



**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**

January 4, 2021

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Sent via email to edtariffunit@cpuc.ca.gov.

RE: The Dry Creek Rancheria Band of Pomo Indians, California's Comments on Revised Draft 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.

Dear Commissioners,

On behalf of the Dry Creek Rancheria Band of Pomo Indians, California (the "Tribe"), a federally recognized Indian tribe, 85 Fed. Reg. 5462, 5465 (Jan. 30, 2020), I am writing to submit the following comments as requested on December 11, 2020 by the California Public Utilities Commission ("CPUC") on its Revised Draft Resolution E-5076 ("Revised Proposed Guidelines") drafted to implement the CPUC's Tribal Land Transfer Policy ("TLTP").

1. General Provisions

Rule 1.2(c) should be modified to provide, at a minimum, examples of when an easement could be placed on real property whose disposition is subject to the TLTP prior to transfer to a tribe. In responding to a previous comment by the Yurok Tribe, the CPUC listed several examples including: "in some circumstances, easements may be necessary to preserve IOU rights-of-way, or continued access critical to ongoing operational requirements." Enumerating these examples in the Revised Proposed Guidelines would provide illustrative guidance to the CPUC in assessing requests by an IOU on a case-by-case basis to ensure that land is not unnecessarily restricted prior to conveyance.

Rule 1.2(c) should also be modified to ensure that the tribe purchasing the property is consulted regarding any proposed easement in accordance with the CPUC's Tribal Consultation Policy.

Rule 1.2(c) should also be modified to require additional negotiations between the tribe and the IOU if the CPUC authorizes an easement on the land prior to transfer to the tribe and that easement was not anticipated during negotiation of the purchase terms between the tribe and the IOU.

Rule 1.3(a) has been modified from the prior draft to reference Alfred Kroeber’s “Handbook of the Indians of California, 1952” for the identification of tribal territory if a tribe has not designated territory under Assembly Bill 52. In making this change, the CPUC explained that it would hold “a technical 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.” Revised Proposed Guidelines at 23. However, no reference is made to such technical workshop in the Revised Proposed Guidance and there is no explanation for how, if the workshop is conducted, it will affect the definition of “ancestral territory” in Rule 1.3(a).

Rule 1.3(f) has been modified from the prior draft to exclude from the definition of IOUs, “corporations that only operate independent gas storage facilities or common carrier pipeline corporations” and water corporations “with fewer than 2,000 service connections.” The CPUC did not provide any explanation for why this provision was modified or the purpose of this modification and the Tribe is not aware of any prior comments submitted requesting this change. Moreover, these exclusions are inconsistent with the TLTP which applies broadly to “future applications and advice letters submitted by investor-owned utilities (IOUs) requesting permission to dispose of Real Property (including any Real Property contained within the hydro watershed lands retained by Pacific Gas and Electric Company (PG&E) through implementation of its Land Conservation Commitment (LCC)) under Section 851 of the Public Utilities Code.” TLTP at 1. The Revised Proposed Guidelines should be modified, consistent with the TLTP to include all IOUs that may request permission to dispose of real property under Cal. Pub. Utilities Code § 851.

Rule 1.4 should be modified to require that the website created and maintained by the IOU be publicly available, user friendly, and easily accessible from the home screen of the IOUs’ website.

2. Notification

A provision should be added noting that the timeframes outlined in **Rules 2.2(b)(iii)-(v)** do not begin to run until a USPS return receipt is received by the IOU indicating that the notice was delivered to and accepted by the tribe.

Rule 2.2(b)(iii) should be modified to provide tribes with 90 days to respond to an IOU’s notice, not 60 days, consistent with the TLTP. See TLTP at 5 (“The Tribe will have 90 days to respond to the notification as to its interest in the subject Real Property.”).

Rule 2.2(b)(v) authorizes the IOUs to seek third-party purchasers for the real property 60 days after the tribe responds to the IOU notice if the tribe and IOU have not reached an agreement or if such an agreement “does not look reasonably imminent” despite good-faith negotiation. Sixty days is not sufficient time for due diligence and good-faith negotiations to take place. The Tribe suggests extending the period to at least 90 days to provide adequate time for tribes to assess the

proposed terms, evaluate the property, and negotiate with the IOU. Additionally, the “reasonably imminent” standard is vague and further guidance should be provided.

A provision should be added requiring the IOU to send a copy of all notices sent to tribes to the CPUC. Additionally, **Rule 2.5** should be modified to require the CPUC post all notices on its website.

3. Requests for Approval

Rule 3.1(a)(iii) should be modified to require the IOU provide any other documentation requested by the CPUC.

A provision should be added to **Rule 3.1(a)** requiring the CPUC keep confidential any materials designated as such by the tribe.

The Tribe is concerned that the IOU and CPUC may be able to get around the requirement of the “right of first offer” through **Rule 3.1(b)(i)** which provides that, if the IOU cannot show that it provided notice and consultation with the appropriate tribes, the CPUC may simply “[i]dentify, any interested tribes, provide them with notice of the [Section 851] proceeding and an opportunity to comment.” Interested tribes that are not notified should still be given the opportunity to acquire the property in the first instance, not merely “comment” on the proceedings held under Section 851. See TLTP at 4 (“If the appropriate Tribe(s) does not receive notice before the IOU begins the Section 851 process, the Commission 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.”) Accordingly, **Rule 3.1(b)(i)** should be modified to read:

Identify any interested tribes through the procedures described in Rule 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;

Rule 3.1(b) is unclear in whether it requires the CPUC to choose to take one of the three actions provided in **Rules 3.1(b)(i)-(iii)** or if the CPUC *may* take one of those actions or *may* take some other action, in its discretion. The Tribe requests that the CPUC be limited to taking only one of the actions described in **Rules 3.1(b)(i)-(iii)** and, accordingly, **Rule 3.1(b)** should be modified to read:

If the IOU does not meet that showing, and if it is unable to cure those deficiencies, the Commission may, in its discretion, either:

Rule 3.2(a) states that the CPUC will encourage interested tribes to participate in the Section 851 proceedings but does not explain how it will do so. **Rule 3.2(a)** should be modified to require any interested tribe receive notice of the proceedings and procedures for the opportunity to comment. Additionally, **Rule 3.2(a)** should be modified to require the CPUC identify all interested tribes in accordance with the procedures described in **Rule 2.2** if such tribes have not already been identified.

