Index #	**Action Item**	**Description**	**Coordination Level**	**Lead**	**Tentative Work Plan**
9.1.3	**Geographic Distribution of Low-Income Programs + Ongoing Analyses**	Institute practice of evaluating geographic distribution of program uptake and policy implementation to understand outreach gaps and if ESJ communities are especially impacted.	Cross-Commission	ESJ Core Team	1- Ensure CPUC staff is well educated in CalEnviroScreen and other equity tools, as well as how to perform simple geospatial analysis 2- Initiate analysis in key programs, with the goal of making it standard practice across all programs 3- If there are particular ESJ impacts (i.e., program not reaching priority communities or a particular policy disproportionately impacting ESJ communities), take steps to address the issue
9.2 Promote Meaningful Feedback Loops					
9.2.1	**Metrics to Measure Satisfaction, Comprehension, and Experience**	Identify qualitative information-gathering strategies of utilities and evaluative spectra to help measure issues such as comprehension, satisfaction, and effectiveness of utility marketing, education, and outreach. Ensure there are pathways to act on information received.	Cross-Commission	ESJ Core Team	1- Review best practices in the field and consult sister agencies 2-Develop customizable set of qualitative criteria for satisfaction, comprehension, and experience 3- Sync with efforts to align Marketing, Education, and Outreach (ME&O) Plans within Energy Division 4- Develop strategy which includes but is not limited to interviews and surveys in collaboration with ESJ communities on key issues of interest 5- Conduct surveys in ESJ communities and analyze results.

Appendix B: Summary of February 2021 Workshop

This Appendix provides a summary of the CPUC ESJ Action Plan – Update Workshop held on February 3 & 4, 2021. This summary highlights commentary shared during the various sessions of the workshop and feedback received via email. It is not a full transcript, nor does it include everything submitted via the chat box. To view session recordings and full chat logs from the workshop, please visit: www.cpuc.ca.gov/ESJActionPlan.

Turn Out Numbers for February 2021 ESJ Action Plan - Update Workshop	
External Participants (Utilities, Community Based Organizations, etc.)	438
Internal Participants (CPUC Staff)	190
TOTAL PARTICIPANTS	628

Comments Received via Email	
Small Business Utility Advocates	East Bay Community Energy
Institute for Governance & Sustainable Development (IGSD)	Richard Skaff
California Water Association	HolLynn D'Lil
Pacific Gas & Electric (PG&E)	Connie Arnold
Steven Birdlebough and William Smith	

Key Themes from Workshop

- Partnerships with community-based organizations (CBOs) are essential to reaching and benefitting ESJ communities. Ensure these partnerships are resourced and that CBOs are given room to deploy a variety of strategies to meet community needs.
- Think about what it takes to do meaningful engagement. CPUC meetings and activities should strive to be more accessible and welcoming.
- Coordinate and align as much as possible. In order to best reach ESJ communities and maximize impact, programs and policies should align both eligibility criteria and outreach efforts. Leverage work of sister agencies as well.
- Work towards more transparency of data and information. Provide stakeholder and CPUC staff with tools and resources to facilitate analysis of ESJ issues and impacts.
- Reconsider traditional cost-effectiveness measures. Understand how investments benefit ESJ communities.
- Prioritize accessibility of programs and meetings to populations with access and functional needs.

Workshop Session Summaries

CPUC Programs and Policies

- Introductory remarks from Kathleen Yip (CPUC) focused on how there are many different definitions and terms used to define vulnerable and disadvantaged communities. Definitions are important because they are used to make decisions and to determine eligibility in programs. The goal with this session is to raise awareness around definitions, and to discuss how to update these terms to further ESJ Action Plan goals.
- Remarks from Amee Raval (Asian Pacific Environmental Network) addressed three main points. First, that definitions matter. Definitions especially matter when targeting protections and investments, especially for communities that have experiences historical injustices, such as redlining and underinvestment. Communities face multiple complex challenges, and there is therefore a need for a range of different tools to capture and address those. Second, having an adaptive approach to crafting definitions is important for balancing tension between inclusive approaches and more targeted approaches. A balanced approach, for the purposes of ESJ definitions, means that the definition arrived at will depend on the problems a program or policy is meant to solve. If decision makers take into consideration and evaluate these problems, they should land in an appropriate definition. But they should be guided by some form of general framework. Third, definitions should be guided from a community perspective. A people centered approach helps to maximize community benefits.
- Kathleen Yip (CPUC) notes that having many different definitions can create confusion for both state agency staff and the public. There will be an attempt to catalogue all used definitions with the CPUC. Beyond that, should a framework or template for definitions be developed to help guide CPUC staff and stakeholders?
- Key takeaways from discussion include:
    - No single definition can be applied to a multitude applications and programs. That would be reductive. A definition, just like criteria, needs to be adaptive to sets of issues that are distinct. But a foundation, baseline, or an analysis of overlap and distinctions, would be helpful.
    - We must understand that a group has names for itself that we need to be mindful and respectful of, rather than just calling them "Disadvantaged Communities."
    - There is a need to balance between having very prescriptive, targeted definitions that are hard to communicate with ensuring that wealthier communities do not take advantage of incentives, for example. Collaboration and being adaptive will be key here.
    - Interagency cooperation is very important, both to understand their definitions and priorities and to move quickly to meet climate change demands.

- » How do we get communities to the table, what are their barriers and how can they overcome them? We must recognize racism and other inequalities that have ensured that some communities do not even get information on decision-making, and that some communities technically, on paper, do not "exist," and do not even know about their barriers. We must think about adaptive and flexible methods to address their needs.
- » Could consider a "baseline" definition with "plug and play" options to help with streamlining definitions.
- » Tools like CalEnviroScreen are very useful, but not inclusive of all needs especially around vulnerability. Tools should be adaptive.

BREAKOUT SESSIONS: ESJ in CPUC Industry Divisions

Transportation & Rail

- Matthew Bond (CPUC) and Terra Curtis (CPUC) ask for suggestions of how the ESJ Action Plan can incorporate action items related to transportation network companies (TNCs) and rail safety.
- Section 190 is a state program that funds grade separation for existing at-grade rail crossings. Could consider opportunities to prioritize ESJ communities for this program.
- Data related to TNCs (such as Lyft and Uber) could be looked at in a geographic way to understand impacts in ESJ communities. Especially related to where pick-ups are or are not happening. There has not been much TNC data published publicly since 2015. Within this year, should be able to share more about that question.
- Are there opportunities to regulate TNC-related smog and congestions, such as limiting number of TNC drivers that can be on the road? This is likely a question for local governments and CPUC could engage and collaborate more at the local level on these kinds of questions.
- How can CPUC help with issues of homeless encampments along railroads? How can we bring people together around the issue?
- How can we involve more community in transportation and rail related proceedings? The process can be complicated, and Intervenor Compensation is not available for these categories of proceedings. Need to be proactive in engaging people and seek opportunities to fund down the road.
- Planning for electric vehicle charging infrastructure occurs within the Energy Division, currently being thought through in the Transportation Electrification Framework.

TELECOMMUNICATIONS

- Wylen Lai (CPUC) and Michael Minkus (CPUC) ask participants to reflect on the experience of their communities with broadband/internet during the COVID-19 pandemic, about how to better understand the impact of communications public purpose programs from a geographic perspective, and to highlight any other issues.
- Broadband access in rural communities is challenging with such limited infrastructure. Families are having to choose between rent, food, and broadband during this time all while losing employment. Programs and opportunities are not always made to service residents. Without broadband access, can feel cut off from the rest of society.
- Many monolingual families rely on their children to familiarize with technology and how to transition to online learning. Those that have children in school have better access to broadband resources.
- Southern California experiences a lot of challenges, especially related to affordability.
- Need to see big companies, like T-Mobile and Frontier, more involved in these discussions.
- Digital divide is not new, some sort of technical assistance or incentive for jurisdictions to apply to these programs is needed. Also, need to ensure mobile homes are eligible for programs.
- Public purpose programs need to have a true social justice lens and barriers to applying need to be removed. There used to be funding for direct community outreach and support, this approach is stronger than leaving the carriers to do it.
- Consider leveraging existing advisory groups to involve communities. Also, if phone companies having people in parking lots to get customers to sign up for carrier phones, why are they not also signing customers up for Lifeline?
- Can we use examples of creative partnerships formed during the COVID-19 pandemic (between schools and businesses) to better promote broadband access?
- As we move towards more remote access, going to perpetuate same inequities we've always had – monolingual, immigrant, black, brown and people of color being excluded from decision-making process. CPUC and carriers must hear directly from residents about broadband issues.
- Need to also keep an eye on internet speed.
- Rethink cost effectiveness strategies. If we continue to work within that framework, it will continue to perpetuate same inequality we have today.
- Communities are limited in ability to participate on advisory committees. Need to consider having funding and stipends, a welcoming environment, bring information to the community and work on their turf. Also there used to be limitations that if you participated in an advisory committee than you could not participate in CPUC-funded grant projects. Hopefully that has changed.

WILDFIRE SAFETY

- Koko Tomassian (CPUC) introduces topic of the Wildfire Threat Maps. These maps were scoped and developed to identify areas prone to catastrophic fires and areas for increased safety regulations. Adopted for a specific proceeding and a specific purpose, with a ten-year refresh schedule. This map underpins utility operations and decision making to mitigate wildfire risk. As use of map evolves and we evaluate how or whether the map should be updated, how can we place ESJ considerations of the map?
  - » Map could be adapted related to the objectives of the CPUC. For example, if the objective to look at prevention, then the map would look different.
  - » Can also consider how does it integrate with other maps (such as the community wildfire protection plans that exist in local government level)?
  - » Could incorporate fire threat map with other programs. How does this map influence other types of decision making? What other contextual factors can the map account for?
  - » What are the goals for the map? Do utilities know where medically vulnerable groups are? Safety is important and need maps of these populations
  - » Need to also consider safety for those who have already experienced fires and the effect of that.
  - » Could also consider a communications dependence overlay. May be useful for evacuation purposes and emergency communications.
- Shrayas Jatkar (CA Workforce Development Board) introduces topic of wildfire preparation industry and vegetation management. This is a very fast-growing industry and there are implications for worker safety, climate change, grid resilience and increased employment opportunities.
  - » Need to think about the quality of jobs. Currently a lot of reliance on foreign guest workers to do work for low pay and in hazardous working conditions. There is no standardized set of skills or training. Some new policy tools, such as SB 247 and a new training program, are helping in this space.
  - » Need to encourage workforce development in this field as there is a big need. Need to be cautious this does not distract utilities from their responsibilities. Should get more voices involved, including wildfire survivors, and more meaningfully consider public comments.
  - » There is a high fatality rate and very little safety training in forestry workforce. Another issue is lack of enforcement. Need to create a requirement that contractors must demonstrate that workers receive adequate training before getting into state contracts.

Systematizing ESJ Considerations: Incorporating ESJ Issues in to CPUC Proceedings and Processes

- Mad Stano (Greenlining Institute) remarks that pollution burden and burden of utility costs are truly life threatening. We must root our thinking on viewing it as such and not just on processes and intending that these processes will resolve impacts at local levels. There is now legislative guidance to require meaningful conversations from communities most impacted by pollution. We cannot decarbonize without centering voices of community, and we cannot implement just and reasonable rates without centering those most impacted. We need to make a case for systematizing this approach. Communities and justice are administered through CPUC activities and actions. How do we reform criteria that leadership is held to when making decisions?
- Administrative Law Judge (ALJ) Ava Tran (CPUC) shares that the CPUC has been working on how to approach ESJ issues within its proceedings. ALJs are being encouraged to discuss ESJ issues within rulings to determine whether or not there are any impacts and to cope in any issues. News and Outreach team can assist by creating an outreach plan to inform interested parties and advise local organizations on how to become parties to proceedings. There are other opportunities to get involved, such as providing public comment. How do we ensure we have sufficient representation in proceedings? How do we better scope ESJ issues into proceedings? What should we be looking at to consider any potential impacts?
- Key takeaways from discussion include:
  - The CPUC has been one of the most difficult organizations to create a pipeline for communication and brining community participation forward. There needs to be an emphasis on hearing from local voices.
  - The San Joaquin Valley Affordable Energy proceeding offers a better model.
  - Incorporating a geographic analysis and pairing that with community engagement can help drive a substantive and long-standing commitment to responding to issues.
  - Could be good to learn from AB 617 Community Air Protection implementation. How can the CPUC both learn from and implement community input through community-based organizations and leveraging ongoing efforts of sister agencies?
  - There is a difference between "service list" outreach and true community engagement and outreach. It is scary to think of the small group of people that are involved as parties and people that are apart of decision-making process, yet their decisions and processes impact a larger population.
  - Intervenor Compensation does not solve the issue of involving communities. One example includes waiting 3-4 years for compensation.
  - Community organizations need more technical assistance to support participation in programs and proceedings. Often a lawyer is needed. Need to think about how community

members can be involved, and be specific (I.e., a different strategy for Spanish speakers and Hmong speakers).

- Need to build more public understanding of the CPUC's role. Local folks to not know the connection or the importance of the CPUC's role.
- While a lot of money has become available because of the pandemic, it has revealed a "digital desert" with communities not having enough expertise to be able to apply to programs to connect communities with resources. Need technical assistance to help with access.
- If there is a way to create meaningful conversations and discussions to allow community members to learn and provide input on proceedings. As a community organization, it is hard to find proceedings, so hard to imagine the energy and work it would take for community members. Encourage the CPUC to make information more accessible- visualization tools, more outreach, videos, translation, —it can empower communities to provide their input.

Tracking and Measuring: Data Collection to Better Understand CPUC Impact in ESJ Communities

- Kathleen Yip (CPUC) opens the session by highlighting the focus being on quantitative data and issues of collection, transparency, tracking, and impact on ESJ communities.
- Jamario Jackson (Transform) remarks that the CPUC should recognize harms and injustices to the communities it serves and protects. To do so, it must ask: what are indicators that can show harms and injustices? Once the CPUC answers that, it can start making improvements. Historically, government and industry have both created these harms. Some are intentional, others are not. All these make for challenges. The CPUC covers many sectors so standardized indicators are different across these, and so we need strategies to tackle that.
- Area where a lot of improvement can be made is to go beyond data and look at how is data collected and its impact. Another area is to consider areas where there is no data, which requires data stewardship, and ethical considerations, both internal and external. Yet another area of improvement is transparency. Data should be accessible and easily discoverable.
- Iain Fisher (CPUC Public Advocates Office) highlights the challenge of getting a person-centered approach to utility data management. In the CPUC, there are a vast range of approaches to data. In sum, each proceeding has a set of question for which it gathers data, which makes that dataset unique to that proceeding and question. But there are in the CPUC examples of broad data collection efforts, e.g., broadband data, which answers many questions that can be used in the future for different purposes. In general, there needs to be more cross-division standardization.
- Kathleen Yip highlights that we cannot fix what we cannot measure. CPUC needs to be accountable and show that we do what we say we will do. One primary issue is the lack of

standardization. Because of this lack, we cannot compare programs or proceedings. Another issue is that utilities can submit data in cumbersome formats and on different scales and metrics. The quality of the data is inconsistent - how to address that? How do we make data both better and more accessible to the public, given privacy and confidentiality issues? How do we measure impact on public policy? One attempt at an answer is to create standard baseline. To do that, we can ask: which indicators ought to be included from an ESJ perspective? What types of data would be useful across proceedings, projects, and programs?

- Iain Fisher points out that to improve quality you need to understand the business process of utilities: what points of the business process do you need to measure?
- Jamario Jackson looks back at the ESJ Action Plan and asks to focus on ensuring protection and benefits to consumers. How do you measure that? Recommend breaking it into smaller chunks and asking the community what the indicators they feel strongly about.
- Iain Fisher reminds that we need to ask what data utilities should collect and what do they have the right to collect.
- Kathleen Yip remarks that a key challenge is to figure out how to publish data that protects privacy on an accessible portal on the CPUC website that can be used by the public. Iain Fisher further mentions that privacy is very important and affects utilities, customers, citizens. Important to mention that part of reason why the CPUC is careful in treading into granular data is privacy issues. Avoids collecting some levels of data for this reason. What we need to do is build a framework on privacy for the CPUC.
- Jamario Jackson mentions one opportunity is that if data from different sources is imported into the same tool, that is an opportunity to explore implications and see patterns. One example could be to see how power shutoff data can be plugged in with redlining data to see if there's correlation. Such an approach would allow advocates to experiment with data. If CPUC provided such data, community organizations could use it. However, even when we have data, sometimes we are not heard by lawmakers and decisionmakers. Strength comes from marrying data with ground troop communities.
- Key takeaways from discussion include:
    - » Being able to standardize data from the three big IOUs, specifically disconnections data, would save a lot of time and energy on the analytical end.
    - » Could consider a geographically focused pilot on standardizing data.
    - » There is some standardization happening in wildfire space with GIS templates used to map utility assets. Still big issues with quality of data and privacy issues when it comes to publishing.
    - » Privacy becomes a hard challenge to manage. With transportation as an example - When you want to improve service or understand behavior, you need pick up and drop off data, and that can suggest movement patterns. On the other hand - as consumers we release a lot of

such data to companies unknowingly and knowingly. Only some people should maybe see it. Merits a larger conversation. Equity and integrity are important.

- » There is a dissonance between those that gather data and those that live the disparity. The data gathering and data must be relevant for people affected, people who live the disparity.
- » Must be understanding when communities sometimes do not want to share information with government. Need to consider strategies that don't require add-on information (like addresses, etc.)
- » Organizational patterns of IOUs might be inappropriate for ESJ data gathering. We need person or community level data. Collecting and ground truthing data with communities can be married with utility level data collection.

Public Comment Session

- Consider how to keep workshop participants in contact and engaged. Could do quarterly or regular engagement.
- All utilities should have a medical baseline program. Additionally, what is the CPUC doing to ensure cell service has backup power during shut off events? What is the CPUC doing to ensure utilities meet Public Safety Power Shut Off guidance? When will funds be added to the Self-Generation Incentive Program (SGIP).
- Need to consider how Community Choice Aggregators (CCAs) play into these ESJ topics and issues.
- Stakeholders with a lot of political and financial capacity can advocate for programs that fit their needs. We need programs with less barriers so that they are equitable. Sometimes regulation results in high barriers and it isn't equitable.
- Take a closer look at consultants who prepare reports and analyses for the CPUC. Consultants from out of state may have little connection to communities and history in California.
- Community is not involved in transition to solar and electrification. Mandates are coming top down and not from community. Need to look at grassroots efforts. Education is missing in these communities.
- On issues related to zero-emission vehicles (ZEVs) and equity, the Governor's Office has pointed to the CPUC. What is the CPUC doing to promote equity with ZEV deployment and charging infrastructure?
- Shocked that there are no comments from the disability community today. It is indicative of a lack of trust between the CPUC and the disability community. Disability needs vary. It is not clumped together in zip codes. It is not a political group even though it has so many common needs.

- Should not use privacy as an excuse to hide or obscure data.
- We need backup power during shutoffs. There is also a lack of cell service during power outages. Additionally, Transportation Network Companies (TNCs) do not provide service to people with physical disabilities.
- Significant challenges with logging in to Web Ex Platform. Zoom should be used.
- CPUC is catering to the interest of the utilities and not disabled people. Concerns are life and death. Knows of someone who had the power shut off by PG&E and died shortly thereafter struggling to breathe. Need to make sure battery backup systems are available to disabled community.

BREAKOUT SESSIONS: ESJ in CPUC Industry Divisions

ENERGY

- Amy Mesrobian (CPUC) and Alison LaBonte (CPUC) highlight there are currently 65 action items from the Energy Division in the current ESJ Action Plan
- Communities of color and low-income communities require a greater amount of funds to reach them and a more concerted effort. If programs are put out first come-first serve, early adopters and those who are motivated would take first advantage of those opportunities. Therefore, saying that that a budget is "equally available" is not equitable, because it might not reach ESJ communities.
- CPUC and IOUs are outreaching to the same communities and others remain uncontacted. Need more, smaller community organizations who can get outreach contracts as they will have the relationships and time to explain programs to new customers.
- Information that the IOUs request is too detailed and hard for customers to access and provide. Need to increase funding to smaller groups and provide adequate training to those doing outreach.
- Customers on the ground are not as satisfied with the Energy Savings Assistance Program (ESAP). IOUs are number driven and when another grassroots organization does outreach does not produce the same numbers, but they do longer term personal relationships where people go into the homes or on the phone to help these people make the changes. Need to accept a transformation in how we outreach to people to educate and not just dropping literature at people's doors. Need to foster long term behavioral changes, which is a longer process
- CPUC should help community organizations get funding for outreach, education of their staff, and education of the community.
- On solar issues, 80% of people are disqualified because they have bad roofs, so how are we helping ESJ homeowners if we cannot help them repair their roofs?

- As far as avoiding unintended impacts, be realistic and really evaluate what goes into making these programs helpful to families you are trying to reach.
- There are also a lot of scammers out there. The CPUC needs to be more proactive in regulating or screening for those scammers.
- Major challenges with how CPUC looks at cost-effectiveness. Need to consider non-energy benefits which can include pollution reduction, quality of services, and person-oriented decisions. CPUC is instead focused on IOU bottom line.
- To find best practices and good models, look to community organizations that are already doing the work and have funding at risk of being taken away. Seek ways to support them in their ongoing, grassroots efforts.
- Need to understand that a consumer's life choices have many different factors, not just focused on one specific issue. Assumptions in program design often do not take this into account.
- Standing relationships with community organizations can have the most benefit. Build in these relationships when you are building a new program. Also consider working with Community Choice Aggregators (CCAs) on program design issues.
- Create an institutional process map to make it clear to CPUC internally and externally – when and where community engagement can make a difference.
- Consider opportunities to align eligibility criteria across programs, alongside need for home and roof repairs.

Safety & Enforcement

- Liz Podolinsky (CPUC) and Nicole Cropper (CPUC) outline how the Safety and Enforcement Division (SED) deals with both gas and electric safety issues as well as wildfire safety and can identify violations and file citations.
- How can ESJ concerns be overlapped with safety considerations? Once example could be in wildfire context and guidelines for alerting utility customers about events.
- It is important for SED to understand its role in terms of equity. For example, if a community member saw a safety issue and had a concern and they made a call into the CPUC or they provided a public comment. What is the expectation from SED in terms of that response? Is expectation to respond to that in 24-48 hours? How does this relate to response time by utilities?
- Another way to look at this is looking at how public participation is measured. Is there a public participation hearing (PPH) taking place? How is it seen and processed through proceeding? Do public comments end up meeting requirements of proceedings? There needs to be an objective or measure of proceedings in order to implement ESJ lens to this work.

- PPHs are good. There should be no proceeding without a PPH. CPUC needs to ask how hearings can be approached in different ways (due to time pressures in different proceedings but also different community needs). CPUC should not bypass the opportunity to engage community members into proceedings.
- Be descriptive of how public engagement is evaluated and how public participation will be merged into decision making process.
- We must understand what contributes to risks, how are risks different within particular communities—urban, rural environment. Understanding ESJ issues is within the expectations and measurement of tools to understand the full scope of the issue.
- Hammering Home: how you engage the public is how risks can be measured.
- CPUC has recently adopted an enforcement policy to set forth policies for all divisions that are under CPUC to take enforcement actions—investigations, penalties, settling cases. One thing we have started to work on is guidelines when we approve supplemental environmental projects SEPs) in lieu of penalties. How much of a penalty should be mitigated, what the nexus between violation and remedial actions that are taken?
- Examples of SEPs that benefit disadvantaged communities include installing air filtration devices in schools, community centers, and residences to reduce the community's exposure to air pollution; monitoring groundwater quality from infiltrating stormwater to detect harmful contaminants; providing regular health screenings for affected communities; or providing community members training to enable them to identify environmental violations and to notify regulatory agencies of those violations.
- SED could consider using CalEnviroScreen to identify environmentally burdened communities that may need tailored enforcement actions. Maybe those communities could receive more safety audits? Perhaps the penalties for violations in these communities could be higher? Perhaps those communities can get quicker service?

WATER

- Steve St. Marie (CPUC) and Jefferson Hancock (CPUC) describe key ESJ-related efforts within the Water Division, including the Low-Income Water proceeding and the Affordability proceeding.
- Interest in workforce development programming and existing partnership with the CA Workforce Development Board, which looks to promote high quality jobs for ESJ communities within CPUC programs and policies.
- Specific to consolidation of small water systems, what are opportunities to streamline the consolidation process with benefits to ESJ communities? Need to better understand barriers for acquisition from the utility perspective. CPUC is mostly interested in the cost of acquisition and subsequent rate impacts to both new and existing customers.

- How is the CPUC looking to diversify its own workforce? Currently has a cohort participating in California Capital Cohort on Race and Equity to develop a CPUC Racial Equity Plan. Also have a new Diversity, Equity, and Inclusion Working Group looking more internally at staff needs.
- Different tools for looking at disadvantaged communities are highlighted, including CalEnviroScreen and tool from Department of Water Resources.
- Consolidation issue is challenging. A system may have low rates but may be poorly maintained with poor water quality. But how do you protect against rate impacts? Sometimes people want to be left alone in rural communities and do not want to be part of larger utility.