The Tribe recognizes the CPUC's obligation to act in the public interest in accordance with the State Constitution and its reasoning for requiring evaluation of the public interest in **Rule 3.3(d)**. However, as other commenters have pointed out, and as the CPUC has itself recognized, the inclusion of **Rule 3.3(d)** as written does not provide tribes, IOUs, or the public with any clarity over how the CPUC would handle a situation in which another public interest, other than the public interest in transferring land to tribes, would be evaluated. The CPUC has stated that, "[i]n 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." Revised Proposed Guidelines at 32. The Tribe suggests codifying that reasoning at **Rule 3.3(d)** by modifying it to read:

That transfer of the real property to another entity would serve a greater public interest.

Rule 3.4 should be modified, 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." TLPT at 6.

4. Dispute Resolution

The Tribe is concerned that the IOUs have absolute authority under **Rule 4.2** to resolve disputes over which tribes should be notified. The CPUC has already recognized that "Tribes are the primary source for identification of a tribe's ancestral territory" (Rule 1.3(a)) and the IOUs do not have the resources or knowledge to resolve disputes related thereto. Accordingly, if a tribe or multiple tribes claim that property is within their ancestral territory, notice should be provided to the tribe(s) in all instances. There is little reason why all tribes who claim the property is within their ancestral territory should not at least be notified. If a dispute should arise later in the process because multiple tribes seek ownership of the property, such disputes should be resolved under **Rule 4.3**, discussed further below. The Tribe suggests modifying **Rule 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.

However, the Tribe is also concerned that IOUs have absolute authority under **Rule 4.3** to resolve disputes between tribes if more than one tribe seeks ownership of the property. Again, tribes are the primary source for identification of their ancestral territory, and IOUs do not have the resources or knowledge to resolve these disputes. Accordingly, though the Tribe recognizes that the CPUC does not have jurisdiction over the NAHC, the parties should be required to request mediation by the NAHC in the first instance. The NAHC is well-equipped to handle these types of disputes and is tasked with mediating disputes in similar situations. See e.g., Cal. Pub. Res. Code § 5097.94(k), Cal. Pub. Health & Safety Code § 8016(d). The NAHC also retains information necessary to resolve disputes regarding tribal ancestral territory in many instances. See Cal. Pub. Res. Code §§ 5097.94(a), 21080.3.1(b). Finally, should the NAHC be unable to assist in mediation, the Tribe does not agree that the IOU should be tasked with proposing a resolution to the dispute, especially by considering external factors including the intended use of the property or “other relevant considerations.” These factors may unduly influence any proposal of the IOU. Ultimately, it should be the CPUC’s responsibility, consistent with the TLTP, to make the final determination in any dispute. Accordingly, the Tribe suggests modifying **Rule 4.3** to read:

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 IOU’s request for approval. 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. The Commission 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 IOU’s documentation of its consultation with the tribes.

5. Right of First Refusal vs. Right of First Offer

Rule 1.3(i) has been modified from the prior draft and now references a “right of first offer” instead of a “right of first refusal.” This was a change requested by IOUs, who reasoned that a right of first offer would ensure tribes have the opportunity to “present an offer” prior to any negotiations by the IOUs with third parties. Whereas a right of first refusal, the IOUs reasoned, can only occur after third-party negotiations. The Tribe agrees that the term “right of first offer” better captures

the intent of the TLTP. However, the Tribe would like to ensure that the safeguards of a “right of first offer,” as that term is used under California law, are incorporated into the Revised Proposed 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.** *Bill Signs Trucking, LLC v. Signs Family Limited Partnership* (2007) 157 Cal.App.4th 1515, 1523, 69 Cal.Rptr.3d 589 (When a party holds a right of first offer, “the seller, upon deciding to market its property, must first make an offer to the grantee of the right of first offer.”) (citing Greenwald & Asimow, supra, ¶ 8:206, p. 8–41). If, after good faith negotiations, the IOU and tribe cannot agree on a purchase price, the IOU may seek third-party purchasers for the property, **but the IOU cannot sell the property at a price lower than what was offered to the tribe.** *Id.* (“If the grantee does not accept that offer, the seller is then free to sell to anyone else on the terms rejected by the grantee or on terms which are better—but not worse—for the seller; in other words, no other buyer can get a better deal than that which was presented to the grantee.”) (citing Greenwald & Asimow, supra, at ¶ 8:209, pp. 8–42 to 8–42.1).

The CPUC recognized these requirements and, in modifying the guidelines to ensure that tribes have the “right of first offer” stated: “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.**” Revised Proposed Guidelines at 29.

The Tribe suggests revising several provisions of the Revised Proposed Guidelines to incorporate the requirements of a “right of first offer” as follows:

- **Rule 1.3(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, must offer initial terms of sale, and must provide the tribe or tribes the right to take or refuse the real property at the offered terms or at terms subsequently negotiated between the parties, before the IOU can seek third-party purchasers for the real property at terms at or more favorable than the terms initially offered to the Tribe. Should the parties fail to reach an agreement, the IOU must, before accepting or offering terms more favorable than was initially offered to the tribe from a third party, reoffer the tribe the more favorable terms negotiated with the third party.