Making the Most of Marketing, Education & Outreach (ME&O): Maximizing Impact and Aligning Strategies

- Whitney Richardson (CPUC) remarks that the CPUC has a strong interest in insuring utility customers are well informed of programs and how dollars are being spent to reach program goals. How can the CPUC ensure that programs reach specific customers?
- Alex Garibay (Southern California Edison) explains that utilities develop marketing and education programs for customers and that equity is core to their work. SCE works closely with community-based organizations that can share information across multicultural groups.
- Key takeaways from the discussion include:
  - Leveraging 211/311 resources in local communities can be helpful. Ready-made infrastructure for outreach.
  - IOUs often look to quantify information (number of bill inserts, etc.) and in no other industry would a marketing and communication campaign be looked at in such a way. Instead, it Is critical to look at how that communication is being interpreted by the user. Not just the number of pamphlets distributed.
  - Need time and investment in hard-to-reach communities so they understand programs available. Need to also have patience to have a conversation about the program. Communities are capable of understanding, but a pamphlet may not be enough.
  - Do not measure success based on cost effectiveness. Sometimes pamphlets do not work all that well. Instead, a meeting with a giant poster may be more effective.
  - Give community organizations the funding to do this type of engagement.
  - Continual education is needed to achieve behavior change
  - With partnerships with community organizations, it takes time and trust to build a collaborative relationship. Make it clear this is teamwork.

- » Creative strategies with COVID-19 pandemic – Communities holding meetings through WhatsApp as it uses much less bandwidth and using Facebook Live. Ask community members how they get messages and what it takes to get them to engage. You are asking for community time, have the resident feel valued.
- » People can be wary of the CPUC and utilities. Need to take that into account.
- » Consider using neighborhood faces in local outreach campaigns. Highlight community organizations doing the work and celebrate it.
- » Come up with a list of community organizations throughout the state that people can filter and have easy access to for outreach purposes.

Appendix C:
Key ESJ Definitions & Statutes

This guide is meant to be an initial resource to assist in incorporating ESJ issues into CPUC proceedings, programs, and processes. This guide is NOT an exhaustive list of definitions, nor does it reflect the only definition for a particular term. When using this guide, please note whether a term is defined in statute (and therefore should not be modified for CPUC use) or if a term can be adapted.

This resource will continue to be updated and available internally on the CPUC ESJ SharePoint website.

Environmental Justice and Equity Concepts

Term (In alphabetical order)	Definition
Adaptive Capacity[45]	The ability of systems, institutions, humans, and other organisms to adjust to potential damage, to take advantage of opportunities, or to respond to consequences.
Climate Justice[46]	Ensures that the people and communities who are least culpable in the warming of the planet, and most vulnerable to the impacts of climate change, do not suffer disproportionately because of historical injustice and disinvestment.
Community Engagement	
Cumulative Impacts[47]	Result when the effects of an action are added to or interact with other effects in a particular place and within a particular time.
Disproportionate Impacts[48]	Occurs when policies, practices, rules, or other systems that appear to be neutral impact different groups in different ways.
Distributive Justice[49]	Fairness in the distribution of rights or resources.

[45] IPCC, 2014: Climate Change 2014: Impacts, Adaptation, and Vulnerability, Annex II, Glossary, p. 1758, https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-AnnexII_FINAL.pdf

[46] https://www.environmentalhealth.org/index.php/en/what-we-do/climate-justice

[47] https://www.epa.gov/sites/default/files/2014-08/documents/cumulative.pdf

[48] https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/disparateimpactdisparatetreatment.aspx

[49] https://post.ca.gov/procedural-justice-and-police-legitimacy

Term (In alphabetical order)	Definition
Environmental Justice[50]	Environmental justice is the ***fair treatment*** and ***meaningful involvement*** of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys: • the same degree of protection from environmental and health hazards, and; • equal access to the decision-making process to have a healthy environment in which to live, learn, and work.
Equity[51]	Equity is transforming the behaviors, institutions, and systems that disproportionately harm people of color. Equity means increasing access to power, redistributing, and providing additional resources, and eliminating barriers to opportunity, in order to empower low-income communities of color to thrive and reach full potential. Greenlining's definition of equity is specific to racial equity, given the legacy of institutionalized racism by government. Our emphasis on race is not about excluding other marginalized groups. These equity approaches are intended to also be applicable to creating equitable outcomes for other groups such as the elderly and people with disabilities.
Ground Truth[52]	Information obtained by direct observation of a real system, as opposed to a model or simulation.
High Road[53]	"High road" means a set of economic and workforce development strategies to achieve economic growth, economic equity, shared prosperity, and a clean environment. The strategies include, but are not limited to, interventions that:

[50] Gov. Code, § 65040.12, subd. (e)

[51] https://greenlining.org/publications/reports/2019/making-equity-real-in-mobility-pilots-toolkit/

[52] https://www.lexico.com/en/definition/ground_truth

[53] https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=UIC&division=7.&title=&part=&chapter=2.&article

Term (In alphabetical order)	Definition
	(1) Improve job quality and job access, including for women and people from underserved and underrepresented populations. (2) Meet the skill and profitability needs of employers. (3) Meet the economic, social, and environmental needs of the community.
Institutional Racism[54]	Institutional racism refers to the policies and practices within and across institutions that, intentionally or not, produce outcomes that chronically favor, or put a racial group at a disadvantage. Poignant examples of institutional racism can be found in school disciplinary policies in which students of color are punished at much higher rates that their white counterparts, in the criminal justice system, and within many employment sectors in which day-to-day operations, as well as hiring and firing practices can significantly disadvantage workers of color.
Japanese American incarceration sites	Sakura Conservation Strategies
Meaningful Involvement[55]	Means that 1) potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment or health; 2) the public's contribution can influence an agency's decision; 3) the concerns of all participants involved will be considered in the decision-making process; and 4) the decision-makers seek out and facilitate the involvement of those potentially affected.
Procedural Justice[56]	Fairness and the transparency of the processes by which decisions are made.

54 https://www.aspeninstitute.org/blog-posts/structural-racism-definition/
55 https://www.epa.gov/sites/production/files/2015-02/documents/team-ej-lexicon.pdf
56 https://post.ca.gov/procedural-justice-and-police-legitimacy

Term (In alphabetical order)	Definition
Public Participation	
Racial Equity[57]	Racial equity refers to what a genuinely non-racist society would look like. In a racially equitable society, the distribution of society's benefits and burdens would not be skewed by race. In other words, racial equity would be a reality in which a person is no more or less likely to experience society's benefits or burdens just because of the color of their skin. This is in contrast to the current state of affairs in which a person of color is more likely to live in poverty, be imprisoned, drop out of high school, be unemployed and experience poor health outcomes like diabetes, heart disease, depression, and other potentially fatal diseases. Racial equity holds society to a higher standard. It demands that we pay attention not just to individual-level discrimination, but to overall social outcomes.
Stakeholder Engagement	
Structural Racism[58]	A system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity. It identifies dimensions of our history and culture that have allowed privileges associated with "whiteness" and disadvantages associated with "color" to endure and adapt over time. Structural racism is not something that a few people or institutions choose to practice. Instead, it has been a feature of the social, economic, and political systems in which we all exist.
Transportation Network Company[59]	A Transportation Network Company (TNC) uses an online-enabled platform to connect passengers with drivers using their personal, non-commercial, vehicles.

57 https://www.aspeninstitute.org/blog-posts/structural-racism-definition/

58 https://www.aspeninstitute.org/blog-posts/structural-racism-definition/

59 6-20-17 Item 14 Transportation Network Company Activity Report.pdf (sfmta.com)

Spectrum of Community Engagement – International Association of Public Participation [60]

Increasing Impact on the Decision

	Inform	Consult	Involve	Collaborate	Empower
Public Participation Goal	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
Promise to the Public	We will keep you informed.	We will keep you informed, listen to, and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision. We will seek your feedback on drafts and proposals.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will work together with you to formulate solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

60 https://sustainingcommunity.wordpress.com/2017/02/14/spectrum-of-public-participation/

CPUC Definitions for Environmental and Social Justice and Disadvantaged Communities

Term (in alphabetical order)	**Definition**
Access and Functional Needs (AFN)[61]	This population includes individuals who live with developmental or intellectual disabilities, physical disabilities, chronic conditions, injuries, limited English proficiency or who are non-English speaking, are older adults, children, people living in institutionalized settings, or those who are low income, homeless, or transportation disadvantaged, including, but not limited to, those who are dependent on public transit or those who are pregnant.
California Native American Tribe	"California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. See Public Resources Code § 21073. California Native American tribes include both federally recognized and non- federally recognized tribes.
Community- Based Organization	The term "community-based organization means a public or private nonprofit organization of demonstrated effectiveness that— A) is representative of a community or significant segments of a community; and B) provides educational or related services to individuals in the community.
Disadvantaged Communities (DAC)[62] **(Water)**	"Disadvantaged community" means the entire service area of a community water system, or a community therein, in which the median household income is less than 80 percent of the statewide annual median household income level.

[61] AB 2311. https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2311&showamends=false

[62] Health and Safety Code Section 116426

Term (in alphabetical order)	**Definition**
Disadvantaged Vulnerable Communities (DVC) [63] **(Climate Adaptation)**	"Disadvantaged Vulnerable Communities" or "DVCs" consist of communities in the 25% highest scoring census tracts according to the California communities Environmental Health Screening Tool (CalEnviroScreen); as well as all California tribal lands, census tracts with median household incomes less than 60% of state median income; and census tracts that score in the highest 5% of Pollution Burden within CalEnviroScreen, but do not receive an overall CalEnviroScreen score due to unreliable public health and socioeconomic data.
Low Income Households [64] [65]	Low-income households are those with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093.
Low Income Communities [66] [67]	Low-income communities are census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093.

[63] D.20-08-046

[64] HSC § 39713

[65] Please note that individual CPUC programs may have low-income designations defined in statute that supersede this definition or may use federal poverty guidelines to define low-income.

[66] HSC § 39713

[67] Please note that individual CPUC programs may have low-income designations defined in statute that supersede this definition or may use federal poverty guidelines to define low-income.

Term (in alphabetical order)	**Definition**
Hard-to-Reach (HTR)[68]	Two criteria are considered sufficient if one of the criteria met is the geographic criteria defined below. There are common as well as separate criteria when defining hard-to-reach for residential versus small business customers. The barriers common to both include: • Those customers who do not have easy access to program information or generally do not participate in energy efficiency programs due to a combination of language, business size, geographic, and lease (split incentive) barriers. These barriers to consider include: *Language* – Primary language spoken is other than English, and/or *Geographic* – Businesses or homes in areas other than the United States Office of Management and Budget Combined Statistical Areas of the San Francisco Bay Area, the Greater Los Angeles Area and the Greater Sacramento Area or the Office of Management and Budget metropolitan statistical areas of San Diego County • For small business added criteria to the above to consider: *Business Size* – Less than ten employees and/or classified as Very Small (Customers whose annual electric demand is less than 20kW, or whose annual gas consumption is less than 10,000 therms, or both), and/or *Leased or Rented Facilities* – Investments in improvements to a facility rented or leased by a participating business customer • For residential added criteria to the above to consider: *Income* – Those customers who qualify for the California Alternative Rates for Energy (CARE) or the Family Electric Rate Assistance Program (FERA), and/or

[68] D.18-05-041

Term (in alphabetical order)	**Definition**
	Housing Type – Multi-family and Mobile Home Tenants (rent and lease)" *Modification*: include disadvantaged communities (as designated by CalEPA) in the geographic criteria for hard-to-reach customers.
Indian Country	The term Indian country is defined in 18 U.S.C. § 1151 and 40 C.F.R. § 171.3 as: 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. Consistent with the statutory definition of Indian country, as well as federal case law interpreting this statutory language, lands held by the federal government in trust for Indian tribes that exist outside of formal reservations are informal reservations and, thus, are Indian country.
Socioeconomic Vulnerability Index (SEVI)[69]	The Socioeconomic Vulnerability Index (SEVI) metric represents the relative socioeconomic standing of census tracts, referred to as communities, in terms of poverty, unemployment, educational attainment, linguistic isolation, and percentage of income spent on housing. This metric therefore considers how a rate change may affect one community's ability to pay more than another's.

[69] D.20-07-032

Term (in alphabetical order)	**Definition**
Underserved Communities [70]	Underserved community means a community that meets one of the following criteria: • Is a "disadvantaged community" as defined by subdivision (g) of Section 75005 of the Public Resources Code. • Is included within the definition of "low-income communities" as defined by paragraph (2) of subdivision (d) of Section 39713 of Health and Safety Code. • Is within an area identified as among the most disadvantaged 25 percent in the state according to the California Environmental Protection Agency and based on the most recent California Communities Environmental Health Screening Tool, also known as CalEnviroScreen. • Is a community in which at least 75 percent of public school students in the project area are eligible to receive free or reduced-price meals under the National School Lunch Program? • Is a community located on lands belonging to a federally recognized California Indian tribe?
Unserved Household [71] **(Broadband)**	"Unserved area" for the California Advanced Services Fund broadband infrastructure grants means a household for which no facility-based broadband provider offers broadband service at speeds of at least 25 megabits per second (mbps) downstream and one mbps upstream. [72]

[70] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB841

[71] https://codes.findlaw.com/ca/public-utilities-code/puc-sect-281.html

[72] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB156

Eligibility Criteria Requirements for CPUC Energy, Communications, and Water Consumer Programs

Program	Eligibility Criteria
California Alternate Rates for Energy (CARE) [73]	Income eligibility for CARE participation is set at 200% or less of Federal Poverty Guidelines.
Family Electric Rate Assistance (FERA) [74]	Total family income eligibility for FERA participation is set between 200% and 250% of Federal Poverty Guidelines.
Energy Savings Assistance (ESA) Program [75]	Income eligibility for ESA participation is set at 200% or less of Federal Poverty Guidelines.
Multi-family Affordable Solar Housing (MASH) [76]	• Solar energy system installations on existing multifamily affordable housing that meets the definition of low-income residential housing established in Pub. Util. Code 2852 • Eligibility under Pub. Util. Code Section 2852 defines "low-income residential housing" as one of the following: Multifamily residential complex financed with one or more of the following: ▪ low-income housing tax credits ▪ tax-exempt mortgage revenue bonds ▪ general obligation bonds ▪ local, state, or federal loans or grants • Multifamily residential complex in which at least 20% of the total housing units are sold or rented to lower income households

73 https://www.cpuc.ca.gov/consumer-support/financial-assistance-savings-and-discounts/california-alternate-rates-for-energy

74 https://www.cpuc.ca.gov/consumer-support/financial-assistance-savings-and-discounts/family-electric-rate-assistance-program

75 https://www.cpuc.ca.gov/consumer-support/financial-assistance-savings-and-discounts/energy-savings-assistance

76 Pub. Util. Code 2852; MASH Program Handbook.

Program	Eligibility Criteria
Single-family Affordable Solar Homes (SASH) [77]	• Receive electrical service from Pacific Gas & Electric (PG&E), Southern California Edison (SCE), or San Diego Gas & Electric (SDG&E), • Own and live in their home, • Have a household income that is 80% or below the area median income (AMI), • Live in a home defined as "affordable housing" by California Public Utilities Code 2852.
Disadvantaged Communities-Single-family Affordable Solar Homes (DAC-SASH) [78]	• Available to customers who live in DACs and meet the income eligibility requirements for the CARE and FERA programs or residents of California Indian Country. • Homeowners must live in one of the top 25 % most disadvantaged communities statewide • Be a billing customer of Pacific Gas & Electric (PG&E), Southern California Edison (SCE), or San Diego Gas & Electric (SDG&E)
Solar on Multi-family Affordable Housing (SOMAH) [79]	• Incentives for solar projects on affordable multifamily properties to achieve 300 MWs by 2030 • Available to affordable multifamily properties occupied by households with a majority of tenants with incomes at or below 60% of the area median income or be located in a disadvantaged community as identified by the California Environmental Protection Agency (CalEPA). • Multifamily properties must be in PG&E, SCE, SDG&E, PacifiCorp, or Liberty territories to participate

[77] AB 217; SASH Handbook; https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/california-solar-initiative/csi-single-family-affordable-solar-homes-program

[78] SB 535 Disadvantaged Communities; AB 327; https://oehha.ca.gov/calenviroscreen/sb535; Decision D.18-06-027; D.20-12-003; https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/solar-in-disadvantaged-communities

[79] AB 693 (2015) "Multifamily Affordable Housing Solar Roofs Program"; Decision 17-12-022; https://www.cpuc.ca.gov/somah; https://calsomah.org/

Program	Eligibility Criteria
Green Tariff/Shared Renewables Program (GTSR) **(Enhanced Community Renewables)** [80]	• The 600 MW GTSR program includes a specific 100 MW reservation for customers and projects in areas identified by the CalEnviroScreen tool as being in one of the 20% most disadvantaged census tracts in each IOU • Small projects—those under 1MW capacity—which are developed in EJ Communities are eligible for a Utility Power Purchase Agreement if their prices fall within 200 percent of the maximum executed contract price, rather than 120 percent for standard GTSR power purchase agreements.
Disadvantaged Communities - Green-Tariff (DAC-GT)[81]	• A 158MW program available for Residential customers in DACs who meet the income eligibility requirements for the CARE and FERA programs. • Homeowners must live in one of the top 25 % most disadvantaged communities statewide or the census tracts in the highest 5 percent of CalEnviroScreen's Pollution Burden or; • Be a billing customer of participating utility or Community Choice Aggregator.
Community Solar Green Tariff (CSGT) [82]	• A 41MW program available for Residential customers in DACs or in San Joaquin Valley (SJV) pilot communities identified in R.15-03-010. • CSGT projects must be in DACs within 5 miles of DAC(s) where subscribing customers reside or within 40 miles for SJV pilot communities. • 50% of a project's output must be subscribed by customers eligible for CARE or FERA. • Customers must live in one of the top 25 % most disadvantaged communities statewide or the census tracts in the highest 5 percent of CalEnviroScreen's Pollution Burden or; • Be a billing customer of participating utility or Community Choice Aggregator.

[80] SB 43; https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB43
[81] AB 327; Decision D.18-06-027, D.18-10-007 and D.20-07-008; https://oehha.ca.gov/calenviroscreen; https://www.cpuc.ca.gov/SolarInDACs/#DAC_GT
[82] AB 327; Decision D.18-06-027 and D.18-10-007; R.15-03-010; https://oehha.ca.gov/calenviroscreen; https://www.cpuc.ca.gov/SolarInDACs/#CSGT

Program	Eligibility Criteria
California Advanced Services Fund (CASF) Broadband Adoption Account[83]	Eligible applicants are local governments, senior centers, schools, public libraries, nonprofit organizations, and community-based organizations with programs to increase publicly available or after school broadband access and digital inclusion, such as digital literacy training programs are eligible to apply for grants.
California Advanced Services Fund (CASF) **Rural and Urban Regional Consortia Account**[84]	An eligible Consortium, as specified by the Commission, may include representatives, of organizations including, but not limited to, local and regional government, public safety, elementary and secondary education, health care, libraries, postsecondary education, community-based organizations, tourism, parks, and recreation, agricultural, business, workforce organizations, and air pollution control or air quality management districts. An eligible Consortium is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.
California Advanced Services Fund (CASF) **Broadband Infrastructure Account**[85]	Senate Bill (SB) 156, enacted and effective on July 21, 2021, made many changes to the CASF. Additionally, SB 4 and Assembly Bill (AB) 14, enacted and effective on October 8, 2021, continued funding of the CASF program beyond 2022 to December 31, 2032.[86] Some of the changes relevant to the CASF Infrastructure Account include: • Redefining "unserved area"—The previous definition was "unserved household," meaning a household with service at six megabits per second (Mbps) downstream and one Mbps upstream. The current operative definition is: "unserved area means an area for which there is no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 Mbps downstream, three Mbps upstream, and a latency that is sufficiently low to allow real-time interactive applications,

[83] AB 1665

[84] Decision (D.) 18-10-032

[85] Pub. Util. Code Section (b)(2)(B)(i)

[86] The CPUC plans to implement implements key changes in the CASF from SB 156, SB 4, and AB 14 for relevant accounts.

Program	Eligibility Criteria
	considering updated federal and state broadband mapping data." The statute also replaced the references to "households" with "areas." • Priority to areas with slow or no internet—Previously, the CPUC was to give preference to projects in areas with only dial-up service or no service. Now, the CPUC is to "prioritize projects in unserved areas where internet connectivity is available only at speeds at or below ten Mbps downstream and one Mbps upstream or areas with no internet connectivity." • Serviceable locations—The CPUC "shall transition CASF program methodologies to provide service to serviceable locations and evaluate other program changes to align with other funding sources, including, but not limited to, funding locations." • Elimination of "indispensable middle-mile" language—The Legislature eliminated the section that discussed the requirements for funding middle-mile infrastructure, if it is indispensable for last-mile service, formerly Pub. Util. Code Sec. 281(f)(5)(B). • • Elimination of prerequisites for local agency infrastructure grants—Formerly in Pub. Util. Code Sec. 281(f)(9), local agencies could only receive an infrastructure grant if the CPUC "has conducted an open application process, and no other eligible entity applied." This section has been eliminated, so that local agencies now have greater eligibility for funding.
California Advanced Services Fund (CASF) Public Housing Account[87]	Senate Bill (SB) 156, enacted and effective on July 21, 2021, made many changes to the CASF. Additionally, SB 4 and Assembly Bill (AB) 14, enacted and effective on October 8, 2021, continued funding of the CASF program beyond 2022 to December 31, 2032.[88] Some of the changes relevant to the CASF Infrastructure Account include:

[87] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/casf-adoption-and-access/bpha_guidelines_august_2020.pdf

[88] The CPUC plans to implement implements key changes in the CASF from SB 156, SB 4, and AB 14 for relevant accounts.

Program	Eligibility Criteria
	• Redefining "unserved area"—The previous definition was "unserved household," meaning a household with service at six megabits per second (Mbps) downstream and one Mbps upstream. The current operative definition is: "unserved area means an area for which there is no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 Mbps downstream, three Mbps upstream, and a latency that is sufficiently low to allow real-time interactive applications, considering updated federal and state broadband mapping data." The statute also replaced the references to "households" with "areas." • Priority to areas with slow or no internet—Previously, the CPUC was to give preference to projects in areas with only dial-up service or no service. Now, the CPUC is to "prioritize projects in unserved areas where internet connectivity is available only at speeds at or below ten Mbps downstream and one Mbps upstream or areas with no internet connectivity." • Serviceable locations—The CPUC "shall transition CASF program methodologies to provide service to serviceable locations and evaluate other program changes to align with other funding sources, including, but not limited to, funding locations." • Elimination of "indispensable middle-mile" language—The Legislature eliminated the section that discussed the requirements for funding middle-mile infrastructure, if it is indispensable for last-mile service, formerly Pub. Util. Code Sec. 281(f)(5)(B). • Elimination of prerequisites for local agency infrastructure grants—Formerly in Pub. Util. Code Sec. 281(f)(9), local agencies could only receive an infrastructure grant if the CPUC "has conducted an open application process, and no other eligible entity applied." This section has been eliminated, so that local agencies now have greater eligibility for funding.
California Advanced Services Fund (CASF)	CASF Tribal Technical Assistance Grant Program aims to provide grants to California tribes to develop market studies, feasibility studies, and business plans to pursue improved communications (voice and broadband).

Program	Eligibility Criteria
Tribal Technical Assistance Grant Program[89]	
California High-Cost Fund A (CHCF A)[90]	The 13 small LECs in California that are eligible to draw revenue from the CHCF-A program are: • Calaveras Telephone Company • California-Oregon Telephone Company • Ducor Telephone Company • Foresthill Telephone Company • Happy Valley Telephone Company • Hornitos Telephone Company • Kerman Telephone Company • Pinnacles Telephone Company • The Ponderosa Telephone Company • Sierra Telephone Company • Siskiyou Telephone Company • The Volcano Telephone Company • Winterhaven Telephone Company

89 Tribal Technical Assistance; see Decision (D) 20-08-005

90 https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/california-high-cost-fund-a

<table>
<tr><th>Program</th><th>Eligibility Criteria</th></tr>
<tr><td>California High-Cost Fund B (CHCF B)[91]</td><td>Carriers of Last Resort (COLRs) are given subsidies for providing basic telephone service to residential customers in high-cost areas that are currently served by Pacific Bell Telephone Company dba AT&T California, Verizon California Inc. dba Frontier Communications of California, Citizens Telecommunications Company of California and Cox Communications. High-cost areas of California are those in which the cost to the COLR to provide service is $36 or more per telephone line.</td></tr>
<tr><td>California Lifeline[92]</td><td>There are two ways to qualify for the California LifeLine Program. You may qualify for California LifeLine via Program-Based OR Income-Based.