- **Rule 2.4**

The notice shall include, in plain language:

- i. The location and a brief description of the real property at issue;
- ii. The reason the IOU is disposing of the real property;
- iii. 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;
- iv. An offer of initial terms of sale of the real property;
- v. An offer to consult in accordance with California Government Code Section 65352.5, with the tribe regarding the tribe's interest in acquiring the real property; and
- vi. 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.

- **Rule 3.1(a)(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.

6. Clerical Corrections

- Consistent with the TLTP, Rule 1.1(b)(iv) should state:

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

- Rule 1.3(a) should read:

“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."

- **Rule 2.2** has been modified from the prior draft to include **Rules 2.2(b)(iii)-(v)**. The added provisions are included as a subset under **Rule 2.2(b)**, the circumstance when the NAHC does not respond to the IOU's request or when the NAHC's response is inconclusive, but should be generally applicable provisions. The Tribe suggests moving **Rules 2.2(b)(iii)-(v)** to a standalone section under **Rule 2**.

- **Rule 2.4(iv)** should read:

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

- **Rule 3.1(a)(ii)** should read:

A copy of the IOU's written notice to any interested tribal chairperson or their designee with USPS return receipt;

If you have any questions or concerns regarding these Comments please contact us at your earliest convenience.

Sincerely,



Chris Wright, Chair
DRY CREEK RANCHERIA BAND OF POMO INDIANS

CC: **Michael Rosauer**
Public Utilities Regulatory Analyst
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Sent via email to Michael.Rosauer@cpuc.ca.gov


Mary Jo Borak
Supervisor
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Sent via email to BOR@cpuc.ca.gov

Service List for CUPC Tribal Land Transfer Policy Revised Draft Resolution E-5076

CERTIFICATE OF SERVICE

I certify that I have served this day via email a true copy of the Tachi Yokut Tribe's Comments on Revised Draft 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* on all parties or their attorneys.

Dated: January 4, 2021, at Grand Rapids, Michigan.

/s 

Lauren Mulhern

Santa Rosa Rancheria Tachi Yokut Tribe

Leo Sisco
Chairman

Robert Jeff III
Vice-Chairman

Candida L. Cuara
Secretary

Dena Baga
Treasurer

Crystalgrace Ignacio/Patricia Lewis
Delegates

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Dear Commissioners,

On behalf of the Tachi Yokut Tribe, known as the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, (the "Tribe"), a federally recognized Indian tribe, 85 Fed. Reg. 5462, 5465 (Jan. 30, 2020), I am writing to submit the following comments as requested on December 11, 2020 by the California Public Utilities Commission ("CPUC") on its Revised Draft Resolution E-5076 ("Revised Proposed Guidelines") drafted to implement the CPUC's Tribal Land Transfer Policy ("TLTP").

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The Tribe suggests revising several provisions of the Revised Proposed Guidelines to incorporate the requirements of a “right of first offer” as follows:

- **Rule 1.3(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, must offer initial terms of sale, and must provide the tribe or tribes the right to take or refuse the real property at the offered terms or at terms subsequently negotiated between the parties, before the IOU can seek third-party purchasers for the real property at terms at or more favorable than the terms initially offered to the Tribe. Should the parties fail to reach an agreement, the IOU must, before accepting or offering terms more favorable than was initially offered to the tribe from a third party, reoffer the tribe the more favorable terms negotiated with the third party.

- **Rule 2.4**

The notice shall include, in plain language:

- i. The location and a brief description of the real property at issue;
- ii. The reason the IOU is disposing of the real property;
- iii. 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;
- iv. An offer of initial terms of sale of the real property;
- v. An offer to consult in accordance with California Government Code Section 65352.5, with the tribe regarding the tribe's interest in acquiring the real property; and
- vi. 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.

- **Rule 3.1(a)(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.

6. Clerical Corrections

- Consistent with the TLTP, Rule 1.1(b)(iv) should state:

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

- Rule 1.3(a) should read:

“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."

- **Rule 2.2** has been modified from the prior draft to include **Rules 2.2(b)(iii)-(v)**. The added provisions are included as a subset under **Rule 2.2(b)**, the circumstance when the NAHC does not respond to the IOU's request or when the NAHC's response is inconclusive, but should be generally applicable provisions. The Tribe suggests moving **Rules 2.2(b)(iii)-(v)** to a standalone section under **Rule 2**.
- **Rule 2.4(iv)** should read:

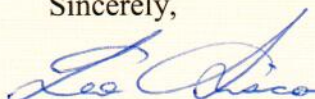
An offer to consult in accordance with California Government Code Section 65352.4, with the tribe regarding the tribe's interest in acquiring the real property; and

- **Rule 3.1(a)(ii)** should read:

A copy of the IOU's written notice to any interested tribal chairperson or their designee with USPS return receipt;

If you have any questions or concerns regarding these Comments please contact us at your earliest convenience.

Sincerely,



Leo Sisco
Tribal Chairman


CC: **Michael Rosauer**, Public Utilities Regulatory
Analyst Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Sent via email to Michael.Rosauer@cpuc.ca.gov

Mary Jo Borak, Supervisor
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Sent via email to BOR@cpuc.ca.gov

CERTIFICATE OF SERVICE

I certify that I have served this day via email a true copy of the Tachi Yokut Tribe's Comments on Revised Draft 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* on all parties or their attorneys.

Dated: January 4, 2021, at Grand Rapids, Michigan.