Program-Based Qualification Method:

You can qualify for California LifeLine if you or another person in your household is enrolled in any one of these qualifying public assistance programs:
• Medicaid/Medi-Cal
• Low Income Home Energy Assistance Program (LIHEAP)
• Supplemental Security Income (SSI)
• Federal Public Housing Assistance or Section 8
• CalFresh, Food Stamps or Supplemental Nutrition Assistance Program (SNAP)
• Women, Infants and Children Program (WIC)
• National School Lunch Program (NSL)
• Temporary Assistance for Needy Families (TANF)
a) California Work Opportunity and Responsibility to Kids (CalWORKs)
b) Stanislaus County Work Opportunity and Responsibility to Kids (StanWORKs)
c) Welfare-to-Work (WTW)</td></tr>
</table>

[91] https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/california-high-cost-fund-b

[92] https://www.cpuc.ca.gov/consumer-support/financial-assistance-savings-and-discounts/lifeline/california-lifeline-eligibility#qualify

<table>
<tr><th>Program</th><th>Eligibility Criteria</th></tr>
<tr><td></td><td>d) Greater Avenues for Independence (GAIN)
• Tribal TANF
• Bureau of Indian Affairs General Assistance
• Head Start Income Eligible (Tribal Only)
• Food Distribution Program on Indian Reservations
• Federal Veterans and Survivors Pension Benefit Program
Income-Based Qualification Method:
You can qualify for California LifeLine if your household's total annual gross income is at or less than these annual income limits:
<table>
<tr><th>Household Size</th><th>Annual Income Limits</th></tr>
<tr><td>1-2</td><td>$28,500</td></tr>
<tr><td>3</td><td>$33,100</td></tr>
<tr><td>4</td><td>$40,300</td></tr>
<tr><td>Each Additional Member</td><td>$7,200</td></tr>
<tr><td colspan="2">Effective June 1, 2021 to May 31, 2022</td></tr>
</table>
</td></tr>
<tr><td>California Teleconnect Fund [93] (edited)</td><td>The CTF Program categorizes applicants (and participants) into seven distinct groups:
<u>Schools</u>
To qualify for the CTF Program, a public school must:
• Provide elementary or secondary education (grades K–12).</td></tr>
</table>

[93] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/california-teleconnect-fund/ctf_applicant_and_participant_guidebook.pdf

<table>
<tr><th>Program</th><th>Eligibility Criteria</th></tr>
<tr><td></td><td>
Possess an active County District School code number from California Department of Education.
To qualify for the CTF Program, a private school must:

Provide elementary or secondary education (grades K–12).
Possess an active County District School code number from California Department of Education.
Possess an annual endowment under $50 million.
File taxes as a nonprofit entity with the Internal Revenue Service.

<u>Libraries</u>
To qualify for the CTF Program, a library must be eligible to participate in state-based plans for funds under the federal Library Services and Technology Act. Eligibility for the CTF Program is further limited to library outlet locations, which are the locations where library services are provided to the community.

<u>Community Colleges</u>
To qualify for the CTF Program, a community college must be a California Community College (as determined by California Education Code Section 70900) and possess a Management Information System (MIS) code.

<u>Government Hospitals/Clinics</u>
Hospitals and health clinics that are owned and operated by a municipal government, county government, or a hospital district may qualify for the CTF Program as a Government Hospital/Clinic. Government Hospitals/Clinics that participate in the CTF Program must have a valid healthcare license and identification number from the Office of Statewide Health Planning and Development. Only locations that provide healthcare services to the community can participate in the CTF Program.

<u>Community-Based Organizations</u>
To qualify for the CTF Program, a CBO must:
File taxes with the Internal Revenue Service as a 501(c)(3) organization.
</td></tr>
</table>

Program	Eligibility Criteria
	• Offer one or more of the following Qualifying Services to individuals and/or families in the community: *Educational Instruction*: These services include regular, ongoing, preschool or K-12 academic educational or instructional programs that can also include ESL and language education, literacy, job training, technology instructions and information on public benefit and social services programs eligibility and access. Educational instruction must include the use of a CTF-eligible communication service by community members. *Head Start Program*: Refer to the Head Start Center Locator at https://eclkc.ohs.acf.hhs.gov/center-locator. *Job Placement*: These services provide community members with assistance in obtaining employment, including activities related to job recruiting and placement. Eligible job placement services must include the use of a CTF-eligible telecommunication service by community members. *Job Training*: These services provide community members with training or skill-building for the purpose of obtaining employment. Eligible Job Training Services must include the use of a CTF-eligible telecommunication service by community members. *Community Lab / Technology Center*: To qualify, these services must provide the community training and/or access to technology and advanced communication services. Eligible Community Technology Programs must include the use of a CTF-eligible communication service by community members. • Offer one or more Qualifying Services directly to individuals at a specific geographic location without charge or at a minimal fee. • Utilize the advanced communication service(s) that receives the CTF discount when providing one or more Qualifying Services. • Provide the community access to the advanced communication service(s) that receives the CTF discount. • Possess annual revenues less than $5 million.

Program	Eligibility Criteria
	• A majority of the CBO's board members must reside in California. **<u>Healthcare Community-Based Organizations</u>** To qualify for the CTF Program, a Healthcare CBO must: • File taxes with the Internal Revenue Service as a 501(c)(3) organization. • Offer healthcare services as their primary function directly to individuals at a specific geographic location. • Have licensed medical personnel on site providing healthcare services to individuals and/or families within the community. • Accept medical plans such as Medi-Cal, Medicare, Department of Veterans Affairs insurance, and/or provide services without charge or at a minimal fee. • Possess annual revenues less than $50 million. • A majority of the Healthcare CBO's board members must reside in California. **<u>2-1-1 Providers</u>** To qualify for the CTF Program, a 2-1-1 Service Provider must: • Have existing authorization from the California Public Utilities Commission (via Resolution) to operate as a 2-1-1 Service Provider. • File taxes with the Internal Revenue Service as a 501(c)(3) organization. • Possess annual revenues less than $5 million.
Deaf and Disabled Telecommunications Program[94]	To be eligible to receive free specialized telephone equipment through the Program, a person must: • Live in California • Have telephone service (Please note: The majority of Program equipment only functions with a land line.)

[94] https://ddtp.cpuc.ca.gov/faqs.aspx#Eligibility_and_Applying

Program	Eligibility Criteria

	• Be certified as having one or more of the following disabilities:
	  ○ Hearing
	  ○ Vision
	  ○ Mobility
	  ○ Speech
	  ○ Cognitive
	There is no age or income requirement.

Water Customer Assistance Programs (CAPs)[95]	Income eligibility for ESA participation is set at 200% or less of Federal Poverty Guidelines.

95 https://www.cpuc.ca.gov/consumer-support/financial-assistance-savings-and-discounts/water-company-assistance

Additional Definitions in State Government

Term	Definition
Socially Disadvantaged Farmers[96]	A farmer or rancher who is a member of a socially disadvantaged group. A "socially disadvantaged group" means a group whose members have been subjected to racial, ethnic, or gender discrimination. These groups include the following: • African Americans • American Indians • Alaskan Natives • Hispanics • Asian Americans • Native Hawaiians and Pacific Islanders • Female farmers and ranchers of color
Disadvantaged Unincorporated Communities (DUCs)[97]	Defined as an area of inhabited territory located within an unincorporated area of a County in which the annual median household income is less than 80 percent of the statewide median household income. State law considers an area with 12 or more registered voters to be an inhabited territory.

[96] AB 1348 - https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1348
[97] SB 244 - https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB244

Term	**Definition**
Under-resourced Communities[98]	"Under-resourced community" is identified pursuant to one, some, or all of the following sections of the Health and Safety Code: • Section 39711, which reads, "The California Environmental Protection Agency shall identify disadvantaged communities … [that] may include, but are not limited to, either of the following: (1) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation. (2) Areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment. • Subdivision (d) of Section 39713 of the Health and Safety Code, which reads, "(1) 'Low-income households are those with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093. (2) 'Low-income communities' are census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093. • Subdivision (g) of Section 75005, which reads, "'Disadvantaged community' means a community with a median household income less than 80% of the statewide average. 'Severely disadvantaged community' means a community with a median household income less than 60% of the statewide average."

[98] SB 1072 - https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1072

Term	**Definition**
AB 1550 Priority Populations [99]	Certain populations are especially vulnerable to the impacts of climate change. At least 35 percent of California Climate Investments [100] must benefit these populations, which include disadvantaged communities, low-income communities, and low-income households, also known as "priority populations." Disadvantaged communities are identified by the California Environmental Protection Agency (CalEPA) as the top 25% most impacted census tracts in CalEnviroScreen 3.0 - a screening tool used to help identify communities disproportionally burdened by multiple sources of pollution and with population characteristics that make them more sensitive to pollution. Low-income communities and households are defined as the census tracts and households, respectively, that are either at or below 80 percent of the statewide median income, or at or below the threshold designated as low-income by the California Department of Housing and Community Development's (HCD) 2016 State Income Limits.

[99] https://ww2.arb.ca.gov/sites/default/files/auction-proceeds/communityinvestments.htm

[100] https://www.caclimateinvestments.ca.gov/

Appendix D: Select Case Studies of ESJ in CPUC Proceedings

The below case studies represent examples of how the ESJ Action Plan can be incorporated into proceeding rulings and resolutions. These highlighted examples are not an exhaustive list and only represent a handful of cases where the ESJ Action Plan has been cited in CPUC proceedings.

Communications

ORDER INSTITUTING RULEMAKING REGARDING BROADBAND INFRASTRUCTURE DEPLOYMENT AND TO SUPPORT SERVICE PROVIDERS IN THE STATE OF CALIFORNIA.

Rulemaking 20-09-001

Comments Requested

Parties are asked to comment on the following questions:

1. Are the inputs and assumptions of the studies [101] discussed above accurate? How could one improve these studies?

2. Do the findings of these studies provide evidence of a systemic problem in California?

3. Do these studies indicate discrimination based on race, socioeconomic status or otherwise, and, if yes, what are the societal implications?

4. If the Commission were to undertake an investigation into whether ISPs are not serving certain communities or neighborhoods within their service or franchise areas, a practice generally referred to as redlining, how should the Commission conduct that investigation? What data should the Commission rely on for its investigation?

5. Historically, redlining has meant that some neighborhoods, generally with affluent, white residents, have access to a particular service while poorer residents do not. How should the Commission define redlining? In the context of broadband Internet service, should Internet speeds offered to residents be taken into consideration?

6. Does the table in Section 3 of this ruling indicate redlining or some other form of systemic issue? It appears to indicate that poorer communities are more likely to be unserved, and wealthier communities are more likely to be served. Is this analysis accurate? Please explain why it is or is not accurate.

7. Are there other studies or analysis that parties wish to submit for the record in this proceeding?

---

101 *On the Wrong Side of the Digital Divide*, released in June 2020 by the Greenlining Institute;
AT&T's Digital Redlining: Leaving Communities Behind for Profit, released in October 2020 by the Communications Workers of America (CWA) and the National Digital Inclusion Alliance (NDIA);
Who gets access to Fast Broadband? Evidence from Los Angeles County 2014-17, released in October 2019 by USC Annenberg Research Network for International Communication (ARNIC) and the USC Price Spatial Analysis Lab (SLAB)

Energy

DECISION ON LARGE INVESTOR-OWNED UTILITIES' AND MARIN CLEAN ENERGY'S CALIFORNIA ALTERNATE RATES FOR ENERGY (CARE), ENERGY SAVINGS ASSISTANCE (ESA), AND FAMILY ELECTRIC RATE ASSISTANCE (FERA) PROGRAM APPLICATIONS FOR PROGRAM YEARS 2021-2026

Decision 21-06-015

9. Environmental and Social Justice

9.1. Background

On February 21, 2019, the Commission adopted the Environmental and Social Justice (ESJ) Action Plan1052 which serves to expand public inclusion in Commission decision-making and improve services to targeted communities in California, specifically communities of color and/ or low-income communities. The ESJ Action Plan defines environmental and social justice as:

Environmental and social justice seeks to come to terms with, and remedy, a history of unfair treatment of communities, predominantly communities of people of color and/or low-income residents. These communities have been subjected to disproportionate impacts from one or more environmental hazards, socioeconomic burdens, or both.

The overall goals identified by the ESJ action plans include:

- Goal 1: Consistently integrate equity and access considerations throughout CPUC proceedings and other efforts.
- Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health.
- Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities.
- Goal 4: Increase climate resiliency in ESJ communities.
- Goal 5: Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit from CPUC programs.
- Goal 6: Enhance enforcement to ensure safety and consumer protection for ESJ communities.
- Goal 7: Promote economic and workforce development opportunities in ESJ communities.
- Goal 8: Improve training and staff development related to ESJ issues within the CPUC's jurisdiction.

- Goal 9: Monitor the CPUC's ESJ efforts to evaluate how they are achieving their objectives.

ESJ communities are also identified as those where residents are predominantly communities of color or low income, underrepresented in the policy setting or decision-making process, subject to a disproportionate impact from one or more environmental hazards, and likely to experience disparate implementation of environmental regulations and socio-economic investments in their communities. On the ground, these targeted communities typically include but are not limited to, DACs, all Tribal lands, and low-income households and census tracts.

9.2. Incorporating ESJ Goals and Efforts into CARE and ESA

As CARE and ESA program eligibility is set at or below 200 percent of FPG, most if not all, ESA and CARE participants are part of an ESJ community. Through this proceeding, we prioritize actions that improve local air quality, benefit public health, increase climate resiliency and provide economic benefits within the ESJ communities. This decision makes great strides in prioritizing ESJ issues and takes actions that advance equity and policies for ESJ communities. Below we outline the efforts directed in this decision that specifically address and further the goals of the Action Plan.

- Requiring that all working groups, (who are tasked with final design and delivery of the program), include representation specifically from community-based organizations, consumer protection/advocates, and other special interest groups, which includes members or representatives from ESJ communities; Furthers Goals 1, 5.

- Requiring the IOUs to hold annual public meetings to discuss program progress with community members; Furthers Goal 5.

- Requiring the consideration of the development of a UAS that would provide low-income customers various registration pathways into multiple affordable programs (including clean energy programs), easing the enrollment process and decreasing barriers to participation; Furthers Goals 1, 2, 5.

- Recommending IOU engagement and collaboration with CARB and GRID Alternatives on the Access Clean California tool, which would provide a single application connecting residents with the state's clean energy and transportation equity programs; Furthers Goals 1, 2, 3, 5.

- Prioritizing the below customer segments for outreach, education, and treatment which are inclusive of ESJ community members; Furthers Goal 1.

By Financials	By Location	By Health Condition
CARE	DAC	Medical Baseline
Disconnected	Rural	Respiratory
Arrearages	Tribal	Disabled
High usage	PSPS Zone	

By Financials	By Location	By Health Condition
High energy burden	Wildfire Zone	
SEVI	Climate Zone	
Affordability Ratio	CARB communities	

- Approving advanced treatment offerings, and investment, for specific customer segments which are inclusive of ESJ community members; Furthers Goals 1, 2, 4.
- Requiring the IOUs to track ESA treatment levels and efforts within specific customer segments in their reporting to the Commission; Furthers Goals 1, 9.
- Approving funding agreements to those point persons in Tribal communities that assist with outreach for ESA, FERA and CARE; Furthers Goals 1, 5.
- Requiring the IOUs to extend and encourage participation of the CARE/FERA capitation program in Tribal communities; Furthers Goals 1, 5.
- Leveraging with LifeLine, CETF and water utilities, which include co-promotion and marketing efforts, co-funding of water measures, and data sharing and customer referrals with LifeLine and water utilities; Furthers Goal 3.
- Approving a Building Electrification pilot that will offer high usage, income-qualified single-family households in DACs electrification measures at no cost; Furthers Goals 1, 2, 4.
- Approving a Clean Energy Homes pilot that will provide incentives for low-income housing developers to incorporate electrification into the designs of new construction, with a goal to reduce energy bills for the low-income customer, reduce GHG emissions associated with burning fossil fuels, and ease participation in customer programs; Furthers Goals 1, 2, 4.
- Requiring the IOUs to ensure additional workforce development opportunities and hiring within local communities, specifically in DACs (via IOU partnerships with the California Workforce Development Board's Energy and Climate Jobs Initiative, community colleges, and organizations providing services in DACs); Furthers Goal 7.
- Requiring the IOUs to track ESA workforce, education, and training efforts in their annual reporting to the Commission; Furthers Goals 7, 9.

We are confident that the objectives and actions taken here are necessary and will advance the Commission towards the state's equity goals.

Rail Safety

APPLICATION OF THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY FOR APPROVAL TO CONSTRUCT THREE NEW GRADE SEPARATED CROSSINGS OVER THE PROPOSED HIGH-SPEED RAIL TRACKS OPERATED BY CALIFORNIA HIGH-SPEED RAIL AUTHORITY AT EXCELSIOR AVENUE (MP 218.83), FLINT AVENUE (MP 220.86), AND FARGO AVENUE (MP 221.88) LOCATED IN THE COUNTY OF KINGS, STATE OF CALIFORNIA.

Decision 21-01-007

Alignment with the Commission's Environmental and Social Justice Action Plan

In February 2019, the Commission adopted its Environmental and Social Justice (ESJ) Action Plan as a comprehensive strategy and framework for addressing ESJ issues in each proceeding.

The Final EIR/EIS identifies several impacts that were considered when choosing the route for the Fresno-Bakersfield CHSTS Project, especially in the rural areas that will be affected by the three crossings proposed in A.20-08-015. CHSRA and FRA worked with local, state, and federal officials and stakeholders to identify a route intended to follow existing railway corridors, to minimize relocation impacts and better align with current and planned land uses along the project corridor.

The route, including the three crossings proposed in A.20-08-015, was also designed to ensure agricultural producers in the San Joaquin Valley still have access to railroad service necessary to efficiently move their goods to market.

Here, CHSRA has coordinated with tribal communities and stakeholders in the regions impacted by the project, and access to a high-speed rail option through the San Joaquin Valley would not only provide cleaner transportation options to residents but could improve ambient air quality by reducing the number of personal vehicle trips through the region.

Upon review of the Application and the record of this proceeding, including the Final EIR/EIS, we find that the three grade-separated crossings proposed in this Application align with the Commission's ESJ Action Plan. CHSRA is encouraged to hire local contractors and conduct public outreach about temporary street closures in multiple languages when constructing the three crossings proposed in A.20-08-015.

Transportation

DECISION AUTHORIZING DEPLOYMENT OF DRIVERED AND DRIVERLESS AUTONOMOUS VEHICLE PASSENGER SERVICE

Decision 20-11-046

4.9. Goal: Equity and Environmental Justice

The December 19, 2019 Ruling asked how the Commission should incorporate equity and environmental justice into its program goals.

4.9.1. Comments

Multiple parties emphasize the importance of ensuring the benefits of AV passenger service are available to all of California's communities including disadvantaged and low-income communities. They reference state law, the Commission's Environmental and Social Justice Action Plan (ESJ Action Plan), and basic principles of equity.

SFMTA and SFCTA along with LADOT argue that, unless the Commission adopts environmental justice goals, profit-driven business models may leave disadvantaged communities behind. UC Davis and LADOT emphasize that even though disadvantaged communities are the communities that could benefit most from improved transportation options, they are the most likely to suffer environmental consequences from transportation operations. Sierra Club agrees.

SFMTA and SFCTA note that the Commission has adopted an ESJ Action Plan that establishes several objectives related to transportation. In the ESJ Action Plan, the Commission states its intent to "promote equitable transportation services regulated by the CPUC; encourage greater utilization of Zero Emission Vehicles (ZEVs) by TNCs within ESJ communities, with a focus on communities that have been underserved by existing transportation options; and encourage that autonomous vehicles be available in disadvantaged communities.

Accordingly, SFMTA and SFCTA propose the goal that "AV Passenger Service should prevent negative impacts on disadvantaged communities and improve transportation options for all, giving priority to disadvantaged communities with unmet transportation needs." SANDAG and SFO support this goal.

While Waymo argues that it is too early to set prescriptive equity goals, they assert that authorizing fare collection encourages companies to expand their service more broadly, including to low-income communities. Waymo gives the example of a partnership they formed with a transit agency in Arizona to provide first- and last-mile service to groups underserved by public transit.

4.9.2. Discussion

The Commission adopts the equity goal to "Improve transportation options for all, particularly for disadvantaged and low-income communities." The environmental justice goal is addressed by ensuring that disadvantaged communities have preferential access to the greenhouse gas and air quality benefits of AVs. The latter goal is addressed more fully in the following section on "Environmental and Climate Impacts."

Parties are correct to highlight that the Commission already recognizes the many burdens faced by DACs including a lack of access to transit options and a disproportionate share of the environmental and health burdens caused by transportation services like particulate emissions from passenger vehicles. As noted in Goal #2 of the ESJ Action Plan, the Commission aims to improve the local air quality (i.e., criteria pollutants and air toxics) and public health in disadvantaged communities. AVs may be an important service to reduce these burdens.

The Commission will collect data to evaluate progress toward this goal including the census tracts in which trips begin and end; the volume and frequency of shared rides in each neighborhood; and narrative descriptions of each permit holder's outreach activities. These data are discussed in more depth in [Section #] of this Decision.

As discussed above, it is too soon for the Commission to set uniform equity targets. Companies will operate under different business models and at different scales. Some companies have stated they intend to provide broad market ride hailing services while other companies focus exclusively on shuttle services for single communities. As the market matures, the Commission can reconsider if and when to impose uniform equity targets.

4.15. Data Reporting Requirements: Equity and Environmental Justice

4.15.1. Comments

Party comments about the data necessary to evaluate the impacts of AV service on equity and environmental justice are largely covered in 4.12 on "AV Operations."

Relevant excerpts:

"Greenlining, SFO, SFMTA and SFCTA, MTC, Sierra Club, and UC Davis all argue that the Commission should expand its data collection to include detailed information about AV operations including the location of pick-ups and drop-offs or at least whether the pick-up or drop-off site is located in a Disadvantaged Community."

"Multiple parties highlight the benefits of collecting location data to understand the impacts of AVs' operations on the environment, equity, and traffic patterns. As Greenlining and Sierra Club note, location data can be used to determine the level of service and the comparative environmental impact of AVs on DACs."

4.15.2. Discussion

As discussed in 4.12, the Commission requires companies to include in their quarterly program reports information about the pick-up and drop-off locations of each trip, and the fuel type of the vehicle for each trip. This enables stakeholders to compare service to neighborhoods in disadvantaged communities vs neighborhoods outside disadvantaged communities. This provides information about the equity of service as well the trips' environmental impacts.

Water

GOLDEN STATE WATER COMPANY. ORDER AUTHORIZING GOLDEN STATE WATER COMPANY TO ACQUIRE ROBBINS WATER SYSTEM FROM SUTTER COUNTY WATER WORKS DISTRICT NO. 1.

Resolution W-5237

This Resolution addresses Goals #1 and #3 of the ESJ Action Plan, "Consistently integrate equity and access considerations throughout Commission regulatory activities," and "Strive to improve access to high-quality water, communications, and transportation services for ESJ communities."

The Commission recognizes that some populations in California such as those served by Robbins, face higher barriers in accessing safe and affordable utility services. The ESJ Action Plan tasks the Commission with the responsibility to serve Californians in a way that helps address these inequities. The Resolution for the acquisition of Sutter County's Robbins Water System by Golden State created a pathway to provide safe and reliable water service for the Robbins community that currently does not have access to high-quality water with the previously mentioned water quality issues related to arsenic, TDS, chloride, and specific conductance.

Robbins is classified as a disadvantaged community as defined by Health and Safety Code Section 116275, subd. (aa). The California Communities Environmental Health Screening Tool, Version 3 (CalEnviroScreen 3.0) provided by the California Environmental Protection Agency, identifies disadvantaged communities by collecting multiple metrics and outputting a single value at the census tract scale. CalEnviroScreen 3.0 ranks Robbins in the 65-70th percentile of the highest scoring census tracts statewide, the census tract notably falls into the 98^{th} percentile for Impaired Water, and in the 91^{st} percentile for Groundwater Threats. The acquisition provided direct relief to residents of Robbins, who experienced disproportionately poor water quality.

Language Access and Partnership with Community Based Organizations

DECISION ON COMMUNITY AWARENESS AND PUBLIC OUTREACH BEFORE, DURING AND AFTER A WILDFIRE, AND EXPLAINING NEXT STEPS FOR OTHER PHASE 2 ISSUES

Decision 20-03-004

3.3. Discussion

3.3.1. In Language Requirements

Communication before, during and after a wildfire may be a life-or-death matter. The diversity of California's population and the vast number of languages spoken here is part of what makes the state strong, vibrant, tolerant, and forward-looking. We should honor and support all residents of the state, especially when dealing with public safety and catastrophic risk. However, people cannot act on outreach they cannot understand; public safety requires that outreach actually reach the intended audience. Outreach that is not in-language simply will not be effective in protecting all California residents.

Therefore, the Commission will require each of the IOU and SMJU respondents in this proceeding to communicate before, during and after a wildfire with community residents, businesses, state and local first responders, and CBOs in all languages that are prevalent in their service territories. Prevalent means that 1,000 or more people speak the language in an IOU's or SMJU's territory. Further, nothing in this decision limits an IOU or SMJU from communicating in a language that is not prevalent.

The communication methods need not all be the same, because different communities may get their information in different ways. However, all IOUs and SMJUs, at a minimum, should consider using radio, broadcast, cable, and print earned and unearned media, shareable video or audio content, door-to-door contact, social media and websites, texting, and other communications-based methods such as live phone calls, emergency alerts, emails, or prerecorded messages to communicate with their customers in language.

To identify prevalent languages, the IOUs and SMJUs shall use U.S. Census data, where available, to determine prevalent languages in their service territories, as well as the data sources suggested by CEJA: "California Complete Count," "Hard to Count" data, and the American Community Survey (ACS) tabulated and untabulated data as a screening tool to identify where English-limited individuals are likely to be in their service territory. They should also use lessons from the San Joaquin Valley proceeding, R.15-03-010 to inform them on appropriate language outreach. CEJA shall forward relevant information from that proceeding to the IOUs and SMJUs no later than 30 days after issuance of this decision.

In addition to census analysis, the IOUs and SMJUs should include data based on prior experience and information from CBOs, community representatives and leaders (i.e., identifying key sites like a migrant housing site or mobile home park). To the extent the IOUs' and SMJUs' own customer data reveals language usage or preference, they shall also utilize customer information data to determine language prevalence.

IOUs and SMJUs shall, to the maximum extent, use their existing CBO networks, and partner with new CBOs where they do not have existing relationships with a specific language minority community. Some principles that should guide CBO relationships are the following:

- Ensure partnerships, particularly with community partners, are resourced and include a clear Memorandum of Understanding to articulate roles, responsibilities, and activities. This should include outreach and translation needs.
- Consider strategies such as phone trees to help quickly disseminate information across trusted sources.
- Create a team of cross-sector partners, with a designated coordinator, to be able to work across purposes, share feedback, and steer the effort.
- Include methods and strategies for information sharing and dealing with confidentiality between partner organizations (both CBO and government).