/s 

Lauren Mulhern

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885

January 5, 2021

TO:

Michael Rosauer
Public Utilities Regulatory Analyst, Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
VIA EMAIL: Michael.Rosauer@cpuc.ca.gov

Mary Jo Borak
Supervisor, Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
VIA EMAIL: BOR@cpuc.ca.gov

RE: Comments on Revised Draft Resolution E-5076 – Guidelines to Implement the CPUC Tribal Land Policy (Agenda ID: 18659)

Dear Mr. Rosauer and Ms. Borak:

Thank you for the opportunity to comment on the above-referenced document (“Guidelines”). The Coastal Commission shares the California Public Utilities Commission’s (“CPUC’s”) strong interest in improving the ability of tribal groups to participate in our agencies’ decision-making processes. Like the CPUC, the Coastal Commission has adopted a Tribal Consultation Policy that acknowledges tribal sovereignty, recognizes tribal stewardship over important resources, and provides for effective communication and government-to-government consultation between tribes and our agency.¹ Both agencies are also obligated to act in the public interest, which, as noted in the proposed Guidelines, will require a “full and transparent consideration” of different interests and a balancing of those interests. California’s constitution, for example, along with the public trust doctrine, recognizes the protection of public access to the coast as being in the public interest. Similarly, the California Coastal Act calls for maximizing public access to the coast and protects other aspects of the public interest, including sensitive habitats, water quality, and views.

Over the years, the Coastal Commission, and local governments, acting pursuant to their delegated Coastal Act authority, have issued coastal development permits that include permit conditions that run with the land and require the recordation of easements or deed restrictions to provide public access and to restrict development on some parcels of coastal land. These conditions, easements, and deed restrictions are

¹ See the Coastal Commission’s August 8, 2018 Adopted Tribal Consultation Policy at: <https://documents.coastal.ca.gov/assets/env-justice/tribal-consultation/Adopted-Tribal-Consultation-Policy.pdf>

meant to further various aspects of the public interest and are different than the utility easements described in the Guidelines, which are those established by an IOU to support utility infrastructure or to meet CPUC requirements (see, for example, the Guidelines' discussion of the "Definition of 'Disposition'" at pages 23-26, and Findings 12, 13, and 14 on page 40).

The Coastal Commission and local governments have an interest in considering how the transfer to tribes of coastal zone lands that include public interest conditions, easements, or deed restrictions might affect the public interest. Accordingly, and to help further our shared goals and commitments, we request that the Guidelines ensure that the Coastal Commission and coastal jurisdictions receive timely notice of proposed transfers of properties within the coastal zone.

We recommend one modification to the proposed Guidelines. Section 2 of the proposed Guidelines describes the notification process that a regulated investor-owned utility ("IOU") is to follow when it decides to dispose of real property. We recommend Section 2.1 of the Guidelines be modified as shown in bolded, underlined text below:

"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.**"

This change will benefit the proposed Guidelines in at least two ways:

- If the Coastal Commission or these local governments decide to respond to a notice of a proposed transfer, it will help ensure that the CPUC and interested tribes can be made aware of any public interest considerations associated with coastal resource protections implemented by either the Coastal Commission or by local governments under their certified Local Coastal Programs.
- It will also provide the Coastal Commission and local governments an opportunity to consider whether a proposed transfer to a tribal entity will allow the transfer to comply "with any law, rule, or regulation," as noted in Section 3.3 of the proposed Guidelines, and to inform the CPUC of this determination in a timely manner.

This change to the Guidelines will help ensure that the CPUC and interested tribes can be made aware early in the process of any opportunities, restrictions, or permit conditions associated with potential land transfers. This approach would not be unduly burdensome on the IOUs, as they generally know which of their lands are within the coastal zone. This approach also takes the burden off of CPUC staff to identify which lands are in the coastal zone. It also meshes with both the CPUC's and Coastal Commission's shared emphasis on maximizing public participation.

As acknowledged in the proposed Guidelines, the CPUC “cannot foresee all future scenarios” of potential property transfers and therefore cannot at this time address all potential public interest concerns it will need to weigh when considering these transfers. Similarly, the Coastal Commission cannot identify how many transfers might be proposed in the coastal zone or what issues of concern, if any, they might involve. Rather than adding language to the Guidelines to attempt to address those potentialities now, we believe that simply providing notice, as recommended above, will allow us to participate as necessary in the CPUC’s future deliberations.

Again, thank you for the opportunity to comment. We are happy to provide additional details or answer any questions you may have.

Sincerely,

/s/ Tom Luster

Tom Luster
Senior Environmental Scientist

cc: Service List for the CPUC Tribal Land Transfer Policy Revised Draft Resolution
E-5076 (as of January 5, 2021)



Northern Chumash Tribal Council

A Native American Corporation - NorthernChumash.org
1590 18th Street Los Osos, PO Box 6533, CA 93412 805-801-0347

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

January 5, 2021

Sent via email to edtariffunit@cpuc.ca.gov

Re: 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.

The Northern Chumash Tribal Council (NCTC) would like to thank the California Public Utilities Commission (CPUC) for this opportunity to comment on the implementation of the CPUC Tribal Land Transfer Policy, Tribal Consultation Policy, The Tribal Land Transfer Policy, and Public Utilities Code Section 851. The ability to reacquire Tribal Land for the future generation of California Tribal Peoples is a great opportunity to heal the wounds of indigenous communities.

NCTC was formed under California Senate Bill 18 in 2006, following the guideline set forth in SB 18 under the California Native American Heritage Commission. NCTC is a state recognized Tribal Government located in San Luis Obispo County, reviewing all land use issues, and General Plan Amendments.

1.1 b.iii. "To protect Tribal sacred places and cultural resources on all ancestral lands deemed important to the tribe." Tribal sacred places and cultural landscape resources are described in SB 18, California Native American Cultural Places SB 18 refers to Public Resources Code §5097.9 and 5097.995 to define cultural places. Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine (Public Resources Code §5097.9). Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site (Public Resources Code §5097.995).

1.3 a. "ancestral territory" for that tribe means territory identified in Alfred Kroeber's "and book of the Indians of California, 1925". Individual tribal consultations will provide traditional tribal territories. Kroeblers work is not recognized by many California tribes, he kept Ishi in a cold damp basement in Berkeley, showed him off to academia, and sent his brain to the Smithsonian for study when Ishi caught phenomena and passed. It took the California Native Indigenous Community many years to get his brain back and reburied. Kroeblers was and is today a black mark in the history of California academia, and his maps should not be used in any case.

1.3 b. "California Native American Tribe" SB 18 uses the term, California Native American tribe, and defines this term as "a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission" (NAHC). "Federal recognition" is a legal distinction that applies to a tribe's rights to a government-to-government relationship with the federal government and eligibility for federal programs. All California Native American tribes, whether officially recognized by the federal government or not,

represent distinct and independent governmental entities with specific cultural beliefs and traditions and unique connections to areas of California that are their ancestral homelands.

1.3. j. “Meaningful consultation” Government Code §65562.5 requires 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. Before engaging in consultation in either of these cases, IOU’s may want to consider developing relationships with tribes that have traditional lands within their land holdings. These pre-consultation efforts may develop a foundation for a mutually respectful and cooperative relationship that helps to ensure more smooth and effective communication in future consultations.

1.4 IOU Tribal Website Should have a high priority for tribal confidentiality, protecting the confidentiality of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places is one of the most important objective for tribes. By maintaining the confidentiality of a cultural place, including its location, traditional uses, and characteristics, IOU’s can help assure tribes of continued access and use of these cultural places, in addition to aiding in the preservation of a cultural place's integrity.

2.2. IOU to Identify Relevant Tribe or Tribes.

iii. Following IOU notification, the tribe shall have 30 days to express interest in acquiring the real property. Many tribes have monthly council meeting to review and make decisions on issues, 60 days would be better, less pressure, better for tribes.

2.4. Contents of Notice.

At the bottom of this directive it states “Notice shall be delivered by USPS certified mail, return receipt” Because of the shortness of funds and hands, the uses of return receipt emails, and phone calls would be welcome noticing additions.

4. Dispute Resolution

How will the CPUC make sure that parallel agendas within IOU’s that run contrarily to the CPUC Resolution E-5076 are handled, what powers does the CPUC have to make sure that California NAHC recognized Tribe(s) are treated fairly and equally.

Example: Currently PG&E the IOU for Diablo Canyon Nuclear Power Plant located in San Luis Obispo County engaged with the community to determine the transfer of their land holding, located between Morro Bay, CA and Avila Beach CA. Two Tribes claim traditional home lands for the holdings. PG&E has had a long working relationship with one tribe, while not engaging with the other tribe; both tribes are recognized by the California NAHC. An Engagement Panel has been formed now for several years PG&E selected the president of one of the tribal group to sit on the panel. This tribal group does not speak for the other tribal government whose ideas of preservation are completely different than the favored tribal group. Last year a new panel was formed and once again PG&E picked the same tribal group over the other tribal government. The tribal group that has been left out, members live adjacent to the PG&E holdings, some members lived the majority of the youth walking over all these lands of PG&E’s holdings, tribal members know this land better than anyone. Additionally not one member of the

chooses tribal group had every set foot on this land before PG&E took control. The director of the PG&E operations has coroneted this group as the ones that he will move PG&E to transfer the land too, in conjunction with a Conservancy of San Luis Obispo. For several years now PG&E have been supporting this conservancy's MOU with PG&E to transfer the land to the conservancy and chosen tribal group.

There are concerns that the MOU's and agreement that were made behind the scenes and parallel to this current resolution will be grandfathered into any future agreement(s), placing one tribal group at a big disadvantage, even under the 120 day window. Putting a funding team together and acquiring funding takes time.

Currently, the PG&E director has started three sup-committees to determine who will get the holdings, the holdings have been divided into three parcels hence the three sub-committees. The chosen group sits on the one of the committees and the other tribal group has not been asked to participate. PG&E has promoted the chosen tribal group as the voice of the Northern Chumash Community. This is far from the truth, and they are not the voice of the Indigenous community.

When this resolution brings tribal members to the table, one tribal group will be at a disadvantage because of PG&E already picking one tribe over another. We hope that under Section 851 the CPUC will make sure that all Tribal entities are treated fairly and equally. Equally and fairness are not something that we have found PG&E to emanate, in our opinion.

Thank you for the opportunity to comment on this so important Tribal Lands Transfer Policy. The ancestral lands of the California Indigenous Peoples in California are vital for tribes to live into the future, the land is the healing soul of the Indigenous Peoples.

Fred Collins

Tribal Chairman

cc Michael Rosauer
Public Utilities Regulatory Analyst Energy Division
California Public Utilities Commission
505 Van Ness Avenue San Francisco, CA 94102
Michael.Rosauer@cpuc.ca.gov

Mary Jo Borak
Supervisor Energy Division
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Erik Jacobson
Director
Regulatory Relations

Pacific Gas and Electric Company
77 Beale St., Mail Code B13U
P.O. Box 770000
San Francisco, CA 94177

Fax: 415-973-3582

January 5, 2021

Energy Division
Attention: Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: Comments of Pacific Gas and Electric Company on Revised Draft 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

Dear Energy Division Tariff Unit:

Pacific Gas and Electric Company (PG&E) appreciates this opportunity to submit comments on the Revised Draft Resolution E-5076 (the Revised Draft Resolution).

1. INTRODUCTION

PG&E supports the clarification in the Revised Draft Resolution that Section 851 conveyances of fee interest in real property are subject to the Tribal Land Transfer Policy (Policy). The Revised Draft Resolution appropriately addresses the comments by the IOUs and other interested parties that transfers of less-than-fee interest in real property, including easements and license transactions, would not advance the stated goals of the Policy to return ancestral lands to the appropriate Tribe.

The Revised Draft Resolution creates a new requirement that utilities must file an application to seek approval of transactions that they propose qualify for an exception to the general presumption that a tribe is the preferred transferee under Section 3.3 of the Guidelines to Implement the CPUC Tribal Land Policy (Attachment A to Revised Draft Resolution, referred to herein as "Implementing Guidelines"). The exemptions include transfers of real property that are found, supported by evidence, are necessary to achieve IOU operational requirements, or to comply with law, rule or regulation, and transfers to another entity would be in the public interest. PG&E questions the new procedural requirement in the Implementing Guidelines that requires more comprehensive review of these transactions through a formal Section 851 application proceeding.