The IOUs and SMJUs should consider the following community partnerships in developing and carrying out community outreach:

- Community Organization Partnerships:
  - » Churches, schools, non-profits, medical clinics and hospitals, social service providers, legal services, and small businesses.
- Local Government Partnerships:
  - » Emergency services, public health departments, other service providers, and first responders.

The IOUs and SMJUs shall take input from parties to this proceeding in a meet and confer format to ensure they are reaching the appropriate CBOs. They need not communicate their meet and confer process to the Commission unless there are problems or concerns. In the event of problems or concerns, the parties shall first contact and work with Monica.Palmeira@cpuc.ca.gov (the September 2019 workshop moderator), or such other contact person the Commission shall later designate, and s/he will determine whether to involve the ALJ and other parties to the proceeding.

The IOUs and SMJUs shall also reach out to the telecommunications, water, and transportation utilities in their territory in order to partner with language access services and CBO relationships those utilities may have. Further, they shall gather – with the assistance of the parties to this proceeding – information on available governmental and non-governmental communications before, during and after a wildfire and coordinate their efforts with those communications to the maximum extent possible.

The IOUs' and SMJUs' communications methods shall accommodate language minorities without a common written language, as well as the indigenous languages Mixteco and Zapoteco. At the workshop, it appeared Triqui use is rare, but if it meets the definition of prevalence, the IOUs and SMJUs should also use Triqui.

In summary, the IOUs and SMJUs shall be prepared to conduct the outreach before, during and after a wildfire in time for the 2020 wildfire season.

Metrics for Utility Outreach & Engagement Activities

DECISION ON COMMUNITY AWARENESS AND PUBLIC OUTREACH BEFORE, DURING AND AFTER A WILDFIRE, AND EXPLAINING NEXT STEPS FOR OTHER PHASE 2 ISSUES

Decision 20-03-004

3.3.2. Surveys and Metrics to Determine Effectiveness of Outreach

Public safety requires that the IOUs and SMJUs survey the communities where they conduct outreach and use other metrics to determine that they are using effective methods. Several parties have commented – both in this Phase and in Phase 1 – that community meetings, conference calls or other group events the IOUs hold may not adequately inform communities about wildfire risk.

No later than May 30, 2020, the IOUs and SMJUs shall prepare, file, and serve the results of an independent survey that assesses the effectiveness of their community outreach in 2019 pursuant to Public Utilities Code Section 8386(c)(16)(B). For the 2020 wildfire season, the survey results are due no later than December 31, 2020. At a minimum, the IOUs and SMJUs shall:

- Ask communities and individuals to which the IOU or SMJU has conducted outreach if the outreach was effective in helping them before, during and after a wildfire.
- Provide survey responses categorized by type of outreach – e.g., community meetings, over the air broadcast information, social media, print media, etc. – so that there is data in the proceeding showing what outreach is most effective that the Commission and stakeholders may use to direct future outreach.
- File and serve any existing survey results that assess the effectiveness of outreach before, during and after a wildfire conducted since the passage of SB 901.

Prior to conducting either survey, the IOUs and SMJUs, alone or in combination, shall gather input from the parties to this proceeding on appropriate survey questions and methodology through a meet and confer process that is open to all parties. This meet and confer process shall conclude no later than 30 days before the surveys are conducted.

In addition to surveys, the IOUs and SMJUs should use metrics to determine the reach of their efforts. One set of metrics should be quantitative in nature, and include data related to web site visits, click rates, conversions, in-person meetings, radio spots, number of partners, number of customers reached, customer acknowledging information, read receipts, video shares, and other quantitative measurement.

Another set of metrics should document comprehension, especially after a significant wildfire event. Such metrics can be more qualitative in nature and include metrics collected from surveys and post-event interviews/sessions with stakeholders and partners. Metrics should capture satisfaction with outreach and engagement from utility, understanding of information and whether communities or individuals feel equipped to act, and whether communities or individuals feel connected to resources they may call upon before, during and after a wildfire. Potential avenues for collecting this information include debriefs with partners to discuss what could be improved, public listening sessions to discuss what could be improved, and customer surveys to understand what could be improved.

Workforce Development

DECISION SETTING NEAR-TERM PRIORITIES FOR TRANSPORTATION ELECTRIFICATION INVESTMENTS BY THE ELECTRICAL CORPORATIONS

Decision 21-07-028

4.3.1. Equity and Environmental Justice Requirements for Near-Term Priority Program Proposals

- Further the principles of economic equity and promote access to high quality jobs for residents of underserved communities. The IOUs should articulate how each project incorporates any of the following priority provisions:
  - » Job quality measures, such as wage and benefit standards and responsible contractor standards;
  - » Job access measures, such as targeted hire requirements as well as specified targets for residents of underserved communities;
  - » Comprehensive project agreements that address both job quality and job access, such as application of the Skilled & Trained Workforce requirement, and use of Community Workforce Agreements for large-scale TE projects;
  - » Funding directed to training partnerships that are guided in their programming to ensure that investments in training are connected to and result in placement in high-quality jobs.

Appendix E:
Memorandum of Understanding (MOU) with the California Workforce Development Board

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE CALIFORNIA WORKFORCE DEVELOPMENT BOARD ON WORKFORCE DEVELOPMENT FOR ENVIRONMENTAL AND SOCIAL JUSTICE

PURPOSE

Pursuant to the California Public Utilities Commission's (CPUC) Environmental and Social Justice Action Plan (ESJ Action Plan), as well as directives in Governor Newsom's Executive Orders N-79-20 (EO N-79-20)[1] and N-19-19 (EO N-19-19)[2], the CPUC and California Workforce Development Board (CWDB) (collectively the Parties) enter into this Memorandum of Understanding (MOU) to coordinate economic and workforce development planning, analysis, and implementation activities.

The purpose of this agreement is to draw upon the expertise of the CWDB to ensure the state has the workforce and industry-based training partnerships necessary to meet its clean energy and clean transportation goals, while building pathways into the middle class and beyond for Californians who have been historically excluded from opportunity or shouldered a disproportionate share of climate and environmental costs.

The scope of this agreement includes advice and recommendations to ensure CPUC policies and regulated programs create or support high-quality jobs in the energy and transportation sectors and expand access to those jobs for priority populations through high-quality education and training.

BACKGROUND

On October 7, 2015, Governor Brown signed the Clean Energy and Pollution Reduction Act of 2015 (SB 350). SB 350 established new energy efficiency and renewable electricity targets to support California's climate goal of reducing greenhouse gas emissions to 40 percent below 1990 levels by 2030. In addition,

---

[1] Executive Order N-79-20, September 2020: https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf
[2] Executive Order N-19-19, September 2019: https://www.gov.ca.gov/wp-content/uploads/2019/09/9.20.19-Climate-EO-N-19-19.pdf

SB 350 directed the California Energy Commission (CEC) and the California Air Resources Board (CARB) to, among other things, study and provide recommendations on barriers for low-income customers to energy efficiency and weatherization investments as well as clean transportation and mobility investments, including those in disadvantaged communities.

On December 2016, the CEC published the *SB 350 Low-Income Barriers Study, Part A- Commission Final Report: Overcoming Barriers to Energy Efficiency and Renewables for Low-Income Customers and Small Business Contracting Opportunities in Disadvantaged Communities* (Study A).[3] Study A recommends promoting well-paying clean energy job opportunities for residents in disadvantaged and low-income communities by creating opportunities to "collaborate with state labor agencies such as the California Labor & Workforce Development Agency, the California Workforce Development Board, and the Employment Development Department on targeted workforce training and job placement initiatives to create strategies that drive clean energy job opportunities in low-income and disadvantaged communities." (Study A, 77.)

In February 2018, CARB published the *SB 350 Low-Income Barriers Study, Part B- Overcoming Barriers to Clean Transportation Access for Low-Income Residents* (Study B).[4] Study B recommends maximizing economic opportunities and benefits for low-income residents from investments in clean transportation and mobility options by expanding workforce training and development. This includes the CWDB taking a lead role, in partnership with other state and local public agencies, to expand opportunities and create connections "for good quality clean transportation jobs in low-income and disadvantaged communities" as well as to expand access to workforce development programs to "support clean transportation jobs and workforce development in low-income and disadvantaged communities, especially for youth." (Study B, 54-55.)

In February 2019, the CPUC adopted the Environmental and Social Justice Action Plan to serve as a roadmap to expand public inclusion in Commission decision-making and improve services to targeted communities in California.[5] One of the core tenets of the ESJ Action Plan, Goal 7, tasks the CPUC with

---

3 https://assets.ctfassets.net/ntcn17ss1ow9/3SqKkJoNlvts2nYVPAOmGH/7bc56e2692769abda31a2aace7b00147/TN214830_20161215T184655_SB_350_LowIncome_Barriers_Study_Part_A__Commission_Final_Report.pdf

4 https://ww2.arb.ca.gov/sites/default/files/2018-08/sb350_final_guidance_document_022118.pdf

5 www.cpuc.ca.gov/ESJActionPlan

promoting economic and workforce development opportunities in ESJ communities by developing workforce development guidelines in programs overseen by the CPUC or CPUC regulated utilities.

In September 2019, Governor Newsom signed Executive Order (EO) N-19-19 to further California's commitment to mitigate the impacts of climate change. EO N-19-19 directs all aspects of state government to continue to increase efforts to reduce greenhouse gas emissions and mitigate the impacts of climate change to build a sustainable and inclusive economy. In September 2020, Governor Newsom signed Executive Order (EO) N-79-20 to redouble California's efforts to reduce emissions from the transportation sector. EO N-79-20 directs the CPUC and other state agencies to accelerate the deployment of affordable fueling and charging infrastructure for zero-emission vehicles, and promotes the creation and retention of high-road, high-quality jobs in the transition to a carbon neutral economy. These Executive Orders reinforced the ESJ Action Plan goal and solidified CWDB's commitment to collaborate with the CPUC to improve workforce development opportunities.

In March 2020, the CWDB released California's 2020-2023 Unified Strategic Workforce Development Plan (State Workforce Plan)[6] featuring the CWDB's vision of a high road economy which is defined by a set of goals to be achieved simultaneously: greater equity and mobility for workers, higher skills and competitiveness for employers, and long-term environmental sustainability and climate resilience for the state. Strategies to advance the high road vision through policy and programs include administering the High Road Construction Careers (HRCC) and High Road Training Partnerships (HRTP) workforce initiatives, as well as establishing partnerships between the CWDB and other state agencies – including the CPUC – to align California's transition to carbon neutrality with the State's high road vision.

ROLES AND RESPONSIBILITIES

The CPUC regulates energy utilities, telecommunications, water, railroad, rail transit, and passenger transportation companies' services and utilities, protects consumers, safeguards the environment, and assures Californians' access to safe and reliable utility infrastructure and services.

6 https://cwdb.ca.gov/plans_policies/2020-2023-state-plan-draft/

The CWDB oversees and continuously improves the workforce system in California, which encompasses a wide array of work including: policy development, workforce support and innovation, and performance assessment, measurement, and reporting. In addition to administering innovative workforce development programs, the CWDB works with a multitude of public and private organizations at the state and local levels to develop a common policy vision for the provision of workforce services in the state.

SHARED PRIORITIES

The Parties share the following priorities for effective communication and coordination to support workforce development policies and practices to implement the State's and CPUC'S directives:

1. Establish regular intervals for information sharing on both the management and staff levels, including a process for regular information flow and opportunities for joint planning and goal setting;
2. Develop a near and long-term framework for high road economic and workforce policy and practice to meet the goals of the state including but not limited to those outlined in CPUC's ESJ Action Plan and CDWB's 2020-2023 State Workforce Plan;
3. Identify programs to examine the scope of CPUC workforce development efforts. Possible program areas include energy efficiency, building electrification, renewable energy, transportation electrification and vegetation management programs;
4. Establish or advance a set of principles and practices that can guide any CPUC-regulated program in updating or developing California's economy and workforce in a way that delivers measurable benefits for ESJ communities. These principles and practices should directly aid disadvantaged Californians by building clean energy and clean transportation career pipelines, while taking into consideration ratepayer impacts;
5. Establish targets and analyze metrics to assess economic and workforce development related activities within CPUC programs and ESJ communities.

CPUC RESPONSIBILITIES

In order to achieve optimal results for the shared priorities, the CPUC will perform the activities and functions summarized below:

1. CPUC will provide information and data to CWDB on workforce development in the energy and transportation industries regulated or overseen by the CPUC, which includes but is not limited to the following:
    a. Elements of current workforce development programs overseen by the CPUC or CPUC regulated utilities.
    b. To the extent available, background information on prior and current CPUC efforts to develop and implement workforce development requirements.
    c. Industries and occupations involved in CPUC workforce development efforts.
    d. Strategies used by CPUC to promote and track workforce development programs and outcomes.
2. Review and analyze CWDB's feedback to develop a standardized workforce development framework.
3. Designate CPUC staff and management with relevant experience to support MOU activities including data and information sharing, and other related activities in coordination with CWDB.

CWDB RESPONSIBILITIES

In order to achieve optimal results for the shared priorities, the CWDB will perform the activities and functions summarized below:

1. Provide subject matter expertise related to high road economic and workforce development strategies and best practices.
2. Evaluate, analyze, and provide feedback on CPUC or CPUC regulated industries' workforce development efforts.
3. Provide recommendations on program design, standards, and requirements to promote high road economic workforce development strategies and best practices.
4. Identify opportunities for upgrading workers' skills and contractors' competencies to perform high-quality work that meets clean energy and clean transportation goals.

5. Provide recommendations related to tracking workforce development impacts and outcomes.
6. Provide designated CWDB staff and management with relevant experience to support data and information sharing, and other related activities in coordination with CPUC.

PROTECTION OF CONFIDENTIAL INFORMATION

"Confidential Information" includes, but is not limited to, any information or data obtained pursuant to California Public Utilities Code section 583 and CPUC General Order 66-D, records exempt from public disclosure under the California Public Records Act (Government Code Section 6250, et seq.), Evidence Code section 1040, or any other applicable federal or state law, or information that is appropriately designated by the Parties to be exempt, prohibited, or privileged from disclosure by state or federal law.

The Parties shall take all necessary measures to protect Confidential Information and, consistent with the Public Records Act and any other laws requiring disclosure, treat any shared Confidential Information as confidential. The Parties shall impose all the requirements of this MOU on all of their respective officers, members, employees, and agents with access to Confidential Information. Any Confidential Information obtained by the Parties shall only be used for purposes that are consistent with existing law. The Parties agree to promptly notify each other's legal counsel of any public records act requests they receive seeking information shared or obtained pursuant to this agreement.

All Confidential Information provided to the Parties pursuant to this MOU shall be subject to Government Code Section 6254.5, subdivision (e), which exempts from public disclosure under the California Public Records Act, confidential records that one state or local agency has provided to another state or local agency pursuant to an agreement that the latter will treat the disclosed records as confidential. The Parties agree that, as provided in Government Code Section 6254, subdivision (e), Confidential Information will only be shared with persons authorized in writing by the Executive Officer of the relevant agency (or by their authorized delegate), and that all information obtained by the Parties pursuant to this agreement will be used only for purposes that are consistent with existing law.

Confidential Information provided to the other party, shall be maintained as confidential and shall not be released without an agreement in writing from the other party, unless a court of competent jurisdiction order the release of the Confidential Information.

The Parties will make all reasonable efforts to ensure that disclosure of Confidential Information will not occur. In the event an inadvertent disclosure of Confidential Information occurs, the party making such inadvertent disclosure will notify the other party in writing and will make every reasonable effort to promptly correct the inadvertent disclosure.
If either party receives a request to release, disclose, or access any of the Confidential Information (for example, pursuant to a subpoena, discovery request, or the California Public Records Act), the party receiving the request shall promptly transmit a copy of the request to the other party that originally generated the Confidential Information. The party who originally generated the Confidential Information shall assume the lead responsibility for determining the appropriate response required by California law, and shall consult with the other party during the course of reaching its determination.

SCOPE

This MOU is made for the sole benefit of the Parties and no other person or entity shall have any rights or remedies under or by reason of this MOU. Nothing in this MOU may be the basis of any third-party challenges or appeals. Nothing in this MOU creates any rights, remedies, or causes of action in any person or entity not party to this MOU.

APPROVAL

This MOU is effective upon completion of the signatures listed below. This MOU may be executed in counterparts. Each executed counterpart shall have the same force and effect as an original instrument. Taken together, the executed counterparts shall constitute one and the same agreement.

This MOU shall not be modified except by a written agreement signed by authorized representatives of the Parties. The Parties shall meet and coordinate on issues pertaining to the effectiveness and validity of this MOU on an annual basis, or as mutually agreed upon by the Parties. Any determination that a provision in this MOU is invalid does not invalidate any other provision of this MOU or the MOU in its entirety.

This MOU shall continue unless or until either party to the MOU determines that the MOU should be terminated. Unless otherwise provided for by the written agreement of both of the Parties, unilateral termination of the MOU shall be effected no sooner than 60 days from the date either party provides written notice of its intent to terminate the MOU. Termination of this MOU shall not affect the obligation of the Parties to maintain the confidentiality of information pursuant to this MOU.

Each party represents and warrants that it has the right, power, and authority to execute this MOU. Each party represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities necessary to permit that party, and the persons executing this MOU for the party to enter into this MOU.

CALIFORNIA PUBLIC UTILITIES COMMISSION:

________________________________ October 29, 2020

RACHEL PETERSON
Acting Executive Director

CALIFORNIA WORKFORCE DEVELOPMENT BOARD:

________________________________ October 26, 2020

TIM RAINEY
Executive Director

Appendix F:
CPUC Tribal Consultation Policy

Tribal Consultation Policy of the California Public Utilities Commission

Introduction:

The CA Public Utilities Commission (CPUC or "Commission") adopts this Tribal Consultation Policy, consistent with Executive Order B-10-11 issued by Governor Edmund G. Brown, Jr. on September 19, 2011). Executive Order B-10-11 declares that "the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus." The Executive Order directs state executive agencies and departments to "encourage communication and consultation with California Indian Tribes." It further directs state agencies and departments "to permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities."

California is home to over 170 California Native American tribes.[1] Executive Order B-10-11 applies to federally-recognized Tribes and other California Native Americans. For purposes of this policy, the terms "tribes" and "tribal governments" refer to elected officials and other representatives of federally- recognized Tribes and other California Native Americans.

This policy is not intended to replace or supplant obligations mandated by federal law. It sets forth provisions for consultation, communication and collaboration with tribes to the extent that a conflict does not exist with applicable laws or regulations. This policy is not a regulation and it does not create, expand, limit, waive, or interpret any legal rights or obligations.

Tribal Liaison:

The Commission's Tribal Liaison will assist with implementing this policy. The Tribal Liaison is responsible for coordinating outreach, communication, education and other activities affiliated with tribal interests. The Tribal Liaison will act as a point of contact for tribal governments enabling participation in Commission proceedings and Commission-approved programs. The Tribal Liaison will facilitate CPUC leadership availability for government to government consultation. Alternatively, tribal governments may contact the Commission's Public Advisor for this assistance (Email: Public.Advisor@cpuc.ca.gov or phone: (866) 849-8390). The Tribal Liaison and/or Public Advisor are additional resources, and tribal governments may continue to directly contact relevant Commission staff regarding ongoing issues.

---

[1] "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. See Public Resources Code § 21073. California Native American tribes include both federally recognized and non- federally recognized tribes. Nothing in this policy prevents tribal consultation with other Native American groups demonstrating an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the CPUC.

Tribal Consultation Policy of the California Public Utilities Commission

Policy Goals: The goals of this policy are as follows:

- Recognize and respect tribal sovereignty
- Encourage and facilitate tribal government participation in CPUC proceedings
- Give meaningful consideration to tribal interests in issues within the CPUC's jurisdiction
- Encourage and facilitate tribal government participation in CPUC-approved utility programs
- Protect tribal cultural resources
- Encourage investments by tribal governments and tribal members in onsite renewable energy generation, energy efficiency; low carbon transportation and energy storage.

Background Regarding CPUC Authority:

The range of CPUC activities is extensive and includes regulation of privately-owned utilities, including gas, electric and water utilities, and oil and gas pipeline companies, and approval of the rates they charge to customers. The CPUC also regulates some aspects of telecommunication companies, and the safety of utilities, railroads, common carriers, charter party carriers and other transportation providers, but does not approve those companies' rates. The CPUC implements laws that require the electric utilities to procure renewable electricity to reduce greenhouse gas emissions, and that require electric and gas utilities to offer incentives, grants or rebates for energy efficiency, installation of renewable energy or energy storage, and installation of electric vehicle chargers. The CPUC also implements programs that offer reduced rates for low income gas and electric customers (i.e., the California Alternative Rate for Energy (CARE) and Family Electric Rate Assistance (FERA) programs; "Lifeline" for telephone service; subsidies for broadband services for underserved communities; and utility programs that provide no-cost energy efficiency upgrades to low income customers (the Energy Savings Assistance (ESA) Program).

The CPUC's activities may affect tribal governments in several ways, including but not limited to: 1) impacts on a tribe that is a utility customer at buildings and/or businesses owned or operated by the tribe or tribal members; 2) impacts on the affordability, availability and reliability of services provided to tribal members by utilities; and 3) potential impacts from proposed construction of utility infrastructure on or near tribal property or property containing tribal cultural resources. Tribes may also experience impacts from electricity outages, or de-energizing of power lines during hazardous weather conditions.

Facilitating Tribal Government Participation:

1. The CPUC will encourage and facilitate tribal government participation in its programs and proceedings.

   a. Tribal governments may contact the CPUC's Tribal Liaison for assistance to initiate participation in a proceeding or consultation with CPUC staff or decision-makers. If a tribe identifies a specific issue for consultation with the CPUC, the Tribal Liaison will identify the appropriate Commission staff and/or decision-makers to participate in the discussions and ensure that the matter receives appropriate consideration.

   b. The CPUC will give special consideration to tribal governments' requests to participate in Commission proceedings. Administrative law judges and Commissioners are encouraged to grant a tribal government's request to become a party in a proceeding, even if a request is untimely, if the proceeding can continue under the existing schedule, or if it is reasonable to modify the schedule and consistent with principles of due process.

   c. Commission staff will assist tribal governments in locating relevant information and documents that will help them participate in Commission proceedings and/or Commission-approved programs. If necessary, Commission staff will send the relevant information or documents to a tribal government electronically or by regular mail.

   d. Commissioners and their advisors will make every effort to grant tribal governments' requests for in person meetings with decision-makers, consistent with the applicable law regarding ex parte communications, and the equal time requirements.[2] Other Commission staff will also accommodate tribal governments' request for in person meetings, whenever possible.

   e. When Commissioners travel to different cities for public meetings, they will seek to arrange separate meetings with local tribal governments, as time allows.

   f. Commission staff and Administrative Law Judges shall make efforts to ensure that relevant information the Commission receives from a tribal government is submitted into the record of a proceeding, consistent with the confidentiality provisions of this policy set forth below. Where a tribal government has submitted written comments in a proceeding, the decision shall explain the tribe's concerns and how they are addressed. Where the

[2] Public Utilities Code § 1701.3(h)(3).

CPUC is unable to fully address the tribe's concerns, the CPUC shall clearly explain the legal, practical, or policy considerations underlying its decision.

g. The Commission will make efforts to ensure that tribal governments are aware of Commission- managed grant programs (such as the CA Advanced Services Fund), and various Commission- approved utility incentive and subsidy programs offered by the utilities, especially those that target disadvantaged and/or remote communities The CPUC's Tribal Liaison will offer informational materials and meetings for tribal governments on these various programs, if requested.

h. Where feasible, Commission staff will provide assistance so that tribal governments and tribal members may seek to participate in (or benefit from) grant programs implemented by the Commission and various Commission-approved incentive and subsidy programs offered by the utilities. The CPUC Tribal Liaison will offer assistance to navigate the application process.

2. In its role as a member of the Pacific Forest and Watershed Lands Stewardship Council, the Commission will encourage prioritizing donation of Pacific Gas & Electric Company property to tribal governments and, where possible, facilitate those donations.

3. In the event that a tribal government believes that consultation has not met the standards set forth in this Policy, it may submit a written letter to the Executive Director of the CPUC explaining the deficiencies. Within 30 days, the Executive Director will either meet with the tribal government, or respond in writing, and will then direct any further consultation that he or she believes is appropriate.

<u>Confidentiality</u>:

- The Commission recognizes that confidentiality of information regarding tribal cultural resources, history, traditions, religious activities and sites, and other matters is important to tribal governments and tribal members.
- The Commission will follow existing laws that protect confidentiality of tribal cultural resources (including Pub. Res. Code §§§ 5097.9, 5097.933 and 21082.3(c); Government Code § 6254(r) and Cal.Code Regs., tit. 14, § 15120(d)).
- The Commission will not include any information provided by a tribal government in environmental documents, or documents it files in proceedings, if it is deemed confidential by the tribal government. The tribal government shall notify the CPUC if any information it provides is confidential, and mark any such documents as confidential.
- If appropriate, the CPUC will work with tribes to enter into a non-disclosure agreement for documents transmitted to the CPUC that contain confidential information.

- If confidential information regarding the presence of tribal cultural resources is relevant to a Commission decision, the Commission will work with the tribal government to reach agreement on how to proceed, in an effort to allow the decision-makers to consider the information, while also protecting its confidentiality.

Tribal Consultation Under CEQA:

For projects where the CPUC is the lead agency under CEQA, the CPUC will comply with the statutory requirements regarding tribal consultation enacted by AB 52 (Gatto, 2014) (Pub. Res. Code §§ 21080.3 *et seq*.). The CPUC may also consult the Governor's Office of Planning and Research *Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA* (June 2017).

Summary of CEQA Consultation Process:

- A tribal government may request CEQA consultation if it is traditionally and culturally affiliated with the geographic area of a proposed project.
- The consultation must take place prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report. (Pub. Res. Code § 21080.3.1(a)). Since the initial consultation occurs early in the agency's CEQA review process (see below under Timing of Consultation), the consultation will occur before the CPUC's release of a draft or proposed negative declaration, mitigated declaration, or environmental impact report.
- The consultation must address alternatives to the project, recommended mitigation measures, or significant effects, if requested by the tribe. (Pub. Res. Code § 21080.3.2(a)).
- If the agency determines that a project may cause a substantial adverse change to tribal cultural resources, the agency must consider mitigation measures. The agency must "when feasible, avoid damaging effects to any Tribal cultural resource." (Pub. Res. Code 21084.3(a)). The statute describes mitigation measures that the agency may adopt, if feasible, to avoid or minimize the impacts. (Pub. Res. § 21084.3(b)).
- The consultation concludes when either 1) the parties agree on measures to recommend to mitigate or avoid a significant effect, if one exists, on a tribal cultural resource (Pub. Res. Code § 21082.3(a)), or 2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Res. Code § 21080.2.2(b)).

In 2016, Appendix G of the CEQA Guidelines was amended to implement AB 52. The Environmental Checklist in Appendix G of the CEQA Guidelines now directs lead agencies to address tribal cultural resources in Question #11: "Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 20180.3? If so, has consultation begun?" Appendix G of the Guidelines also directs the lead agency to identify whether the project would cause a substantial adverse change in the significance of a tribal cultural resource that is: listed or eligible for listing in the California Register of Historical Resources; is listed in a local register of historical resources; or that is significant pursuant to the criteria in Public Resources Code § 5024.1(c) (CEQA Guidelines, Section XVII).

Advance Request for Notice of Projects:

- Pursuant to AB 52, a tribe may inform agencies in advance that it would like notice of projects subject to CEQA that are seeking the agency's approval and that are within the tribe's traditionally and culturally affiliated area.
- The CPUC's website has a form has a form letter that tribal governments may submit to the CPUC requesting advance notice of CEQA projects in its area. See: http://www.cpuc.ca.gov/tribal/.

Timing of Consultation: The CPUC will follow the statutory deadlines for tribal consultation under CEQA, which generally require the following:

- When a tribe has requested notice of CEQA projects, the CPUC must provide written notice to that tribe of a project in its area, within 14 days of determining that the project application is complete.
- A tribe may request to engage in consultation within 30 days of receipt of the notice, and designate a lead contact person.
- The CPUC will begin the consultation process within 30 days of receipt of the request for consultation.
  - The CPUC will hold a consultation meeting at one of the CPUC offices (in Sacramento, San Francisco or Los Angeles) or at a tribal government office within 30 days.
  - If a meeting at a Commission office is not feasible for the tribal government, the consultation may occur at a mutually agreeable alternative location or by telephone.
  - If the tribe requests that the consultation be scheduled for a time after the 30 day period, the CPUC will accommodate the request.
- The CPUC will participate in additional consultation meetings as necessary to address the issues and work in good faith to reach an agreement with the tribal government on recommendations for project modifications or mitigation measures.
- The CPUC will honor a tribe's request for CEQA consultation that is made more than 30 days after the tribe's receipt of notice, as long as there is still time for meaningful consultation to occur.

<u>Other Situations</u>:

When a tribe has not requested advance notice of all CEQA projects from the CPUC, if the Commission is the lead agency, a request will be made to the Native American Heritage Commission to identify tribal entities interested in the project area. Commission staff will ensure that the identified tribal entities receive written notice of a proposed project in their area at the beginning of the environmental review process. The Commission will carefully consider all tribal government comments regarding potential impacts on tribal cultural resources and suggested mitigation measures.

Appendix G: CPUC Enforcement Policy

I. INTRODUCTION

A. Background

The California Public Utilities Commission (Commission) regulates a broad array of entities and industries, that include privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation entities (regulated entities). The Public Utilities Act (Public Utilities Code § 201 et. seq.) requires the Commission to enforce the laws affecting regulated entities by promptly investigating and prosecuting alleged violations and imposing appropriate penalties.

The Commission considered its existing enforcement policies and practices when developing this Commission Enforcement Policy (Policy). Nothing in this policy document shall be used as the basis of a regulated entities' defense to any enforcement action or as justification for any ratemaking relief, nor in any way relieve regulated entities of any duties and obligations they may have under statutory law.

This Policy does not apply to any violation that, as of the effective date of the Policy, is the subject of a citation, an Order to Show Cause, an Order Instituting Investigation, or a referral to the Legal Division for the filing of a civil or criminal action.

B. Policy Objectives

The goals of the Policy are to promote maximum compliance with Commission rules and requirements through the adoption and application of consistent enforcement practices and to develop a sufficient record that ensures that regulated entities subject to an enforcement action receive due process (e.g., notice and an opportunity to be heard). The purpose of these goals is to ensure that regulated entities provide services and facilities to the public in a manner that is safe, reliable, non-discriminatory and just, and reasonable. The Commission intends for this Policy to promote a consistent approach among Commission staff[1] to enforcement actions, to make enforcement a high priority, and to promote the Commission's enforcement culture.

[1] As used in this Policy the term □staff□ refers to division staff or such other staff as may be designated by the Executive Director or a Deputy Executive Director to carry out the functions involved in taking enforcement action.

The Policy provides guidance on:

1. Achieving a consistent approach to enforcement;
2. Enforcement actions;
3. Settlements; and
4. Setting penalties

C. Policy Components

Guiding Principles

The Commission's enforcement actions will be guided by a standard set of principles, as described in this Policy, within its jurisdictional authority for energy, communications, water, and transportation.

Division Specific Enforcement Teams

This Policy creates division-specific enforcement teams made up of staff handling enforcement work. Among other activities, staff will prioritize enforcement cases, recommend appropriate enforcement actions, and ensure that enforcement activities are monitored and documented and that enforcement actions are made public to the extent possible.

Commission Enforcement Team

The Policy also creates a Commission Enforcement Team made up of at least one enforcement liaison from each division. The enforcement liaisons shall meet at least quarterly to discuss enforcement matters and procedures with the goal of promoting consistency and efficiency throughout the Commission.

Consistent Enforcement Actions

To provide a consistent approach to enforcement, the Policy standardizes enforcement documents and procedures to the extent appropriate.

II. Guiding Principles

A. Ensuring Compliance

The Commission will strive to ensure compliance with statutes, rules, orders and other requirements and provide a meaningful deterrent to violations through its enforcement actions.

B. Consistent Enforcement

Commission enforcement actions shall be consistent, while considering the differences in the Commission's statutory authority and programs for each particular industry. The Commission's enforcement actions shall be appropriate for each type of violation and shall provide consistent treatment for violations that are similar in nature and have similar safety and/or customer protection impacts. Enforcement actions shall also require a timely return to compliance.

C. Firm Enforcement & Meaningful Deterrence

Enforcement actions should provide a meaningful deterrent to non-compliance. This requires, at a minimum, that the Commission seek adequate remedies, including:

1. Refunding or depriving the economic benefit gained by the noncompliance;
2. Penalties that are higher than the amounts required to be refunded or deprived. In setting the penalty amount, Staff shall be guided by statute and the factors in Appendix I, Penalty Assessment Methodology, which include:
    a. Severity or gravity of the offense (including physical harm, economic harm, harm to the regulatory process, and the number and scope of the violations);
    b. Conduct of the utility (including the regulated entity's prior history of violations and actions to prevent, detect, disclose, and rectify a violation);
    c. The financial resources of the regulated entity (including the size of the business, need for deterrence, and constitutional limitations on excessive fines);

d. The totality of the circumstances in furtherance of the public interest; and

e. The role of precedent.

D. Timely Enforcement

The Commission shall pursue timely enforcement, consistent with the needs of each case.

E. Progressive Enforcement

The Commission shall implement progressive enforcement. Progressive enforcement is an important component of consistent and firm enforcement. Progressive enforcement provides an escalating series of actions, beginning with actions such as a warning letter or notification of violation followed by actions that compel compliance and may result in the imposition of penalties or fines (e.g., the issuance of an enforcement order or filing a civil or criminal action). Progressive enforcement may not be an appropriate enforcement response when violations result from intentional or grossly negligent misconduct, where the impacts on ratepayers or other consumers are widespread, or where impacts to safety are significant.

F. Transparency

The Commission shall provide clear and consistent information about its enforcement actions and which entities it regulates. The Commission will monitor and report its enforcement actions in a publicly accessible way, including the extent to which regulated entities return to compliance.

G. Environmental Justice and Disadvantaged Communities

The Commission shall promote enforcement of all statutes within its jurisdictions in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations in the state. This includes tailoring enforcement responses to address the needs of vulnerable and disadvantaged communities.

H. Adaptive Management

The Commission shall continuously monitor and update its enforcement tools, programs and authorities to ensure that they remain protective of customers, ratepayers, and the environment. This includes keeping abreast of new markets, business practices, and consumer abuses that might necessitate changes to the enforcement program and authorities. The Commission will prioritize regular communication among divisions to identify both specific violations and trends.

The Commission should address new consumer issues as they arise. In instances where the Commission lacks jurisdiction, the Commission will work proactively to identify the appropriate local, state, or federal agency that does have jurisdiction and will work with that agency to remedy the harm to consumers.

I. Enforcement Prioritization

It is the policy of the Commission that every violation should result in an appropriate enforcement action consistent with the priority of the violation. In recognition of its finite resources, the Commission shall exercise its enforcement discretion to prioritize enforcement actions. Enforcement prioritization enhances the Commission's ability to leverage its finite enforcement resources and to achieve the general deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. In prioritizing enforcement actions, the Commission shall consider the impact of violations on vulnerable and disadvantaged communities.

III. Enforcement

In carrying out the Commission's mandate, staff may pursue different levels of enforcement action. In some cases, an enforcement response, such as an oral communication followed by a Warning Letter or Email or a Notice of Violation, will be enough to notify a regulated entity that staff identified an issue or violation that requires corrective action. Other cases may warrant a stronger enforcement action in lieu of, or in addition to, a warning or other initial enforcement response. All enforcement actions shall be designed and implemented to ensure that timely action is taken to avoid or correct a violation and return to compliance.

Division Enforcement Teams

Each division that participates in enforcement work shall establish a Division Enforcement Team. The Division Enforcement Team is made up of the managers or their delegates and an attorney[s] from the Commission's Legal Division. The Division Enforcement Teams shall prioritize division cases for enforcement action to ensure the most efficient and effective use of available resources. The Division Enforcement Teams shall meet at least quarterly to prioritize enforcement cases, continuously improve enforcement processes and procedures, and make recommendations about how to proceed with cases, including which enforcement action is appropriate for each case. The Division Enforcement Team is also responsible for tracking and publishing information about division cases in an enforcement database.

Commission Enforcement Team

The Commission Enforcement Team is made up of enforcement liaisons from each division that maintains an enforcement team and attorney(s) from the Commission's Legal Division. The enforcement liaisons and attorney(s) shall meet at least quarterly to discuss enforcement matters of statewide concern with the goal of promoting consistency and efficiency throughout the divisions.

A. Enforcement Actions

Staff may pursue the following enforcement actions:[2]

1. In Person or Telephone Communication

a. Staff may, but is not required to, inform regulated entities in person or by telephone of violations that must be corrected. Staff may also orally inform regulated entities of weaknesses, safety concerns, or opportunities for improvement that are not violations but should be corrected to avoid a violation or to reduce safety risk. Staff shall keep a detailed written record of such oral communications with the regulated entity in the case file. The minimum requirements for documenting an oral communication with a regulated entity are:

i. Date and time of the communication;

ii. The name of the staff member[s] and the representative[s] of the regulated entity involved in the communication;

iii. The violation, weakness, safety concern, or opportunity for improvement that was discussed;

iv. Actions for correcting the violation or addressing the weakness, safety concern, or opportunity for improvement that were discussed, including required timeframes for completing such actions;

[2] Nothing in this Policy shall be construed to constrain staff or the Commission from pursuing actions that are otherwise authorized but are not specifically mentioned in the Policy.

v. The regulated entity's response to the communication of the violation, weakness, safety concern, or opportunity for improvement; and

vi. The evaluation of whether the response is sufficient and/or warrants a follow-up investigation.

b. All oral communications shall be memorialized in a warning email or letter, Notice of Violation, or other written communication. Oral communications are not required in every case. Staff may issue a Warning Letter or email, citation, Notice of Violation, or refer a case for other enforcement in lieu of an oral communication.

2. <u>Warning Letter or Email</u>

Staff may send a regulated entity a letter or an email that identifies program weaknesses, safety concerns, or opportunities for improvement. A Warning Letter or Email should only be sent to a regulated entity to address issues that are not being cited as violations but should be corrected to avoid a citation or Notice of Violation or to reduce a safety risk. Staff shall verify delivery of the Warning Letter or Email using a Proof of Service form. A Warning Letter or Email shall be placed in the regulated entity case file and recorded in the enforcement database and shall include the following:

a. The date the letter or email was sent;
b. The date staff identified the situation or condition at issue;
c. The circumstances under which staff identified the situation or condition at issue (e.g., during an inspection or by consumer complaint); and
d. Actions recommended to address the situation or condition at issue, including any recommended timeframes to complete such actions.

3. <u>Request for Information</u>

Staff are authorized to inspect the accounts, books, papers, and documents of a regulated entity. Staff may request the production of accounts, books, papers, and documents of a regulated entity. Failure to make such records available may lead to the issuance of a subpoena or other enforcement action.

4. Subpoena

Staff may subpoena records from a regulated entity as permitted by the Public Utilities Act. Staff may also subpoena the attendance of a person for deposition or other examination under oath as permitted by the Public Utilities Act. The issuance of a subpoena is not a prerequisite for the exercise of Commission authority under Public Utilities Code section 313 or any appropriate powers under the California Constitution and the Public Unities Code.

5. Cease and Desist/Stop Work Order

Commission or staff may issue an order to cease and desist an activity or an order to stop work to a regulated entity consistent with existing Commission decisions and orders and as permitted by the Public Utilities Act. Nothing in this Policy is intended to modify existing procedures concerning such actions, including any right to appeal such actions.

6. Notice of Violation

a. When a violation is identified, staff may issue a Notice of Violation to a regulated entity. Staff shall use a Notice of Violation form. Staff shall verify delivery of the Notice of Violation using a Proof of Service form. A Notice of Violation shall be placed in the regulated entity case file and recorded in the enforcement database and shall include:

    i. The law or Commission order, decision or rule violated by the regulated entity;
    ii. The facts that form the basis for each violation;
    iii. Information related to the potential for additional or ongoing violations;
    iv. A directive to correct each violation to avoid additional enforcement action;
    v. A date by which the regulated entity must submit a plan for correcting each violation if a plan is appropriate;
    vi. A date by which the regulated entity must certify that each violation has been corrected;

vii. A penalty amount if the Notice of Violation includes a penalty;[3]

viii. Staff contact information; and

ix. Information about how to respond to the Notice of Violation.

b. A regulated entity that receives a Notice of Violation shall be given an opportunity to respond in writing to that Notice of Violation. The response shall be provided to the enforcing division within 30 days[4] from the date the Notice of Violation was served upon the regulated entity. The response time may be extended or shortened by staff, depending on the exigencies of a case. The response shall include:

i. If the regulated entity disputes that a violation has occurred, a statement of the facts upon which the dispute is based;

ii. A plan to correct any undisputed violations;

iii. Confirmation that the regulated entity will correct any undisputed violations by the date(s) specified in the Notice of Violation or a proposal for a later date with an explanation of the need for additional time; and

iv. Confirmation that a penalty assessed will be paid within 30 days of the issuance of the Notice of Violation or a proposal for a lower penalty amount with an explanation of why the lower amount is appropriate.

c. Staff shall review the regulated entity's response to a Notice of Violation and consider the regulated entity's explanation or defenses. Staff shall determine whether to accept the response or proceed with additional enforcement. The reasons for a determination that the regulated entity's explanation or defenses lack merit should be included in the regulated entity case file. After

[3] Staff may decide that violations that are administrative in nature do not warrant the imposition of a penalty given the facts known at the time. Administrative violations do not involve immediate safety implications. Examples of administrative violations include: Inadvertent omissions or deficiencies in recordkeeping that do not prevent staff from determining compliance; records not physically available at the time of the inspection, provided the records exist and can be produced in a reasonable amount of time; and inadvertent violations of insignificant administrative provisions that do not involve a significant threat to human health, safety, welfare, or the environment. A recurring administrative violation may warrant a penalty.

[4] When referred to in this policy, days means calendar days.

reviewing the response, staff may take any appropriate action including any of the following actions:

i. Send the regulated entity a draft Proposed Administrative Consent Order and negotiate a proposed settlement for Commission review;
ii. Request that the regulated entity provide additional information; or
iii. Take the next appropriate enforcement action.

7. Administrative Consent Order

a. A negotiated proposed settlement shall be memorialized in a proposed Administrative Consent Order, prepared using an Administrative Consent Order form. The proposed Administrative Consent Order shall become final upon review and approval by the Commission. All proposed and final Administrative Consent Orders shall be placed in the regulated entity case file and recorded in the enforcement database and shall include:

i. The law or Commission order, resolution, decision, or rule violated by the regulated entity;
ii. The facts that form the basis for each violation;
iii. The number of violations, including the dates on which violations occurred;
iv. Information related to the potential for additional or ongoing violations;
v. An agreement by the regulated entity to correct each violation;
vi. A date by which the regulated entity must certify it corrected all violations;
vii. An agreement by the regulated entity to pay any penalty by a date specified.

b. The Commission's Executive Director shall designate Commission management at the Deputy Director level or higher (or designee) to negotiate a proposed Administrative Consent Order.

c. If a regulated entity does not respond to a Notice of Violation within the required time frame, or if a proposed Administrative Consent Order is not negotiated, staff shall take the next appropriate enforcement action.

8. <u>Citation and Compliance Programs</u>

a. If staff discover a violation that can be addressed under an existing Citation and Compliance Program, staff shall determine whether to issue a citation as allowed under the Citation and Compliance Program or take a different enforcement action. Factors to consider in determining whether a different enforcement action is appropriate include, but are not limited to:

    i. Whether more flexibility in determining the penalty is appropriate for the circumstances, including whether the appropriate penalty is lesser or greater than the administrative limit imposed by the Citation and Compliance program (the remaining factors below may be relevant to this determination);
    ii. The culpability of the regulated entity — e.g., whether the violation was negligent, knowing, willful, or intentional;
    iii. Whether the regulated entity benefitted economically from noncompliance, either by realizing avoided or reduced costs or by gaining an unfair competitive advantage;
    iv. Whether violations are chronic, or the regulated entity is recalcitrant;
    v. Whether violations can be corrected within 30 days;
    vi. Whether the actual or potential harm from a violation is substantial;
    vii. Whether the case warrants specific corrective action requirements that cannot be included in a citation; and
    viii. Whether the case warrants a recommendation for an Order Instituting Investigation and/or civil or criminal action.

b. If staff discover a violation that cannot be addressed through a pre-existing Citation and Compliance program, staff should take the next appropriate enforcement action.

c. Prescriptive and Proscriptive Requirements — All requirements (including, but not limited to, complaint procedures, an action or failure to act identified as a violation in a Citation and Compliance

Program, and requirements to report actual or potential violations to any entity, e.g. local authorities or the Commission), that are otherwise applicable to a regulated entity shall continue to apply and remain enforceable, regardless of whether staff choose to issue a citation for a violation under a Citation and Compliance Program or pursue a different enforcement action.

9. Administrative Enforcement Order

   a. Staff may issue a proposed Administrative Enforcement Order to a regulated entity, prepared using an Administrative Enforcement Order form. Staff shall verify delivery of the proposed Administrative Enforcement Order to the regulated entity using a Proof of Service form. Proposed Administrative Enforcement Orders shall be placed in the regulated entity case file and recorded in the enforcement database and shall include:

      i. The law or Commission order, resolution, decision, or rule violated by the regulated entity;
      ii. The facts that form the basis for each violation;
      iii. The number of violations, including the dates on which violations occurred;
      iv. Information related to the potential for additional or ongoing violations;
      v. A directive to correct each violation;
      vi. A date by which the regulated entity must certify that it corrected all violations;
      vii. A directive to pay a penalty by a date specified;
      viii. Staff contact information; and
      ix. Information about how to request a hearing on the proposed Administrative Enforcement Order.

   b. The Commission's Executive Director shall designate Commission management at the Deputy Director level or higher (or designee) to transmit a proposed Administrative Enforcement Order to a regulated entity.

   c. The regulated entity may request a hearing on the proposed Administrative Enforcement Order by filing a Request for Hearing form within 30 days of the date the proposed order is served on the entity. The right to a hearing is forfeited if a Request for Hearing is not timely filed. If a timely Request for Hearing is not filed, the proposed Administrative Enforcement Order shall become final upon adoption by the Commission. Corrective action requirements in a proposed Administrative Enforcement Order remain in effect, notwithstanding the filing of a Request for Hearing. Neither payment of the penalty nor filing a timely Request for Hearing shall excuse the regulated entity from curing a violation. The hearing shall be conducted by an ALJ in accordance with the hearing provisions in the Citation Appellate Rules. A draft ALJ resolution approved by the Commission is subject to rehearing pursuant to Public Utilities Code section 1731 and to judicial review pursuant to Public Utilities Code section 1756. The amount of the penalty shall continue to accrue on a daily basis until the violation is corrected or until the appeal, rehearing, and judicial review process is fully concluded, a penalty is found to be appropriate, and the penalty is paid in full. The requirement that a penalty be paid shall be stayed during the hearing and rehearing process. Interest may be charged on unpaid balances and staff may take whatever actions are provided by law to recover unpaid penalties.

10. Order Instituting Investigation

Staff may recommend that the Commission issue an Order Instituting Investigation. Factors that may be considered in determining whether to recommend an Order Instituting Investigation include, but are not limited to:

a. The appropriate penalty for the case exceeds limits set by resolution or decision;
b. The matter is complex;
c. The violations caused fatalities, substantial injuries, and/or involved significant property damage in a widespread area;
d. The matter includes allegations of fraud or knowing, intentional or willful behavior;
e. The regulated entity's potential explanation or defenses; and
f. The entity has repeatedly violated the law or Commission rules and orders.

11. Order to Show Cause

Staff may recommend that the Commission issue an Order to Show Cause - an order that requires a regulated entity to show cause why a specified Commission action should not be taken. In deciding whether to recommend that the Commission issue an Order to Show Cause, Staff shall consider:

a. Whether the regulated entity failed to comply with a Commission order, general order, ruling, rule, data request, or statute; and
b. If the regulated entity failed to comply, whether the failure is a Rule 1.1 violation, a violation of Public Utilities Code section 2107, or its actions meet the criteria for a finding of contempt.

12. Suspension, Alteration, Amendment, and Revocation/Receivership

Commission or staff may suspend, alter, amend, or revoke the license or certification of a regulated entity consistent with existing Commission decisions and orders and as permitted by the Public Utilities Act. Nothing in this Policy is intended to modify existing procedures concerning such actions, including any right to appeal such actions.

13. Civil or Criminal Action

Staff may request that the Commission refer the matter to the Legal Division for the filing of a civil or criminal action, including requests for injunctive relief. Factors staff may consider in determining whether to refer the matter for civil or criminal action include, but are not limited to:

a. The matter includes allegations of criminal behavior;
b. Any of the factors for recommending an Order Instituting Investigation exist; or
c. Referral is appropriate given resource availability.

14. Referral to or from Another Agency

In some circumstances it may be appropriate to refer a case to another local, state or federal agency for consideration of enforcement action. If another agency refers a case to the CPUC, enforcement actions considered and/or taken will be in accordance with this Policy.

B. Settlement of Enforcement Actions

The Policy does not list the full range of considerations that may be relevant to negotiating a proposed settlement. However, the following general considerations should be evaluated as part of any proposed settlement to be submitted for Commission review:

1. Equitable factors;
2. Mitigating circumstances;
3. Evidentiary issues; and
4. Other weaknesses in the enforcement action that the division reasonably believes may adversely affect the ability to obtain the calculated penalty.

C. Penalties

The Commission and staff that choose not to take enforcement action under a Citation and Compliance Program, shall calculate an appropriate penalty using the methodology set forth in Appendix I (Penalty Assessment Methodology).

D. Monitoring Compliance with Orders, Decisions, and Resolutions

Staff is responsible for monitoring compliance with all final orders (including administrative consent orders), decisions, and resolutions. Staff shall document compliance in the enforcement database and the regulated entity's case file.

Appendix I
Draft Penalty Assessment Methodology

When a regulated entity violates the Public Utilities Act or Commission rules, decisions, or orders, Commission staff may propose, and the Commission may assess a penalty against the regulated entity. The penalty amount for each violation may be proposed or assessed at an amount that is within the statutory range authorized by the Public Utilities Act. This Penalty Assessment Methodology sets forth the factors that staff and the Commission must consider in determining the amount of a penalty for each violation. The factors are consistent with those that the Commission previously adopted and has historically relied upon in assessing penalties and restates them in a manner that will form the analytical foundation for future decisions that assess penalties.