2. DISCUSSION

Transfers Of Real Property To Achieve IOU Operational Requirements Should Be Eligible For Review Through The Advice Letter Process.

The Revised Draft Resolution adds a new procedural requirement in the Implementing Guidelines that the IOU seek Commission approval for certain real property transfers through a formal Section 851 application procedure.¹ IOUs would no longer be permitted to seek Section 851 approval from the Commission for transactions that are exempt from the Tribal Land Transfer Policy under Section 3.3 of the Implementing Guidelines through the advice letter process under General Order 173. PG&E believes 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 Implementing Guidelines, do not warrant a more comprehensive review through a formal Section 851 application.

An example of a real property transfer to achieve IOU operational requirements would involve a land swap with an adjoining property owner to accommodate the expansion of the IOU's existing facility, such as a power plant or substation. A land exchange to enable an IOU facility upgrade or expansion project would not typically present such unusual issues of fact or law to warrant a more complete fact-finding through the Section 851 application procedure.

The Policy itself recognizes that transfers to achieve IOU operational requirements may qualify as an exception to the presumption a tribe is the preferred transferee.² In view of the Policy's recognition that such real property transfers may support treating the transaction as an exceptional case, the Implementing Guidelines should not universally require review under the formal Section 851 application procedures. Commission review of qualifying real property transfers necessary to achieve IOU operational requirements should continue to be allowed under the advice letter treatment specified in Section 851. The advice letter treatment for such qualifying transactions would be in the interest of efficiency, avoid unnecessary delays to transactions necessary to achieve IOU operational requirements, and conserve the Commission's own resources. Moreover, there are adequate procedural mechanisms in GO 173 that provide for rejection of the advice letter treatment for any proposed real property transfer that may, under the circumstances, warrant a more comprehensive review.³ Finally, PG&E finds the exemption under Section 3.3(c) critical to allowing utility projects to advance in a timely manner, as the Policy would otherwise require an additional 90 days or more to be added

¹ Section 3.3(e) of the Implementing Guidelines.

² Policy, p. 5.

³ GO 173, Rule 2.2, which provides that the Commission's Executive Director or the appropriate Industry Division Director may require the utility to file a formal Section 851 application, rather than an advice letter, for certain transactions file a formal Section 851 application, rather than an advice letter, for certain transactions, based on the criteria set forth in Rule 7.a.(3).

to project schedules to accommodate the right for first offer period and potential negotiations. However, because the Commission application process provides up to 18 months to resolve ratesetting proceedings, requiring IOUs to file an application in all cases that seek this exemption would eliminate that efficiency.

For these reasons, the Implementing Guidelines should not mandate the formal Section 851 application process for all transfers necessary to achieve IOU operational requirements or to comply with law.

3. CONCLUSION

For the reasons discussed above, PG&E submits that its proposed modification to the Section 3.3(e) of the Implementing Guidelines to exclude real property transfers that are necessary to achieve IOU Operational Requirements or to comply with law, rule or regulation from the new procedural requirement that classifies certain transactions as subject to Commission approval through a formal Section 851 application procedure.

Respectfully submitted,

_____/S/
Erik Jacobson
Director, Regulatory Relations

cc:

Edward Randolph, Director, Energy Division
Service List CPUC Tribal Land Transfer Policy Resolution E-5076
Michael Rosauer, Energy Division
Mary Jo Borak, Energy Division

Attachment A

**PG&E Proposed Revisions to
Section 3.3. Presumption in Favor of Tribe of
Guidelines to Implement the CPUC Tribal Land Policy**

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 public interest.
- e. Should subsections ~~b, c,~~ or d apply, the IOU must file a formal Section 851 application with the Commission seeking approval for the conveyance of the real property.



Gary A. Stern, Ph.D.
Managing Director, State Regulatory Operations

January 5, 2021

Energy Division
Attention: Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Comments of Southern California Edison Company on Draft
Resolution E-5076

Dear Energy Division Tariff Unit:

Pursuant to Rule 14.5 of the California Public Utilities Commission (Commission or CPUC) Rules of Practice and Procedure (Rules), Southern California Edison Company (SCE) hereby submits its Comments on Draft Resolution E-5076 (Draft Resolution).

SCE supports the Commission's efforts to ensure California Native American Tribes (Tribes) are engaged and meaningfully considered in the disposition of investor-owned utility (IOU) lands. SCE thanks the Commission and Energy Division for its thoughtful review of comments previously provided by Tribes, utilities, and other stakeholders on the Tribal Land Transfer Policy Implementation Guidelines (Guidelines).

Energy Division staff's efforts to address feedback from stakeholders is evident in the revised Draft Resolution and Guidelines, notably the clarification in the Draft Resolution that the Policy applies to the transfer, sale, donation, or disposition by any other means of a fee interest in real property and not to easements, licenses, and leases. In addition to these revisions, SCE recommends a few additional modifications to further improve the Guidelines, including reliance on government-to-government consultation between Tribes and the Commission to identify Tribal ancestral territories and resolve disputes, mapping ancestral territories prior to Guidelines implementation, and suggested modifications to the Guidelines text as described in further detail below.

Government-to-Government Consultation to Identify Ancestral Territories and Resolve Disputes

SCE recommends the Tribes and the Commission identify ancestral territories through government-to-government consultation and provide a map overlay of IOU service area relative to tribal ancestral lands. SCE, consistent with comments from Tribes and other IOUs, continues to stress that the IOUs are not in a position to determine or dispute the

ancestral territories of Tribes. Guidelines Section 2.2(b)(ii) requires IOUs to determine which Tribe(s) to notice if the Native American Heritage Commission (NAHC) fails to respond to a request to identify Tribes relevant to the territory on which the real property lies and the real property is not located on or abutting federally recognized Indian Country.¹ Rather than require IOUs to identify the appropriate Tribe, it would be more effective and efficient if IOUs utilize an overlay map determined through consultations between Tribes and the Commission.

Similar to SCE's concerns with IOUs identifying Tribal ancestral territories, IOUs are not the appropriate entities to resolve disputes between Tribes regarding disposition of real properties. SCE recommends revising the entirety of Guidelines Section 4: Dispute Resolution to remove IOUs from determining a Tribe's ethnographic affiliation with land to be disposed.² Tribes' connections to a subject property should be determined through government-to-government consultations between the interested Tribes and the Commission. Multiple Tribes and the IOUs raised concerns regarding the IOU's role in dispute resolution between interested Tribes, however, no changes were made to the Guidelines. SCE continues to underscore the need for dispute resolution to involve Tribes and the Commission through government-to-government consultation.

Completion of mapping of ancestral territories

SCE recommends the Commission consider consulting with tribes to complete the mapping of tribal ancestral territories prior to implementing the Guidelines to ensure IOUs are contacting the appropriate Tribes with properties to be disposed. There are over 30 federally recognized Tribes in SCE's service area, 13 of which are rate paying customers. Additionally, SCE works with dozens more when facilitating Tribal consultation under applicable laws and regulations. Due to the complexity of identifying tribal ancestral territories and the number of California Native American Tribes and individuals on the NAHC referral list, a defined process will help to identify the appropriate Tribe to contact regarding properties to be disposed. One benefit to completing consultation and mapping of tribal ancestral territories prior to Guideline implementation is it would eliminate the reliance on the broad NAHC referral list and avoid the IOUs contacting multiple Tribes and individuals for each property to be disposed and potentially cause disputes between Tribes.

¹ Draft Resolution E-5076 Adoption of Guidelines to Implement the CPUC Tribal Land Policy, Section 2.2(b)(ii) IOU to Identify Relevant Tribe or Tribes, p. 45.

² Draft Resolution E-5076 Adoption of Guidelines to Implement the CPUC Tribal Land Policy, Section 4 Dispute Resolution, p. 47.

Recommended Modifications to Guidelines

SCE recommends a few minor modifications to the Guidelines to improve efficiency in NAHC involvement, provide further clarification of the types of dispositions subject to the Policy and Guidelines, and refine reporting requirements.

Improve efficiency for NAHC through quarterly updates rather than for each project

If the Guidelines are adopted prior to completion of the technical workshops to identify tribal ancestral territories, SCE recommends revising the Guidelines to allow utilities to contact the NAHC quarterly, rather than on a per-project basis. Guidelines Section 2.2(a) states that the IOU shall submit a written request to the NAHC to identify Tribes relevant to the territory on which the real property lies. Rather than contacting the NAHC for each disposition, SCE proposes to submit a quarterly request for their referral list for the counties in the service area. Due to the potential number of requests generated by each utility a quarterly update would result in a more efficient and streamlined process for both the NAHC and the utilities. SCE recommends Section 2.2(a) be revised as follows (recommended revisions in red text and underlined):

2.2 IOU to Request NAHC 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 or may submit a written request to the NAHC on a quarterly basis to identify Tribes relevant to each County within the IOU's service area.

Clarification of "Disposition" Definition

SCE recommends the following revisions to Section 1.3 Definitions, Section (d) to ensure the applicability of the Guidelines is clear:

1.3 Definitions

- 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.

Quarterly Reporting for In-Process and Completed Dispositions

Section 5.1(a) requires IOUs to provide quarterly reports identifying recent and anticipated real property dispositions. SCE is concerned predicting upcoming dispositions may be challenging and recommends the reporting be limited to in-process and completed dispositions.

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 ~~upcoming-anticipated~~ 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.

Conclusion

To further improve the Implementation Guidelines, SCE recommends the Commission consider revising the Guidelines to rely on government-to-government consultations to determine ancestral territories and resolve disputes over real properties as well as incorporate the recommended minor modifications. SCE thanks the Commission for the opportunity to provide comments.

Southern California Edison Company

/s/ Gary A. Stern
Gary A. Stern, Ph.D.

GAS:lc:cm

Cc: Edward Randolph, Director, CPUC Energy Division
Molly Sterkel, CPUC Energy Division
Mary Jo Borak, CPUC Energy Division
Michael Rosauer, CPUC Energy Division
Service List for the CPUC Tribal Land Transfer Policy Revised Draft Resolution
E-5076



January 5, 2021

VIA EMAIL (edtariffunit@cpuc.ca.gov)

Energy Division Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Draft Resolution E-5076 (Revised) - Tribal Land Transfer Policy Implementation Guidelines

Dear ED Tariff Unit:

Pursuant to Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric Company ("SDG&E") and Southern California Gas Company ("SoCalGas") (together, the "Joint Utilities") submit these comments regarding the revised version of Draft Resolution E-5076 (the "Revised DR") issued on December 11, 2020. The Revised DR proposes revised draft guidelines ("Revised Draft Guidelines") for implementation of the Commission's Tribal Land Transfer Policy¹ adopted by the Commission on December 5, 2019 ("Policy").