The purpose of a penalty is to go beyond restitution to the victim and to effectively deter further violations by the perpetrator or others. Effective deterrence creates an incentive for regulated entities to avoid violations. Deterrence is particularly important against violations that could result in public harm and other severe consequences. The following factors shall be used in setting penalties that are appropriate to a violation:

I. Severity or Gravity of the Offense

The evaluation of the severity or gravity of the offense includes several considerations:

- Economic harm to victims
- Physical harm to people or property
- Threatened physical harm to people or property
- Harm to the integrity of the regulatory processes, including disregarding a statutory or Commission directive
- The number of violations
- The number of consumers affected

Economic harm reflects the amount of expense that was imposed upon victims. In comparison, violations that cause actual physical harm to people or property are generally considered the most severe, followed by violations that threaten such harm. The fact that the economic harm may be difficult to quantify does not itself diminish the severity or the need for sanctions. For example, the Commission has recognized that deprivation of choice of service providers, while not necessarily imposing quantifiable economic harm, diminishes the competitive marketplace and warrants some form of sanction.

Many potential penalty cases do not involve any harm to consumers but are instead violations of reporting or compliance requirements. Such violations harm the integrity of the regulatory processes. For example, state law requires all California public utilities to comply with Commission directives:

> Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees. (Public Utilities Code § 702).

Such compliance is essential to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.

The number of the violations is a factor in determining the severity. A series of temporally distinct violations can suggest an on-going compliance deficiency that the regulated entity should have addressed after the first instance. Similarly, a widespread violation which affects a large number of consumers is a more severe offense than one that is limited in scope. For a continuing offense, Public Utilities Code section 2108 counts each day as a separate offense.

II. Conduct of the Regulated Entity

The evaluation of the conduct of the regulated entity includes several considerations:

- Degree of culpability
- Actions taken to prevent a violation
- Actions taken to detect a violation
- Actions taken to disclose and rectify a violation, including voluntary reporting of potential violations, voluntary removal or resolution efforts

undertaken, and the good faith of the regulated entity in attempting to achieve compliance after notification

- Actions taken to conceal, hide, or coverup a violation
- Prior history of violations

This factor recognizes the important role of the regulated entity's conduct in: (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation. The regulated entity is responsible for the acts of all its officers, agents, and employees:

> "In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his [or her] official duties or employment, shall in every case be the act, omission, or failure of such public utility." (Public Utilities Code § 2109).

Prior to a violation occurring, prudent practice requires that all regulated entities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations, and most critically, the regulated entity regularly reviewing its own operations to ensure full compliance. In evaluating the regulated entity's advance efforts to ensure compliance, the entity's past record of compliance with Commission directives should be considered.

The Commission expects regulated entities to diligently monitor their activities and operations. When staff determines that regulated entities, for whatever reason, failed to monitor and improve substandard operations, staff will continue to hold the regulated entity responsible for its actions. Deliberate as opposed to inadvertent wrong-doing will be considered an aggravating factor. Staff will also look at the management's conduct during the period in which the violation occurred to ascertain the level and extent of involvement in or tolerance of the offense by management personnel. Staff will closely scrutinize any attempts by management to attribute wrong-doing to rogue employees. Managers will be considered, absent clear evidence to the contrary, to have condoned day-to-day actions by employees and agents under their supervision.

When a regulated entity is aware that a violation has occurred, staff expects the regulated entity to promptly bring it to the attention of Commission staff. The precise timetable that constitutes "prompt" will vary based on the nature of the

violation. Violations that physically endanger the public must be immediately corrected and thereafter reported to the Commission staff. Reporting violations should be remedied at the earliest administratively feasible time.
Prompt reporting of violations and expeditious correction promotes transparency and public trust and furthers the public interest. For this reason, steps taken by a regulated entity to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

III. Financial Resources of the Regulated Entity, Including the Size of the Business

Effective deterrence also requires that staff recognize the financial resources of the regulated entity in setting a penalty that balances the need for deterrence with the constitutional limitations on excessive penalties. Some California regulated entities are among the largest corporations in the United States and others are extremely modest, one-person operations. An accounting rounding error to one company is annual revenue to another. If appropriate, penalty levels will be adjusted to achieve the objective of deterrence, without becoming excessive, based on each regulated entity's financial resources.

IV. Totality of the Circumstances in Furtherance of the Public Interest

An evaluation of the totality of the circumstances in furtherance of the public interest includes several considerations:

- Establishing a penalty that effectively deters further unlawful conduct
- Consideration of facts that tend to mitigate or exacerbate the degree of wrongdoing
- Harm from the perspective of the public interest
- Ensuring that a regulated entity does not have incentives to make economic choices that cause or unduly risk a violation

Setting a penalty at a level that effectively deters further unlawful conduct by the regulated entity and others requires that staff specifically tailor the package of sanctions, including any penalty, to the unique facts of the case. Staff will review facts that tend to mitigate the degree of wrongdoing as well as any facts that exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

An economic benefit amount shall be estimated for every violation. Economic benefit includes any savings or monetary gain derived from the act or omission that constitutes the violation. In cases where the violation occurred because the regulated entity postponed improvements, failed to implement adequate control measures, failed to obtain required Commission authority or did not take other measures needed to prevent the violations, the economic benefit may be substantial. Economic benefit should be calculated as follows:

- Determine those actions required to comply with a permit, decision, or order of the Commission, an enforcement order, or that were necessary in the exercise of reasonable care, to prevent a violation. Needed actions include obtaining regulatory authority or coverage, capital improvements, staff training, plan development, or the introduction of procedures to improve facility management.
- Determine when and/or how often the regulated entity should have taken these actions as specified in the permit, decision, or order, or as necessary to exercise reasonable care, in order to prevent the violation.
- Evaluate the types of actions that the regulated entity should have taken to avoid the violation and estimate the costs of these actions. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades, training, development of procedures and practices), but that the regulated entity implemented too late to avoid the violation and/or is still obligated to perform. Avoided costs include expenditures for equipment or services that the regulated entity should have incurred to avoid the incident of noncompliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time the costs should have been incurred to the present.
- Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the □interest□ on delayed costs. This calculation reflects the fact that the regulated entity has had the use of the money that should have been used to avoid the instance of noncompliance.
- Determine whether the regulated entity gained any other economic benefits. These may include income from unauthorized or unpermitted operations.

The economic benefit should not be adjusted for expenditures by the regulated entity to abate the effects of the unauthorized conduct, or the costs to achieve or return to compliance.
The economic benefit amount should be compared to the penalty amount calculated using the other factors set forth in this appendix.

The penalty amount should be at least 10 percent higher than the economic benefit amount so that regulated entities do not construe penalties as the cost of doing business and that the assessed penalty provides a meaningful deterrent to future violations. Absent express findings of exceptional circumstances or other factors as justice may require, if the penalty amount is lower than the economic benefit amount plus 10 percent, the economic benefit amount plus 10 percent shall be the penalty. It would be unfair to regulated entities that voluntarily incur the costs of regulatory compliance to impose a lower amount absent exceptional circumstances.

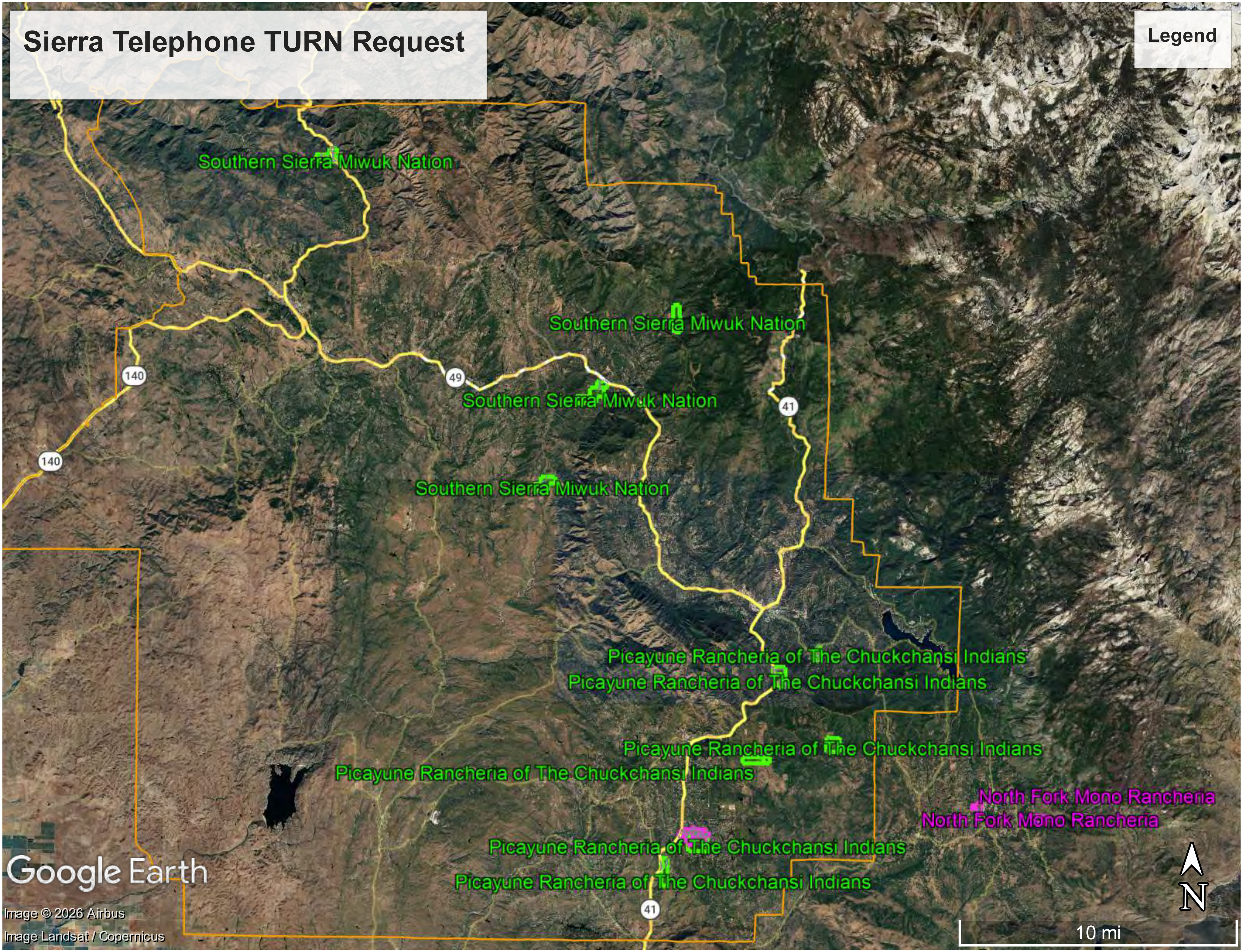
V. The Role of Precedent

Penalties are assessed in a wide range of cases. The penalties assessed in cases are not usually directly comparable. Nevertheless, when a case involves reasonably comparable factual circumstances to another case where penalties were assessed, the similarities and differences between the two cases should be considered in setting the penalty amount.

Appendix D

Map of Sierra/Varcomm service territory

Sierra Telephone TURN Request



Appendix E

History of Advocacy in Tribal Telephony and Telecommunications

Reports

History of Advocacy in Tribal Telephony and Telecommunications, 1980–2020

Traci L. Morris, American Indian Policy Institute, Sandra Day O’Connor College of Law, Arizona State University, *t.morris@asu.edu*

History of Advocacy in Tribal Telephony and Telecommunications, 1980–2020

Abstract

The history of Tribal advocacy in telecommunications policy is remarkable, yet many people are unaware of it. On Tribal lands, the connectivity gap extends beyond just access to communication technologies, including basic telephone services and now broadband. This reveals deep structural inequalities caused by limited funding, inadequate physical infrastructure, ineffective policies, lack of data, and the government's failure to meet its trust responsibilities. This article provides a comprehensive timeline, organized by decade, of Tribal advocacy in the communications, telephony, and telecommunications sectors from 1980–2020. The article also provides an overview of Federal Communications Commission (FCC) dockets and proceedings, along with responses from Tribal Nations and Tribal organizations. This forty-year span, along with the years 2020–2025 (discussed in the next article), illustrates a body of policy that demonstrates Tribal Nations' exercising self-determination rights as outlined in their trust relationship with the United States.

Keywords: telecom; Tribal telecommunications; Tribal telecommunications policy

Introduction

It is remarkable to many when they learn that Tribal Nations had some of the first telephones, telegraphs, and radio stations in the United States. Tribes' early adoption of these technologies is the foundation for the important role Tribal advocacy has played in the country's regulation of communications on Tribal lands. This advocacy continues today as Tribal Nations exercise self-determination in this area, as in many others.

Despite this foundation and years of advocacy, many Tribal lands still lack adequate connectivity—or any at all. This gap goes beyond mere access to communication technologies, such as basic telephone service and broadband. It underscores deep structural inequalities caused by insufficient funding, poor physical infrastructure, ineffective policies, lack of data, and the government's failure to meet its trust responsibilities.

This article presents a comprehensive timeline, broken down by decade, of Tribal advocacy in the communications, telephony, and telecommunications sector between 1980 and 2020. The article also provides an overview of Federal Communications Commission (FCC) dockets and proceedings, along with the reactions of Tribal Nations and Tribal organizations to these dockets. This forty-year span, as well as the subsequent years of 2020–2025 (addressed in the Special Issue article titled "An Examination of Federal Tribal Broadband Funding Post-COVID"), represents a body of policy that demonstrates Tribal Nations' exercising self-determination policies as provided for in the trust relationship with the United States.

Methodology

This article employs original research methodology that utilizes an FCC docket search through the Electronic Comment Filing System (ECFS). It also includes a thorough search of the National Congress of American Indians (NCAI) resolutions library, along with submitted policy papers, letters, and testimonies. The two data sets were organized by year and docket number, then cross-referenced and cataloged. This process also uncovered advocacy records of other Tribal organizations, including Tribal Nations and groups such as the Affiliated Tribes of the Northwest, the California Tribal Government Association, the National Association of Tribal Historic Preservation Officers, the National Tribal Telecommunications Association (NTTA), Native Public Media (NPM), the Navajo Nation, the Navajo Nation Council, the Navajo Nation Dine Education Consortium, the Navajo Nation Legislative Branch, the Navajo Nation Northern Regional Business Development Office, the Navajo Nation Office of the President, the Navajo Nation Telecommunications, the Navajo Nation Telecommunications Regulatory Commission, and the Salt River Pima Maricopa Indian Community. Additionally, the author used ChatGPT as a tool for grammar and spell checking, organizing the sections of this article after it was written, and generating draft versions of charts from the original research.

Data collected from the FCC records and comments submitted by Tribal advocacy groups clearly show that numerous Tribal Nations, Tribal organizations, and others have actively advocated for telecommunications on behalf of Indian Country from at least 1980–2025 and continue to do so. A search of the ECFS using the terms “Spectrum,” “Radio,” “National Congress of American Indians,” “Tribe,” “Tribal,” and “ONAP (Office of Native Affairs Policy)” revealed 997 filings by Tribes from July 1995 through 2020, along with other relevant documents such as orders, rulemakings, reports, policies, auctions, and topics including broadband, lifeline, spectrum, ONAP, radio/TV, the Universal Service Fund (USF), and the rewrite of the Telecommunications Act. For policy activity from 2020–2025, refer to the article in this special edition titled "An Examination of Federal Tribal Broadband Funding Post-COVID." A complete list of dockets are found in Appendix I. To see an overview of the policy eras from 1980–2020, see Appendix II.

The most active organizations advocating in this area during this time period were the NTTA, the NCAI, and NPM. The NTTA represents its 14-member Tribal telephone companies. As of December 2023, these tribes include the Cheyenne River Sioux Tribe Telephone Authority; Fort Mojave Telecom; Gila River Telecommunications, Inc.; Hopi Telecommunications, Inc.; Mescalero Apache Telecom, Inc.; Mohawk Networks, LLC; Nez Perce Tribe; Sacred Wind Communications, Inc.; Saddleback Communications; San Carlos Apache Telecom; Siyeh Communications; Tohono O’odham Utility Authority; Warm Springs Telecom; Yukon-Kuskokwim Delta Tribal Broadband Consortium; and 50 affiliate organizations (NTTA, n.d.). Organizational information beyond docket files is proprietary to its members.

The NCAI is a public-facing representative organization composed of Tribal government members, divided into voting regions, along with individual members. NCAI has a longstanding history of advocacy across a wide range of policy areas. Its advocacy is formally supported by resolutions approved by member tribes, which establish the organization's official positions for external engagement with the federal government. To support filings with the FCC, NCAI's Telecommunications and Technology Subcommittee—a segment of the Economic Development Committee—has been active since 2009. The organization's most active year was 2011, when the NCAI Tribal Nation membership approved seven distinct resolutions concerning telecommunications and technology. Through the NCAI resolutions process, tribes have historically—and continue to—actively support advocacy in the following areas: (a) radio and television matters; (b) the FCC Office of Native Affairs and Policy and its actions; (c) the National Telecommunications and Information Administration; (d) inclusion of Indian Country in USF reform at the FCC; (e) Tribal positions on spectrum; (f) Tribal positions on the long-pending Telecommunications Act rewrite; and (g) Tribal access to broadband. Other significant areas of interest include E-Rate, Lifeline and Link-Up; net neutrality (open internet); and funding mechanisms for infrastructure.

NPM is a small nonprofit organization founded in 2004. It primarily serves the Native broadcast system by supporting Tribal radio stations with compliance, station operations, legal assistance, and training. The organization also has a strong history of policy work (NPM, n.d.). NPM was active in this space from 2004–2020; although its activity has decreased, it continues to operate.

Timeline of Advocacy: Overview

The five distinct eras of Tribal broadband advocacy discussed next divide roughly by decade. Because the first Tribal telecommunications company was established in the late 1950s, the first era covers years up to 1990. This timeframe overlaps with several eras in federal Indian policy, but by the 1980s, Tribal work in this area was part of the self-determination era in federal Indian policy; therefore, I call this period Self-Determination Telephony.

The second era spans the 1990s, a period made significant by the enactment of the Telecommunications Act of 1996. This policy change transformed the entire regulatory framework of telephone services as Americans knew it, paving the way for the internet age. And guess what? Tribal nations were left out of this law, which caused an uproar. The Tribal response was almost immediate.

The 2000s align with the nation-to-nation period of federal Indian policy. During this time, the term *digital divide* was introduced. After a report by the National Telecommunications and Information Administration (NTIA) showing that 46% of people on Tribal Nation reservations had no access to basic telephone service, the first field hearings in Indian Country were held.

The period from 2010–2020 represents the most active era of Tribal advocacy in history, as evidenced by comprehensive research. These years saw a significant increase in meetings, FCC docket filings, and Tribal responses to those dockets. This surge reflects heightened engagement and the growing involvement of Tribal communities in policy- and decision-making processes, highlighting a period of intensified advocacy efforts and increased visibility for Tribal concerns.

The current era began in 2020 with the outbreak of COVID-19 and the responses it sparked within the Tribal digital landscape and the federal policy arena. Today, Tribal Nations continue to advocate for digital sovereignty and self-determination, emphasizing the importance of long-term infrastructure investments. By 2024, Tribes had submitted 167 responses to FCC dockets, demonstrating their ongoing effort for policy improvements. Legislation saw notable progress as the COVID-19 pandemic underscored the urgent need for broadband access on Tribal lands. The lack of reliable internet services has worsened economic, educational, and healthcare disparities, prompting the swift legislative actions discussed at the end of this article. As of 2025, the changes and rescissions of legislatively allocated funds and programs are substantial. This era is examined in more detail later in this article and in “An Examination of Federal Tribal Broadband Funding Post-COVID,” also found within this special edition.

Era One: Early Years and the 1980s—Foundations of Self-Determination in Telephony

Tribal Nations have long shown ingenuity and adaptability in adopting and managing communication technologies. Even before the digital age, many Tribal communities had Indigenous media and communication systems. Tribal newspapers—some dating back to the 19th century—along with early telegraph and radio broadcasts demonstrate a pattern of active engagement with new technologies. These efforts not only provided practical solutions to geographic isolation but also strongly expressed Tribal sovereignty, cultural continuity, and self-determination.

By the mid-20th century, a growing number of Tribal Nations began asserting control over utilities and telecommunications infrastructure, laying the groundwork for what would become sovereign communications ecosystems. These advocacy efforts coincided with federal neglect of rural and Tribal infrastructure needs, requiring Tribes to lead their own solutions to communication disparities.

The modern history of Tribal self-determination telecommunications began in 1958 when the Cheyenne River Sioux Tribe established the Cheyenne River Sioux Tribe Telephone Authority (CRSTTA), one of the first Tribal-owned telecommunications companies (CRSTTA, n.d.). The Tribe purchased an existing private telecommunications provider, thereby asserting economic and technical sovereignty over local infrastructure. This groundbreaking decision enabled the Tribe to systematically enhance telecommunications services throughout the reservation. Other Tribes, such as the Gila River Indian Community and Fort Mojave Indian Tribe, followed similar paths in the years leading up to and just after 1980, recognizing the essential role of telephony in governance, emergency services, education, and economic development (Fort Mojave Telecommunications, n.d.; Gila River Telecommunications, n.d.).

While the first era spans several decades, it is important to focus on the rapid changes in the broader telecommunications landscape and note shifts in Tribal policy. The 1950s and 1960s saw efforts to expand telephone service into rural areas, though these efforts ultimately failed on Tribal lands. During the 1950s and 1960s, Tribes faced harmful federal policies of termination.

In 1968, amid the civil rights era, the Tribal self-determination era began, initiating policy changes that laid the groundwork for later telecommunications advocacy on Tribal lands.

By the 1980s, deregulation of telephone monopolies was well underway, paving the way for wireless communications. National data before the 1990s remains limited, but available evidence indicates many Tribes were already exploring their own telecommunications initiatives before the expansion of federal Tribal broadband programs. These early efforts built a necessary foundation for future progress in broadband sovereignty and Tribal control over digital infrastructure.

Era Two: The 1990s—The Digital Divide on Tribal Lands

The 1990s marked a crucial turning point in the growth of telecommunications and digital infrastructure in the United States. However, for Tribal Nations, this era also saw a worsening of systemic inequalities, now commonly called the digital divide. In 1996, the Telecommunications Act was passed, representing the first major update to telecommunications policy since the Communications Act of 1934. While the 1934 Act established a heavily regulated monopoly system for telephone, telegraph, and radio services, the 1996 law aimed to break down monopolistic barriers, promote market-based competition, and support the adoption of new technologies such as broadband and wireless services (Telecommunications Act of 1996, 1996).

Among its most notable provisions, the 1996 law established the designation of Eligible Telecommunications Carriers (ETCs) and created a framework for carriers to receive federal universal service support, helping offset the costs of expanding infrastructure into rural areas and providing telecommunications services in underserved and high-cost regions. However, despite its goal to broaden access and promote equity in telecommunications, the Act did not include explicit language recognizing Tribal sovereignty or addressing the unique telecommunications needs of Indian Country. This omission significantly affected Tribal access to funding, policy inclusion, and infrastructure development, effectively sidelining Tribal governments in the rapidly evolving digital economy.

The Act's deregulatory approach—while encouraging innovation and competition in urban and suburban markets—left rural and Tribal areas vulnerable to market failures. Private carriers, driven by profit, largely ignored Tribal lands because of low perceived returns and the challenges of building infrastructure in remote, under-resourced, and often jurisdictionally complex regions. This neglect was intensified by regulatory uncertainties regarding Tribal authority to own, operate, or regulate telecommunications systems on their lands, which further delayed infrastructure development.

The NTIA's 1999 report, *Falling Through the Net: Defining the Digital Divide*, recognized this significant data gap that effectively made Native communities invisible in the national conversation on digital access and equity (on file with author). This report indicated that by the late 1990s, the effects of systemic exclusion were clear. In 1998, a shocking 46% of American Indian households on Tribal lands still lacked access to even basic telephone service (FCC 99-204, 1999) This figure, mentioned during the FCC's public hearings on Indian telecommunications, highlighted the ongoing infrastructure disparities affecting Native communities. More striking still was the absence of federal data on internet access or usage in Indian Country, underscoring the invisibility of Tribal communities in national technology assessments.

In response to growing concerns about these disparities, the FCC initiated a series of national field hearings in 1999. These listening sessions collected direct testimony from Tribal leaders, community members, and telecommunications providers regarding the barriers to basic connectivity in Indian Country. The first hearing was held on January 29, 1999, at the Indian Pueblo Cultural Center in Albuquerque, New Mexico. The second was on March 23, 1999, in Chandler, Arizona, in collaboration with the Gila River Indian Community (*FCC Public Hearing*, n.d.). These sessions represented an early yet critical recognition by the federal government of its responsibility to engage with Tribal Nations and begin addressing the digital divide affecting many communities.

Despite these efforts, the 1990s left a legacy of systemic neglect, regulatory exclusion, and data invisibility for Tribal Nations. The structural flaws of the 1996 Telecommunications Act—especially its failure to include Tribal consultation or carveouts—sparked ongoing Tribal advocacy that continues to shape digital equity policy today. This period saw the rise of key efforts to assert Tribal Digital Sovereignty, promote self-determination in communications infrastructure, and demand meaningful inclusion in federal policymaking processes.

The 1990s produced both rapid technological progress and a warning about how federal policies can unintentionally deepen inequality when Tribal perspectives and governance rights are overlooked. This sparked a movement for Tribal broadband equity and laid the foundation for future legal, regulatory, and grassroots efforts to achieve digital sovereignty in Indian Country.

Era Three: 2000 to 2010—Telecom and the Trust Relationship

The first decade of the 21st century marked a turning point in Tribal telecommunications policy. This period saw the growth of federal-Tribal regulatory engagement and the emergence of Native-led media and telecommunications advocacy, along with allied organizations. More important, it signaled the evolution of the federal trust responsibility into the digital realm, laying the foundation for what would later be called Tribal Digital Sovereignty.

Tribal telecommunications policy was actively developed during the 2000s. The FCC strengthened its relationship with Tribal Nations, acknowledging the government-to-government connection with Tribes. At the start of the decade, only one Native person worked at the FCC and the Indian Telecom Initiative; this would change by 2010. The FCC recognized that Tribal Nations required access to high-speed internet and advanced telecommunications technology to stay competitive in the modern world. This recognition led to the development of programs aimed at increasing broadband deployment and adoption among Tribal Nations. Additionally, the first research on internet availability, access, and usage on Tribal lands was published in 2009, driven by a lack of data in these areas. By the end of the decade, advocacy networks involving Tribes, the NCAI, and other organizations were active, and Tribal Nations were included in the FCC's National Broadband Plan (NBP) released in 2010.

2000—Laying the Foundation

The term *digital divide*, coined by Larry Irving when he was at the NTIA, entered the national lexicon when President Bill Clinton used it in his 2000 State of the Union address to describe the growing technology gap between privileged and marginalized communities, including Indigenous peoples (*Address*, 2000). This recognition triggered a series of policy responses by the FCC to address the longstanding telecommunications inequities on Tribal lands.

In 2000, the FCC initiated several landmark dockets that directly affected Tribal Nations. FCC 00-204 addressed universal service for Tribal libraries through the Schools and Libraries Universal Service Support Program (E-Rate), allowing eligible schools, libraries, and consortia to apply for discounts on telecommunications services, internet access, and internal connections, with the requirement that all eligible institutions obtain competitive bids for discounted services (FCC Docket 00-204, 2000). FCC 00-206 focused on common carrier obligations in the context of the merger between Intermedia Communications Inc. and WorldCom, Inc. (FCC, *World Com*, n.d.). Most significant for Tribal communities was FCC 00-208, which established a Tribal-specific designation for ETCs, expanded Lifeline and Link-Up Program subsidies tailored to Tribal lands, and introduced a bidding credit system designed to incentivize infrastructure deployment by carriers serving Tribal areas (FCC Docket 00-208, 2000). In 2000, the FCC released a Tribal Policy Statement (Establishing, 2000).

The momentum culminated in the FCC's first national Indian Telecom Training Initiative (ITTI) conference on September 28, 2000, in St. Paul, Minnesota. FCC Chair William E. Kennard emphasized the necessity of an "Indian Desk" at the FCC to institutionalize the government-to-government relationship. Nearly 600 participants from 135 Tribes attended, signaling a new era of coordinated Tribal-federal telecommunications engagement (Kennard, 2000).

2001–2006: Institutional Development and Policy Friction

In the years following 2000, federal engagement with Tribal telecommunications fluctuated. The 2001 ITTI was canceled due to the September 11 terrorist attack, and early efforts to establish a permanent FCC Office of Tribal Relations were initiated and subsequently withdrawn. Nevertheless, Tribal advocacy gained ground through sustained efforts by the NCAI, the National Tribal Telecommunications Association (NTTA), and other emerging institutions.

During this period, several developments significantly advanced Tribal telecommunications policy and infrastructure. The Indian Telecom Initiative (ITI), which grew out of the earlier ITTI, was expanded under the leadership of Geoffrey Blackwell and later Shana Bearhand between 2003 and 2006. In 2002, a joint hearing on Tribal telecommunications issues was convened before the Senate Committee on Commerce, Science, and Transportation in conjunction with the Committee on Indian Affairs, reflecting heightened federal attention to these disparities (*Tribal Telecommunications Issues*, 2002). In 2004, Native Public Media (NPM) was established to engage with media and broadband policy from an Indigenous perspective, marking a critical step in ensuring Native voices were included in shaping national communications frameworks. Around the same period, the Hopi Telecommunications Corporation achieved designation as an ETC, thereby asserting Tribal authority over telecommunications infrastructure and service provision. Finally, in 2005, an FCC panel discussion featuring Commissioner Michael Copps and broadcaster Susan Braine brought attention to persistent inequities in Tribal broadcasting and underscored the need for greater regulatory inclusion in federal policy debates.

Parallel to these developments, the regulatory status of emerging internet technologies became increasingly contentious. Legal battles over Voice-over-IP (VoIP) services—particularly in the *Vonage Holdings Corp. v. FCC* case—raised questions about how new technologies intersected with universal service contributions, a crucial funding stream for rural and Tribal infrastructure. It was during this time that the value of spectrum was established (*Vonage Holdings Corp. v. FCC*, 2007).

2007–2008: Inclusion through Infrastructure and Stimulus

Tribes remained frustrated about being excluded from the 1996 Telecommunications Act, which led the NTTA and allied organizations to advocate for systemic reform. The 2008 economic downturn compounded this exclusion. In response to the downturn, the American Recovery and Reinvestment Act of 2009 established the Broadband Technology Opportunities Program (BTOP), creating new funding opportunities. Tribes were eligible for this funding to build broadband infrastructure. Although access to these programs was inconsistent, BTOP represented a major change in how broadband infrastructure could be financed and prioritized on Tribal lands. It was during this time that the idea of a NBP started to take form.

2009: Data as a Sovereignty Imperative

By 2009, the lack of accurate, culturally relevant data on Native internet access and usage became a major obstacle. In response, NPM and the Open Technology Institute at the New America Foundation released the first comprehensive study of its kind: *New Media, Technology, and Internet Use in Indian Country* (Morris & Meinrath, 2009).

The study surveyed 196 individuals from over 120 Tribal Nations across 28 states and found that Native users were not only digitally literate but often surpassed national averages in their technology use and adoption; Native Americans were early adopters of technology. Although the sample size was small, it was significant because this was the only data on internet use and availability on Tribal lands, and it remained so for years. These findings directly challenged prevailing assumptions and documented how outdated or biased federal data had led to the underrepresentation of Tribal needs in broadband policy. The report also presented eight substantial policy recommendations, emphasizing the links between data, digital equity, and Tribal sovereignty.

Simultaneously, the FCC opened several major dockets with Tribal implications: FCC 09-47 (DTV), 09-51 (National Broadband Plan for Our Future), 09-52 (Rural Radio), and 09-137 (Broadband Deployment on Tribal Lands). The NCAI responded with fifteen formal filings, supported by five telecommunications subcommittee resolutions: four related to the broadband dockets and one regarding the rural radio docket, including PSP-09-026, PSP-09-082C, PSP-09-083C, PSP-09-084C, and PSP-09-087C. These filings reflected a maturing advocacy network capable of influencing federal telecommunications policies through expertise and sovereign assertions.

Toward a Sovereign Digital Future

The 2000s were crucial years for Tribal telecommunications policy. This period laid the institutional and rhetorical groundwork for shaping policy in Tribal telecommunications. It was a decade of awakening, development, and contestation—a time when Tribes started to assert their digital sovereignty through policy, research, and persistent advocacy. The FCC strengthened its relationship with Tribal Nations, acknowledging the government-to-government relationship between the federal government and Tribes. The FCC recognized the importance of Tribal Nations having access to high-speed internet and advanced telecommunications technology to stay competitive with the world around them. This recognition led to programs aimed at expanding broadband deployment and adoption among Tribal Nations. Additionally, the first research on internet availability, access, and usage on Tribal lands was published in 2009, addressing the lack of data on Tribal internet access and use. By the end of the decade, an advocacy network was active through the NCAI, and Tribal Nations were included in the NBP released in 2010.

Era Four: 2010 to 2020—Tribal Telecommunications and Regulatory Momentum

The decade that began in 2010 marked a historic turning point for Tribal Nations in the national broadband and telecommunications landscape. With the release of the NBP, Tribal Nations were formally recognized for the first time as vital stakeholders in the effort to close the digital divide. This recognition initiated a period of intense policy activity and the establishment of new regulatory structures that increased Tribal engagement in telecommunications policy.

2010: Building a Tribal Regulatory Presence

The FCC's 2010 NBP served as a comprehensive roadmap to expand broadband access across the United States, with goals that included improving connection speeds; extending service to rural areas; and supporting economic growth, job creation, and advancements in healthcare, education, and public safety (FCC, *National Broadband Plan*, n.d.). In response to the plan's call for an inclusive broadband policy, the FCC established the Office of Native Affairs and Policy (ONAP) in August 2010, marking a foundational step toward integrating Tribal perspectives into federal telecommunications policymaking and honoring the trust relationship. FCC Docket 10-

141 created the ONAP. That same year, the agency introduced the Tribal Priority for Radio Broadcast Licensing, a measure aimed at increasing Tribal presence in media and amplifying Indigenous voices. These developments marked a significant departure from a decade earlier, when only a single Native staff member worked at the FCC as part of the Indian Telecom Initiative; now an entire office was dedicated to the government-to-government relationship with Tribal Nations. Geoffrey Blackwell led the office.

The 2010s were a defining decade for Tribal telecommunications policy, characterized by unprecedented federal involvement and ongoing Tribal advocacy. Throughout the decade, the FCC opened 33 dockets related to Tribal telecommunications issues. Support came from organizations like NPM, which filed 59 documents (many jointly with the NCAI); and the NTTA, which submitted an impressive 213 filings during this period. The NCAI actively participated, submitting 134 formal filings and passing 50 resolutions on various telecommunications topics, including spectrum policy, Universal Service reform, and net neutrality. During the 2010s, the NCAI used its resolutions process to advocate for Tribal access to broadband infrastructure, support for the FCC's ONAP and related initiatives, inclusion of Indian Country in Universal Service Fund reforms, Tribal positions on spectrum use and licensing, the long-anticipated rewrite of the Telecommunications Act, radio and television broadcasting rights for Tribes, and federal programs such as E-Rate, Lifeline, Link-Up, and Open Internet protections. This period arguably marked NCAI's most active era in telecommunications policy, culminating in increased Tribal representation in federal forums. However, staffing changes within the NCAI led to a decline in telecommunications expertise, and US presidential transitions caused significant inaction from 2016 onward.

In February 2010, the FCC released its NBP. The federal government included Tribes in the NBP, marking a significant symbolic and strategic milestone. The plan was an FCC initiative aimed at expanding internet access across the United States. The FCC was tasked with developing this plan under the American Recovery and Reinvestment Act of 2009. However, deeper tensions remained. The Obama administration's focus on "data-driven decision making" conflicted with the reality that either no data was available for Indian Country or the existing data misrepresented the situation due to methodological or cultural bias. This paradox raised fundamental questions: How can data sovereignty be achieved without data that accurately reflects reality? How can Tribes claim authority over digital infrastructure and planning when current policy tools lack Tribal metrics or priorities?

In April 2010, the FCC issued a Notice of Inquiry and a Notice of Proposed Rulemaking for three dockets: 10-90 (Connect America Fund), 09-51 (National Broadband Plan for Our Future), and 05-337 (High-Cost Universal Service Support). Also in April, the US House of Representatives Subcommittee on Communications, Technology, and the Internet held a hearing titled "The National Broadband Plan: Deploying Quality Broadband Services to the Last Mile." During this hearing, the NCAI provided testimony on issues affecting Tribal communities. In August 2010, the ONAP was established at the FCC. Later, in October 2010, the FCC issued a Notice of Proposed Rulemaking on Docket 10-208 (Universal Service Fund Reform–Mobility Fund).

Various sections of the NBP were directly influenced by the recommendations outlined in the New Media, Technology & Internet Use in Indian Country, released in November 2009 (Morris

& Meinrath, 2009). This study was the first study ever written about Tribal connectivity, accessibility and use in Indian Country. The NCAI addressed several open dockets: 09-52 (Rural Radio), 10-90 (Connect America Fund), 09-51 (National Broadband Plan for Our Future), 05-337 (High-Cost Universal Service Support), and 10-208 (Universal Service Fund–Mobility Fund). The NCAI's filings were made jointly with NPM and supported by six resolutions, four related to telecommunications and two concerning radio: RAP-10-006, RAP-10-007, RAP-10-008, RAP-10-009, ABQ-10-006, and ABQ-10-061.

The NTTA submitted filings in the following dockets: 10-90 (Connect America Fund), 09-51 (National Broadband Plan for Our Future), 10-90 (Connect America Fund as part of the National Broadband Plan for Our Future and High-Cost Universal Service Support), 05-337 (High-Cost Universal Service Support), 09-197 (Telecommunications Carriers Eligible for Universal Service Support), and 05-337 (Federal-State Joint Board on Universal Service concerning High-Cost Universal Service Support).

2011: Expanding Tribal Engagement

In 2011, the FCC established the Native Nations Broadband Task Force, now called the Native Nations Communications Task Force, to advise on the broadband needs of Tribal lands and provide a formal process for Native leadership in federal broadband policy. In March of that year, the ONAP started with an Open Commission meeting in which it introduced two major rulemakings impacting telecommunications on Tribal lands, along with a third initiative concerning the Tribal Priority in Radio Broadcast Licensing. Opened dockets included 11-40 (Spectrum on Tribal Lands) and 11-41 (Improving Communications Services for Native Nations).

Furthermore, a Notice of Proposed Rulemaking was issued for several dockets: 11-42 (Lifeline and Link-Up Reform and Modernization), 96-45 (Federal-State Joint Board on Universal Service), and 03-109 (Lifeline and Link-Up). All of these dockets had implications for Indian Country. Finally, in November, the FCC released a Report and Order and Further Notice of Proposed Rulemaking on the following dockets: 10-90 (Connect America Fund), 09-51 (National Broadband Plan for Our Future), 07-135 (Establishing Just and Reasonable Rates for Local Carriers), 05-337 (High-Cost Universal Service Support), 96-45 (Federal-State Joint Board on Universal Service), 03-109 (Lifeline and Link-Up), and 10-208 (Universal Service Reform–Mobility Fund).

In response, the NCAI submitted comments in seven dockets, including 10-208 (Universal Service Fund–Mobility Fund), 09-52 (Rural Radio), 11-41 (Improving Communications Services for Native Nations), and 11-42 (Lifeline and Link-Up Reform and Modernization). Seven resolutions supported these filings: MKE-11-004, MKE-11-005, MKE-11-006, MKE-11-007, MKE-11-016, PDX-11-021, and PDX-11-034. The NTTA filed comments in 28 dockets, including three joint filings with NCAI (11-41, 09-51, and 10-90).

2012: Institutionalizing Tribal Involvement

In 2012, the FCC's ONAP published its first annual report, detailing the actions taken during its inaugural year. That year marked a crucial period for ONAP, and under Blackwell's leadership, it addressed all the issues Indian Country had been advocating for. In June, Commissioner Mignon Clyburn testified before the US Senate Committee on Indian Affairs at an oversight hearing called *Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities*. Other witnesses at this hearing included Johnathan Adelstein, Administrator of the Rural Utilities Service at the US Department of Agriculture; Councilman Alfred LaPaz of the Mescalero Apache Tribe; Steve Merriam, CEO and General Manager of the Arctic Slope Telephone Association; Albert Hee, President of Sandwich Isles Communications; and Shirley Bloomfield, CEO of the National Telecommunications Association.

In July, ONAP, in collaboration with the Wireless Telecommunications Bureau and the Wireline Competition Bureau, issued further guidance on the Tribal Government Engagement Obligation and provisions of the Connect America Fund. This guidance was associated with the following dockets: 10-90 (Connect America Fund), 07-135 (Establishing Just and Reasonable Rates for Local Carriers), 05-337 (High-Cost Universal Service Support), 03-109 (Lifeline and Link-Up), 01-92 (Developing a Unified Intercarrier Compensation Regime), 96-45 (Federal-State Joint Board on Universal Service), 10-208 (Universal Service Reform–Mobility Fund), and 09-51 (National Broadband Plan for Our Future).

Just over a month later, ONAP, along with the Wireless Competition Bureau and the Wireline Competition Bureau, requested comments on the US Telecom Association's Petition for Reconsideration concerning the Tribal Government Engagement Obligation provisions of the Connect America Fund, referencing the same dockets as before. Additionally, in 2012, the FCC issued a Public Notice (Docket 12-23) indicating that the Wireline Competition Bureau sought comments on the TracFone petition to require the retention of Lifeline Program eligibility documentation. Later that year, the FCC released a Notice of Proposed Rulemaking aimed at expanding economic and innovation opportunities in spectrum through incentive auctions (Docket 12-268).

In response, the NCAI submitted 41 comments across 13 dockets. These included the previously mentioned dockets along with Docket 12-23 concerning the Wireline Competition Bureau's request for comments on the TracFone petition, as well as Dockets 11-40 (Spectrum on Tribal Lands) and 11-41 (Improving Communications Services for Native Nations). A Notice of Proposed Rulemaking was also released for Dockets 11-42 (Lifeline and Link-Up Reform and Modernization) and 99-25 (Low-Power Radio Service). Supporting these filings were several prior resolutions, along with five new resolutions—four focused on telecommunications issues and one specifically on low-power radio service. The resolutions were SAC-12-019, SAC-12-021, SAC-12-033, SAC-12-034, and LNK-12-007. On July 19, 2012, NCAI President Jefferson Keel sent a letter to FCC Chair Julius Genachowski to be included in the record for Docket 11-40 (Spectrum on Tribal Lands). The letter emphasized the importance of establishing a Tribal Priority for spectrum licensing and reiterated the need to improve Tribal access to spectrum.

2013: Focus on Program Reform and Auctions

In 2013, several important dockets concerning Tribal issues were opened. The first was Public Notice 13-53, which detailed the schedule for the Tribal Mobility Fund Phase I Auction, originally planned for October 24, 2012, but later postponed to December 19, 2013. The second was Public Notice 13-240, a Scoping Document aimed at beginning Tribal consultation on Positive Train Control under Section 106 of the National Historic Preservation Act. The third notable docket was the Notice of Proposed Rulemaking 13-184, which addressed efforts to modernize the E-Rate Program for schools and libraries.

The NCAI submitted comments in 11 dockets. They responded to two of the three major dockets opened by the FCC in 2013: 13-53 (Tribal Mobility Fund Phase I Auction), for which NCAI filed both comments and reply comments; and 13-184 (Modernizing the E-Rate Program for Schools and Libraries). Additionally, NCAI filed comments in several other open dockets, including 10-90 (Connect America Fund), 07-135 (Establishing Just and Reasonable Rates for Local Carriers), 05-337 (High-Cost Universal Service Support), 03-109 (Lifeline and Link-Up), 01-92 (Developing a Unified Intercarrier Compensation Regime), 96-45 (Federal-State Joint Board on Universal Service), 10-208 (Universal Service Reform–Mobility Fund), and 09-51 (National Broadband Plan for Our Future). In support of their comments, NCAI relied on several longstanding resolutions that remain in effect, as well as three newly passed resolutions: REN-13-063, REN-13-064, and TUL-13-061.

2014: Program Overhauls and Continued Mobilization

In 2014, the FCC issued an Order and Report, along with a Further Notice of Proposed Rulemaking, addressing several dockets, including 13-5 (Technology Transitions), 12-353 (AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition), 10-90 (Connect America Fund), 10-51 (Structure and Practices of the Video Relay Service Program), 03-123 (Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities), and 13-97 (Number Policies for Modern Communications).

FCC Chair Wheeler spoke at the NCAI Winter Session, where the Tribal Leader FCC Broadband Taskforce was transitioned and reseated. Additionally, the 14-58 Connect America Fund Omnibus Order and Further Notice of Proposed Rulemaking, along with a Report and Order and Further Notice of Proposed Rulemaking in docket 13-184 (Modernizing the E-Rate Program for Schools and Libraries), were also released. The NCAI submitted 23 filings across 20 dockets. NCAI responded to both current and past dockets, as is often the case with proceedings that span several years. The 2014 dockets included the 14-58 (Connect America Fund Omnibus Order and Further Notice of Proposed Rulemaking), 14-28 (Protecting and Promoting the Open Internet), 12-269 (Policies Regarding Mobile Spectrum Holdings), 14-50 (2014 Quadrennial Regulatory Review Broadcast Ownership Rules), 09-182 (Public Notice of Five Research Studies on Media Ownership), and 04-256 (Rules and Policies Concerning Joint Sales Agreements in Local Television Markets).

All other comments were filed in previous dockets, including 13-184 (Modernizing the E-Rate Program for Schools and Libraries), 96-45 (Federal-State Joint Board on Universal Service), 07-294 (Media Ownership), 10-90 (Connect America Fund), 03-109 (Lifeline and Link-Up), 13-5 (Technology Transitions), 09-197 (Telecommunications Carriers Eligible for Universal Service Support), 11-40 (Spectrum on Tribal Lands), 10-208 (Universal Service Reform–Mobility Fund), 11-42 (Lifeline and Link-Up Reform and Modernization), 11-41 (Improving Communications Services for Native Nations), 12-268 (Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions), 01-92 (Developing a Unified Intercarrier Compensation Regime), and 07-135 (Establishing Just and Reasonable Rates for Local Carriers). Their submissions were supported by previous resolutions, along with the addition of five new resolutions: ANC-14-010, ANC-14-049, ANC-14-015, ATL-14-010, and ATL-14-077.

2015: Transition and Continued Advocacy

In 2015, the FCC issued an updated order concerning the Lifeline and Link-Up Programs for Tribal lands, related to dockets 11-42 (Lifeline and Link-Up Reform and Modernization), 09-197 (Telecommunications Carriers Eligible for Universal Service Support), and 10-90 (Connect America Fund). The ONAP conducted consultations to gather input from Tribal representatives on upcoming regulatory changes.

Activities included a Petition for Reconsideration related to the Report and Order for dockets 10-90, 14-58, and 14-192 in February, as well as participation in docket 11-40, which aimed to improve communications services for Native Nations by promoting greater utilization of spectrum over Tribal lands. Additionally, NCAI responded to Public Notice 15-49 regarding comments on competitive bidding proceedings in dockets 14-170, 05-211, 12-268, and RM-1135.

The NCAI conducted extensive outreach to Tribal communities. It actively participated in several key dockets, submitting numerous letters and petitions to the FCC concerning Universal Service and spectrum utilization. They filed in the following dockets: 10-90 (Connect America Fund), 14-58 (Connect America Fund Omnibus Order and Further Notice of Proposed Rulemaking), and 11-42 (Lifeline and Link-Up Reform and Modernization). NCAI provided comments and reply comments on 11-42 (Lifeline and Link-Up Reform and Modernization), 09-197 (Telecommunications Carriers Eligible for Universal Service Support), and 10-90 (Connect America Fund).

NCAI passed four significant resolutions: MSP-15-036 (To Preserve the Universal Service Fund for Lifeline and Link-Up Programs for All Tribal Lands and Peoples), MSP-15-033 (Support for Road Access for the Aleut People of King Cove, Alaska, to Cold Bay All-Weather Airport), MSP-15-024 (Support for a Policy on the Universal Service Fund for Voice and Broadband Services on Tribal Lands), and SD-15-037 (Urging the FCC to Improve Access to Spectrum Licenses for Tribal Nations).

2016–2020: Tribal Telecommunications Policy and Regulatory Developments

Between 2016 and 2020, Tribal Nations in the United States experienced a significant shift in their efforts toward digital sovereignty. What began as consistent advocacy and fundamental policy engagement developed into a federal regulatory recognition of Tribal rights to spectrum access and control. This period set a path that continues to influence broadband policy, infrastructure development, and Tribal digital governance today. Key milestones and the broader policy landscape are highlighted below, showcasing the efforts of Tribal organizations, the FCC, the NCAI, and research institutes like the American Indian Policy Institute (AIPI) at Arizona State University.

2016: Groundwork in Advocacy

Although there were no formal FCC dockets or NCAI Tribal resolutions in 2016, this year marked the start of increased advocacy for Tribal digital inclusion. NCAI filed three documents in existing dockets, creating a foundation for future discussions with federal regulators. These filings highlighted ongoing connectivity gaps on Tribal lands and stressed the importance of Tribal input in telecommunications policymaking.

While the FCC's ONAP existed at the time, Tribal concerns rarely reached the full Commission's attention. However, Tribal leaders and advocates utilized filings and public comments to highlight longstanding digital inequities.

NCAI policy filings included reply comments in 10-90 (Connect America Fund), 14-158 (Eligible Telecommunications Carrier Annual Reports and Certifications), and 01-92 (Developing a Unified Intercarrier Compensation Regime), along with supporting resolutions REN-13-063 and MSP-15-024 as documentation. Advocacy emphasized broadband access, digital inclusion, and the need for sovereign control over emerging infrastructure.

2017: A Turning Point in Policy Volume

In 2017, regulatory and Tribal policy activity increased significantly. Specifically, eight FCC dockets addressed issues relevant to Tribal communities, while the NCAI filed ten submissions. Additionally, five Tribal resolutions were passed, highlighting the importance of digital equity and connectivity.

Key proceedings at the FCC centered on topics like the Lifeline Program and broadband deployment under Section 706 of the Telecommunications Act. These proceedings garnered coordinated responses from Tribal groups, advocating for better Tribal consultation, recognition of sovereignty, and equitable funding.

As the FCC advanced high-impact deregulatory initiatives, Tribal governments and national Native advocacy organizations mobilized to defend Tribal interests and sovereignty in digital infrastructure development. Central to the federal agenda were two important FCC dockets. Docket 17-108 (Restoring Internet Freedom Order) indicated a reversal of net neutrality rules, raising concerns about equitable access to online resources. Meanwhile, docket 17-79 (Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment) proposed eliminating local and Tribal regulatory hurdles to infrastructure siting, which could have serious implications for Tribal land use and governance.

In response, the NCAI, along with allied Tribal organizations, launched a coordinated advocacy effort to support and promote Tribal broadband interests. A key focus was the Universal Service Fund Programs, where the NCAI submitted a series of formal comments on broadband access for low-income Tribal consumers and the structural needs of Tribal telecommunications providers. These included 17-287 (Bridging the Digital Divide for Low-Income Consumers), 11-42 (Lifeline and Link-Up Reform and Modernization), 09-197 (Telecommunications Carriers Eligible for Universal Service Support), and 10-90, specifically opposing limits on operating expense recovery for carriers serving Tribal lands.

NCAI also submitted joint comments with the National Indian Health Board, United South and Eastern Tribes, the National Association of Tribal Historic Preservation Officers, and various Intertribal Councils and Tribal Nations. These collective filings emphasized the protection of Tribal authority over broadband deployment decisions, particularly in response to docket 16-421, which concerns small-cell infrastructure siting and the Mobilitie, LLC petition seeking federal preemption of local siting rules.

Along with these broad policy measures, NCAI supported specific Tribal telecom initiatives, particularly advocating for Gila River Telecommunications' petition for a waiver of high-cost loop support benchmarks under docket 10-90—a crucial step toward financial stability for Tribal carriers.

Overall, 2017 was characterized by increased federal efforts to deregulate communications infrastructure and reduce oversight. In contrast, Tribal advocacy efforts—led by the NCAI and supported by a broad coalition—focused on the importance of inclusive broadband policies that respect Tribal sovereignty, support Tribal telecommunications entities, and address the persistent digital divide in Indian Country.

2018: Consolidation and Internal Policy Building

In 2018, the number of FCC dockets and NCAI filings experienced a slight decline. Despite this, significant progress was achieved within Tribal organizations, as no Tribal-specific dockets were opened at the FCC, yet two dockets impacted tribes, and two NCAI filings were submitted. Additionally, Tribal organizations passed four resolutions.

The NCAI advocated for digital inclusion (what would now be called digital sovereignty) through strategic regulatory efforts in response to the FCC's initiatives, specifically the Transforming the 2.5 GHz Band (18-120) and Accelerating Wireless Broadband Deployment (17-79). NCAI submitted targeted comments, including joint submissions with the United South and Eastern Tribes (USET). These efforts emphasized a unified Tribal position: the urgent need to remove infrastructure barriers and expand sovereign access to broadband spectrum.

NCAI's advocacy was strengthened through a series of four Tribal resolutions that promoted internal coordination and long-term strategic planning. These resolutions were DEN-18-048, which urged the FCC to improve broadband mapping to better reflect connectivity gaps on Tribal lands; DEN-18-037, which called for revitalizing the FCC's ONAP, particularly its consultation and educational functions; DEN-18-036, which demanded that the Tribal Lifeline Program be managed according to its original purpose and federal procedural law; and DEN-18-005, which opposed the FCC's efforts to reduce Tribal authority over historic preservation review related to wireless infrastructure.

Although federal engagement in Tribal broadband policy temporarily declined, coinciding with the rollback of net neutrality and broader deregulatory trends, Tribal nations used this period to build internal capacity. The resolutions served as a framework for strengthening sovereignty by developing regulatory literacy and infrastructure readiness. This groundwork positioned Tribes to respond more effectively to future opportunities for spectrum access and federal resources, marking a quiet but vital inflection point in the broader movement for Tribal Digital Sovereignty.

2019: Strategic Research and Spectrum Sovereignty Framing

In 2019, Indian Country entered a new era of data-driven and sovereignty-based policymaking, laying a solid foundation to assert Tribal rights to spectrum as a sovereign resource. The year marked a key strategic and intellectual shift in how Tribal Nations positioned themselves within federal regulatory frameworks and spectrum governance, setting in motion events that would directly influence the FCC and reshape future broadband access for Native communities.

At the heart of this shift was the growing momentum among Tribal Nations to formalize their claims to wireless spectrum. The NCAI epitomized this momentum, submitting a Petition for Reconsideration in Docket No. 18-120, which challenged the FCC's actions surrounding the 2.5 GHz band. The petition pushed back on decisions that inadequately considered Tribal sovereignty and called for meaningful Tribal participation in the reallocation of spectrum resources.

Complementing this legal effort, two key NCAI Resolutions—ABQ-19-086C and ABQ-19-087C—laid the political groundwork for Indigenous spectrum access. These resolutions urged the success of Tribal Nations in accessing the 2.5 GHz Broadband Tribal Priority Window and advocated for expanded partitioning, disaggregation, and leasing opportunities for Tribes to control wireless services within their own territories. Together, these actions sent a clear message: Tribal Nations would no longer be passive recipients of federal broadband policy but active architects of their digital futures.

Supporting this work, three academic contributions from the American Indian Policy Institute (AIPI) in 2019 strengthened the case for Tribal spectrum sovereignty both technically and legally. First, the Tribal Technology Assessment (TTA), written by Traci L. Morris and Brian Howard, is the second national survey of its kind, following the 2009 New Media Study that documented the digital divide in Indian Country. It revealed stark disparities in broadband and digital service access, challenging the FCC's reliance on flawed connectivity data and emphasizing the urgent need for Indigenous-led data collection. Second, a policy brief titled "Tribal Spectrum Sovereignty: A Natural Resource that Must Be Leveraged" offered a framework to view wireless spectrum as an extension of Tribal sovereignty. It argued that access to spectrum is not merely a technical or economic issue but a matter of self-determination and sovereign control over the airwaves above Tribal lands. Lastly, the AIPI organized a one-day event, the Spectrum Sovereignty Workshop. Co-hosted by the ONAP and AIPI, this national gathering on December 19, 2019, brought together Tribal leaders, policy experts, and legal scholars to prepare for the 2.5 GHz spectrum auction process.

The year 2019 was not marked only by policy activities; it also saw the inclusion of academic expertise. By combining legal advocacy, strategic political resolutions, empirical research, and coalition building, Indian Country reshaped the narrative around the spectrum—from a federal asset to a sovereign resource. These efforts established the groundwork for the FCC's subsequent creation of the 2.5 GHz Rural Tribal Priority Window in 2020, which resulted directly from the organizing and intellectual work done the previous year. More than a policy milestone, 2019 marked the inflection point when Tribal Nations reasserted control over the digital lifelines of the 21st century, initiating an era of Tribal digital self-determination.

From 2010–2020, Tribal engagement in telecommunications evolved from an under-recognized advocacy effort into a powerful policy movement rooted in sovereignty and self-determination. Tribes moved beyond submitting comments and resolutions to securing federally recognized spectrum rights, setting a model for future claims to digital infrastructure, jurisdiction, and regulatory authority. This period offers essential lessons on how Tribal Nations can navigate and influence federal regulatory systems while asserting their inherent rights to self-governance in the digital domain. Regulatory breakthroughs depend on coalition building and ongoing engagement.

The FCC's creation of a Rural Tribal Priority Window for unassigned 2.5 GHz spectrum licenses in 2020 represented a significant legal acknowledgment of spectrum sovereignty. It enabled Tribes to access midband spectrum, critical for wireless broadband deployment, which is often the only practical connectivity solution in remote areas. The initiative established a precedent for granting sovereign access to spectrum resources, reinforcing the idea of Tribal Digital Sovereignty. Despite challenges resulting from political changes and shifting federal priorities, the 2010–2020 decade was a defining time for Tribal telecommunications. Tribes gained meaningful representation in federal broadband discussions, strengthened their technical and legal policy advocacy, and laid the foundation for more assertive claims to spectrum, infrastructure, and digital sovereignty in the future. This era laid the institutional groundwork for Tribal participation in US telecommunications policy—a crucial shift from advocacy to policymaking and from marginalization to a seat at the table.

Era Five: The 2020s: The Emergence of a Regulatory Imperative for Tribal Digital Sovereignty

2020: A Watershed Moment in Tribal Telecommunications

Despite the upheaval of the COVID-19 pandemic, 2020 marked a watershed in the history of Tribal telecommunications policy and sovereignty. Although the FCC did not open new dockets specifically for Tribal issues, it implemented a landmark initiative with lasting implications for Tribal digital self-determination: the 2.5 GHz Rural Tribal Priority Window (RTPW).

Created under the Transforming the 2.5 GHz Band proceeding (WT Docket No. 18-120), the RTPW was part of the FCC’s effort to reform the Educational Broadband Service (EBS) spectrum—historically reserved for educational institutions but largely underused, particularly in rural areas. In response to years of Tribal advocacy and multiple ex parte filings, including emergency comments from the NCAI and allied signatories, the FCC opened a six-month window (February 3–September 2, 2020) granting federally recognized Tribes first priority to apply for unassigned 2.5 GHz spectrum licenses.

This historic milestone in US regulatory history took place during the peak of the COVID-19 pandemic. Lockdown measures, along with ongoing connectivity issues across Indian Country, posed significant challenges for Tribes trying to submit applications. Many eligible Nations encountered difficulties accessing the necessary digital tools or support infrastructure to participate fully in the process. Despite these systemic obstacles, the RTPW represented a regulatory acknowledgment of the importance of Tribal sovereignty in the digital realm.

For the first time, Tribal Nations were given direct access to midband spectrum—a critical resource for broadband deployment. Despite pandemic-related disruptions and connectivity barriers that limited participation for many applicants, the RTPW acknowledged spectrum as a sovereign resource. It allowed Tribes to claim control over airwaves above their lands, develop Tribal-owned internet service providers (ISPs), and build community broadband networks.

The RTPW established a precedent: spectrum was formally recognized as an extension of Tribal sovereignty, analogous to land and water. By linking digital equity with federal trust obligations, the Commission affirmed that spectrum access is fundamental to modern self-determination and governance. Years of Tribal advocacy culminated in this moment, transforming the long struggle for connectivity into a legal acknowledgment of Tribal jurisdiction in the digital sphere.

As this article demonstrates, the RTPW is the result of years of advocacy and represents a milestone in the evolving relationship between Tribal Nations and federal communications policy. More than a licensing opportunity, it is a declaration of Tribal Nations’ right to control the digital lifelines that support governance, education, healthcare, and economic development. In doing so, it solidifies spectrum as a central pillar of Tribal Digital Sovereignty, with the potential to reshape broadband infrastructure and Tribal governance for generations to come.

COVID-19 and the Federal Policy Shift

The pandemic exposed the depth of broadband inequities across Indian Country. For many communities, limited connectivity meant isolation from education, telehealth, and civic participation—revealing that internet access was no longer a convenience but a necessity. From a regulatory standpoint, COVID-19 accelerated a paradigm shift: broadband came to be understood not only as infrastructure but as a right and a responsibility tied to federal trust duties. Policymakers in Congress, the FCC, and the National Telecommunications and Information Administration (NTIA) began to frame broadband access for Tribes as a matter of equity, sovereignty, and constitutional obligation under Title VI and federal healthcare and education mandates.

Federal Legislative and Regulatory Responses

In response to unprecedented challenges, a suite of federal programs emerged to promote equitable broadband access in underserved and unserved Tribal areas. These initiatives were not merely financial; they were legal acknowledgments of the federal government's dual responsibilities to support infrastructure development and uphold the sovereign rights of Tribal Nations.

1. **Tribal Broadband Connectivity Program (TBCP):** Authorized by the Consolidated Appropriations Act of 2021 and expanded under the Infrastructure Investment and Jobs Act (IIJA), the TBCP provides direct funding to Tribal governments for broadband deployment, digital inclusion, and workforce development. For the first time, Tribes could apply directly for federal funds, bypassing state intermediaries—a clear legal affirmation of Tribal self-governance.

2. **Broadband Equity, Access, and Deployment (BEAD) Program:** Also under the IIJA, BEAD allocates $42.45 billion to states and territories but requires Tribal consultation as a statutory condition of funding. This provision creates a legal duty for state broadband offices to engage with Tribal governments in planning and implementation.

3. **Digital Equity Act Program:** The Digital Equity Act of 2021 established three grant mechanisms (State Planning, State Capacity, and Competitive Grants) to promote digital inclusion. It legally defines *digital equity* to include cultural, linguistic, and geographic contexts—language that directly reflects Tribal advocacy for locally governed broadband strategies.

Legal and Regulatory Advocacy by Tribal Nations

By the end of 2024, Tribal governments had submitted 167 responses in FCC dockets, demonstrating ongoing legal advocacy for fair telecommunications regulation. These filings addressed a wide range of issues, including network sovereignty, spectrum allocation, reform of the Universal Service Fund, middle-mile infrastructure needs, and consultation procedures.

These legal actions indicate Tribes' shift from being passive recipients of federal aid to active participants in rulemaking, asserting inherent sovereignty in the digital realm.

Long-Term Infrastructure and Sovereignty Considerations

While emergency funding helped address immediate access gaps, Tribal Nations have consistently emphasized that temporary capital infusions are not enough without legal recognition of long-term sovereignty and regulatory independence. Calls for sustainable infrastructure investments are increasingly seen within a broader legal context that includes affirmative trust responsibilities under federal Indian law, self-determination provisions of the Indian Self-Determination and Education Assistance Act, and consultation mandates under Executive Order 13175 and the IIJA's Title IV. These efforts reflect a growing understanding of *Tribal Digital Sovereignty*—the right of Tribal Nations to govern, protect, and manage their digital infrastructure, data, and communication networks within their jurisdictions, both physical and virtual.

Conclusion

The COVID-19 era catalyzed a fundamental transformation in how broadband policy addresses Indian Country. Years of advocacy converged in a federal response that, while imperfect, began to position Tribes not as beneficiaries but as sovereign regulators of their digital futures. The RTPW, TBCP, and BEAD Program together form the early pillars of a national framework for Tribal Digital Sovereignty—one that integrates infrastructure investment, legal recognition, and self-determined governance.

Ensuring that this momentum endures will require continued Tribal participation in policymaking, vigilant enforcement of consultation requirements, and sustained investment in Tribal capacity to build and govern digital infrastructure for future generations.

References

Cheyenne River Sioux Tribe Telephone Authority (CRSTTA). (n.d.). *About us*. https://www.crstta.com/about-us

Clinton, W. J. (2000, January 27). *Address before a joint session of the Congress on the state of the union.* Miller Center, University of Virginia. https://millercenter.org/the-presidency/presidential-speeches/january-27-2000-state-union-address

Establishing a government-to-government relationship with Indian Tribes. (2000, July 6). 65 Fed. Reg. 41668. https://www.federalregister.gov/documents/2000/07/06/00-16969/establishing-a-government-to-government-relationship-with-indian-tribes

FCC Docket 99-204: In the matter of Federal-State Joint Board on Universal Service: Promoting deployment and subscribership in unserved and underserved areas, including Tribal and insular areas (CC Docket No. 96-45). (1999, August 5). Federal Communications Commission. Retrieved October 2, 2025, from https://transition.fcc.gov/Bureaus/Common_Carrier/Notices/1999/fcc99204.pdf

FCC Docket 00-204: In the matter of Federal-State Joint Board on Universal Service: Universal service support for eligible schools and libraries (CC Docket No. 96-45). (2000, June). Federal Communications Commission. Retrieved October 2, 2025, from https://docs.fcc.gov/public/attachments/FCC-00-204A1.pdf

FCC Docket 00-208: In the matters of Federal-State Joint Board on Universal Service; promoting deployment and subscribership in unserved and underserved areas, Including Tribal and insular areas: Western Wireless Corporation, Crow Reservation in Montana; Smith Bagley, Inc.; Cheyenne River Sioux Tribe Telephone Authority; Western Wireless Corporation, Wyoming; Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc.; petitions for designation as an Eligible Telecommunications Carrier and for related waivers to provide universal service. (2000, June 30). Federal Communications Commission. Retrieved October 2, 2025, from https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/2000/fcc00208.pdf

FCC Public Hearings—"Overcoming Obstacles to Telephone Service to Indians on Reservations" March 23, 1999 Arizona Public Hearing. (n.d). Arizona Memory Project. https://azmemory.azlibrary.gov/pdf/4.0.189/web/viewer.html?file=/assets/displaypdf/208613

Federal Communications Commission (FCC). (n.d.) *National Broadband Plan*. https://www.fcc.gov/general/national-broadband-plan

Federal Communications Commission (FCC). (n.d.) *WorldCom, Inc. and Intermedia Communications Inc.* [CC Docket 00-206]. https://www.fcc.gov/proceedings-actions/mergers-transactions/worldcom-inc-and-intermedia-communications-inc

Fort Mojave Telecommunications, Inc. (n.d.). Home page. https://ftmojave.com/

Gila River Telecommunications, Inc. (n.d.). *About GRTI*. https://gilarivertel.com/grti-info/about-grti/

Kennard, W. A. (2000, September 28). *ITTI 2000: Fulfilling the promise.* Indian Telecom Training Initiative, St. Paul, Minnesota. https://transition.fcc.gov/Speeches/Kennard/2000/spwek021.html

Morris, T. L., & Meinrath, S. (2009). *New media, technology, and internet use in Indian Country: Quantitative and qualitative analyses* [White paper]. New America Foundation.

National Tribal Telecommunications Association (NTTA). (n.d.). *Members—NTTA*. https://nationaltribaltelecom.org/members/

Native Public Media (NPM). (n.d.). *About*. https://www.nativepublicmedia.org/about

Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). https://www.congress.gov/104/plaws/publ104/PLAW-104publ104.pdf

Tribal telecommunications issues: Hearing before the Senate Committee on Commerce, Science, and Transportation and House Committee on Indian Affairs, 107th Cong. (2002). https://www.govinfo.gov/content/pkg/CHRG-107shrg91301/html/CHRG-107shrg91301.htm

Vonage Holdings Corp. v. Federal Communications Commission, 489 F.3d 1232 (D.C. Cir. 2007). https://media.cadc.uscourts.gov/opinions/docs/2007/06/06-1276a.pdf

Appendix I

FCC Chart of Dockets (1995–2020)—Grouped by Policy Category

Universal Service Reform

Year	Docket	Title	Notes & Tribal Impact
1996	96-45	Federal-State Joint Board on Universal Service	Established foundational USF principles, including for Tribal lands.
2003	03-109	Lifeline and Link-Up	Earlier expansion of eligibility.
2005	05-337	High-Cost Universal Service Support	Sought to reform funding formulas for rural/Tribal areas.
2009	09-197	Telecommunications Carriers Eligible for Universal Service Support	Shaped how Tribal carriers qualify for USF and Lifeline.
2010	10-90	Connect America Fund	Redirected high-cost support to broadband; major Tribal implications.
2010	10-208	Universal Service Fund Reform–Mobility Fund	Introduced mobile support, critical for Tribal regions.
2011	11-42	Lifeline Reform and Link-Up Reform and Modernization	Created Tribal Lifeline tier (+$25); Tribal consultation expanded.

Broadband and Digital Inclusion

Year	Docket	Title	Notes & Tribal Impact
2009	09-47	DTV Transition	Implementation of the DTV Delay Act, dealing with post-transition digital operations. Part of a larger, coordinated effort, alongside GN Docket Nos. 09-51 and 09-137, to inform the development of a National Broadband Plan as mandated by the American Recovery and Reinvestment Act of 2009
2009	09-51	National Broadband Plan for Our Future	Set national goals; identified Tribal areas as underserved. Part of a larger, coordinated effort, alongside GN Docket Nos. 09-51 and 09-137, to inform the development of a National Broadband Plan as mandated by the American Recovery and Reinvestment Act of 2009
2009	09-137	Section 706 Inquiry	Annual inquiry into deployment gaps; Tribal comments highlighted persistent divide. Part of a larger, coordinated effort, alongside GN Docket Nos. 09-51 and 09-137, to inform the development of a National Broadband Plan as mandated by the American Recovery and Reinvestment Act of 2009
2017	17-108	Restoring Internet Freedom (Net Neutrality Repeal)	Strongly opposed by Tribes; seen as harmful to sovereignty.

Anchor Institution Connectivity

Year	Docket	Title	Notes & Tribal Impact
2013	13-184	Modernizing the E-Rate Program for Schools and Libraries	Pushed for Wi-Fi and broadband; Tribal advocates cited tech gaps.

Spectrum Access and Tribal Lands

Year	Docket	Title	Notes & Tribal Impact
2011	11-40	Spectrum on Tribal Lands	Called for better Tribal spectrum licensing.
2018	18-120	Transforming the 2.5 GHz Band	Created window for Tribal exclusive spectrum licenses.
2010	10-141	Improving Native Nations Communications	Initiated inquiry into Tribal-specific broadband needs.

Infrastructure and Rights-of-Way

Year	Docket	Title	Notes & Tribal Impact
2007	07-135	Establishing Just and Reasonable Rates for Local Carriers	Addressed access and pricing in rural areas.
2017	17-79	Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	Reduced Tribal consultation requirements—widely opposed by Tribes.

Media and Broadcasting

Year	Docket	Title	Notes & Tribal Impact
2009	09-52	Rural Radio	Tribal eligibility and allotment raised as core issues.

Appendix II

Timeline of the History of Advocacy in Response to Structural Inequalities in Tribal Telephony and Telecommunications

Period	Policies or Actions	Impacts
Era One: Early years and the 1980s	• Cheyenne River Sioux Tribal Telephone Authority started in 1958 • Fort Mohave Telecommunications, Inc. started in 1988 • Gila River Telecommunications, Inc. started in 1988	• Historically, Tribal nations demonstrated early adoption of new technologies. • From newspapers and telegraphs to radios, telephones, cell phones, and the internet, communities have embraced these tools as powerful communication and information-sharing tools. • Some of the earliest telephony include Cheyenne River Sioux Telephone Authority, Gila River Telecom, Inc., and Fort Mojave Telecommunications, Inc.

Period	**Policies or Actions**	**Impacts**
Era Two: 1990s	• Telecommunications Act of 1996 (rewrite of 1934 Act) • NTIA publishes report: *Falling Through the Net: Defining the Digital Divide* 1999 • NTIA found that 46% of American Indians had no access to basic telephone service. • FCC hosted first field hearings in 1999, "Overcoming Obstacles to Telephone Service for Indians on Reservations" in response to NTIA data.	• The Telecommunications Act of 1996 aimed to promote competition, reduce regulations, and encourage the development of new technologies in the US telecommunications industry. • It removed many regulations and barriers to entry, leading to increased competition, lower prices, and rapid technological expansion. Even today, the Act continues to impact the industry significantly. • Tribal Nations are not included in the Telecommunications Act of 1996, which spurred a multitude of strong Tribal responses and essentially marks the beginning of Tribal advocacy in telecommunications.
Era Three: 2000–2010	• President Clinton uses term *digital divide* in State of the Union address 2000. • FCC Universal Service Dockets 00-204 and 00-208 • FCC Tribal Policy Statement • Tribal Lands ETC designation and new enhanced lifeline and linkup for Tribal lands	• The 2000s were pivotal years in Tribal telecom policy. The FCC advanced its relationship with Tribal Nations: at the beginning of the decade, there was one person and the Indian Telecom Initiative. At the end of the decade, Tribal Nations were included in the National Broadband Plan of 2010. • The FCC recognized the need for Tribal Nations to have

Period	Policies or Actions	Impacts
	• NCAI passed 22 resolutions in the telecommunications subcommittee • ITTI 2000: 600 people from 135 Tribes showed up. • Indian Telecom Initiative 2003, 2004, 2005, 2006 • ARRA, BTOP 2008 • Native Public Media formed. • New Media Study 2009 • FCC opens four major dockets with Tribal implications: significant Tribal response.	access to high-speed internet and advanced telecommunications technology to stay competitive in the modern world. This recognition led to the creation of programs that aimed to increase broadband deployment and adoption in Tribal Nations. • The first research on internet access, use, and availability on Tribal lands was published in 2009. But generally, there was no data (and there's still little). • There were 117 filings by Tribes in FCC dockets during this decade.
Era Four: 2010–2020	• National Broadband Plan of 2010 includes Tribes. • FCC forms the Office of Native Affairs and Policy (ONAP) in 2010. • FCC implements Tribal Priority for Radio Broadcast Licensing 2010. • FCC forms Native Nations Broadband Taskforce in 2011 (now called Native Nations Communications Taskforce). • FCC opens 33 Dockets. • NCAI submits 134 filings between 2010 and 2020.	• Starting in 2010 with the National Broadband Plan, which included Tribal Nations, this decade saw Tribes getting that seat at the table. • Through the NCAI resolutions process, Tribes have historically and continue to support the following areas: (1) radio and television matters; (2) the ONAP and its actions; (3) articulating Indian Country's inclusion in Universal Service Reform at the FCC; (4) Tribal positions on spectrum; (5) Tribal positions on the long impending

Period	Policies or Actions	Impacts
	• NCAI passes 50 resolutions on telecom, spectrum, and radio in 2010s. • Work slows down in 2015 in advance of presidential election. Less FCC action. NCAI changes in staff lead to less telecom expertise. • Presidential changes lead to much inaction from 2016 on. • Spectrum becomes important.	Telecommunications Act rewrite; and (6) Tribal access to broadband. Other significant areas of interest include E-Rate, Lifeline and Link-Up, net neutrality or open internet, and the funding mechanisms for infrastructure. • During the 2010s, there were significant policy actions, including at least 33 dockets. • There were 673 filings in dockets by Tribes in this decade.

Era Five: 2020s	• 2.5 GHz spectrum
	• Legislative responses emerged to address COVID-19 issue including:
	  • Tribal Broadband Connectivity Program
	  • Broadband Equity, Access & Deployment Program (BEAD)
	  • Digital Equity Act Program
	  • State Planning Grant Program
	  • State Capacity Grant Program
	  • Competitive Grant Program
		• The COVID-19 pandemic emphasized the need for broadband access in Tribal lands, with those without reliable internet access being left behind.
		• This era is marked by dramatic swings in federal policy.
		• Through December 2024 Tribes filed on 167 dockets.