The Joint Utilities appreciate that the Revised DR made substantial changes in response to stakeholder comments. While the Revised DR appears to remedy certain flaws identified by the Joint Utilities and other parties in response to the original Draft Resolution E-5076 (the "Original DR"), the Revised DR does not resolve the legal deficiencies inherent in the Revised Draft Guidelines, which are described in detail in the prior comments submitted by SDG&E and SoCalGas, respectively. In particular, the requirement that the investor-owned utilities ("IOUs") grant a preference to California Native American Tribes ("Tribes") in disposing of real property subject to the Policy appears on its face to violate Public Utilities Code ("P.U. Code") Section 453(a), which prohibits the investor-owned utilities ("IOUs") from granting a preference as to rates, charges, service, facilities, "or in any other respect." The California Supreme Court has

¹ *Investor-Owned Utility Real Property – Land Disposition – First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes.*

held that the prohibition on discrimination through granting of preferences must be broadly construed.²

This issue was raised in prior comments on the Draft Guidelines, but the Revised DR makes no finding regarding compliance with this statutory requirement. Plainly, however, the Commission does not have the requisite authority to order the IOUs to act in a manner that conflicts with the prohibition on grant of preferences established by P.U. Code Section 453(a). Executive Orders N-15-19 and B-10-11 do not authorize the Commission to grant preferential treatment to the Tribes in the disposition of IOU real property, and the Commission's general plenary authority under P.U. Code Section 701 does not overcome the *specific* prohibition in P.U. Code Section 453(a) against granting of preferences.³ The California Supreme Court has made clear that "[a]dministrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them."⁴

In addition, the dispute resolution approach proposed in the Revised Draft Guidelines is highly problematic. The requirement that the IOUs resolve disputes between Tribes regarding their claims to available real property runs afoul of the principle that resolution of intertribal disputes regarding ancestral territory are within the power of the Tribes as sovereign nations, not the State of California or the Commission.⁵ As discussed below, the Commission's broad authority to regulate the IOUs does not extend so far as to permit it to require the IOUs to interfere in or resolve territorial disputes between sovereign nations.

These infirmities, as well as those discussed in detail in the Joint Utilities' earlier comments, will make the Policy and final adopted guidelines ("Final Guidelines") vulnerable to legal challenge. Given the complex legal and policy issues arising from the proposals contained in the Policy and the Revised Draft Guidelines, the Joint Utilities recommend that the Commission withdraw the Policy and Revised DR in their entirety and initiate a formal rulemaking to develop a policy regarding disposition of IOU fee-owned property subject to P.U. Code Section 851 that is located in a Tribe's ancestral territory.

² *Gay Law Students Ass'n v. Pac. Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 480 (noting that "legislative history demonstrates that section 453, subdivision (a)'s prohibition of utility discrimination may not properly be interpreted to apply only to discrimination as to rates or services. After initially enacting legislation that proscribed rate or service discrimination, the Legislature consciously broadened the statutory prohibition to bar utility discrimination 'in any respect whatsoever'; the broadened prohibition has been repeatedly reenacted in revised utility regulatory schemes and is retained by the terms of section 453, subdivision (a) today.").

³ D.99-10-058, p. 27, citing *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577; *Rose v. State of California* (1942) 19 Cal.2d 713, 723-724 ("It is a well established rule of statutory construction that a specific provision relating to a particular subject will take precedence over a more general provision, even if that general provision could be construed broadly to include that subject.").

⁴ *Morris v. Williams* (1967) 67 Cal.2d 733, 737.

⁵ See Cohen's Handbook of Federal Indian Law § 4.01 (Nell Jessup Newton ed., 2017) (hereinafter, "Cohen's Handbook").

If the Commission elects to move forward without the benefit of a formal rulemaking process, modifications to the Revised Draft Guidelines are necessary. The Revised Draft Guidelines must be amended to address the issues discussed above, and also to ensure alignment with the Commission's stated intent to exempt easements and General Order ("G.O.") 69-C transactions from application of the Policy and to clarify the relationship between the Policy and the Final Guidelines. Specifically, as discussed further below, the Revised DR and Revised Draft Guidelines should be modified as follows:

- Clarify the definitions of "Disposition" and "Real Property" to be included in the Final Guidelines;
- Amend the Revised DR and Revised Draft Guidelines to eliminate an inconsistency that undermines clarity of the Commission's definition of "Right of First Offer" and provide clear direction regarding the requirements associated with this right;
- Revise Section 1.1 of the Revised Draft Guidelines to expressly state that in the event of a conflict between the language of the Policy and the requirements adopted in the Final Guidelines, the Final Guidelines apply;
- Modify the Revised Draft Guidelines to mitigate non-compliance with P.U. Code Section 453(a);
- Amend Section 3.3(b) of the Revised Draft Guidelines to make agreement to commercially reasonable terms in land transfer agreements a condition of the preference granted to the Tribes; and
- Replace the Dispute Resolution provisions of the Revised Draft Guidelines in Section 4 with interim provisions pending the results of the technical workshop on determining Tribal ancestral territory, to be held within 90 days of the formal adoption of the Final Guidelines.

I. THE REVISED DRAFT GUIDELINES MUST BE REVISED TO CLARIFY APPLICABILITY OF THE POLICY AND ADOPTED GUIDELINES

The Joint Utilities support the determination in the Revised DR that real property easements and G.O. 69-C conveyances should be exempted from the Policy and Final Guidelines. This is a commonsense conclusion that resolves a major concern expressed by several stakeholders regarding application of the Policy. As discussed below, however, while the discussion included in the Revised DR makes clear that these transactions are not subject to the Policy, the definitions of "Disposition" and "Real Property" set forth in the Revised Draft Guidelines include language that could create ambiguity on this point.

Similarly, the Revised DR and Revised Draft Guidelines contain an inconsistency that undermines clarity of the Commission's definition of "Right of First Offer" and its direction to the IOUs regarding the mechanics of this requirement. Finally, the Draft Guidelines do not address the apparent conflict between the provisions in the Revised Draft Guidelines that establish exemptions for easements and G.O. 69-C transactions, on the one hand, and those contained in the Policy that establish broad applicability to *all* P.U. Code Section 851 transactions, on the other. To prevent confusion and ensure implementation that is aligned with the Commission's stated intent, the Commission should adopt the clarifying revisions in the Revised DR and the Revised Draft Guidelines discussed below.

The proposed definition of "Disposition" set forth in the Revised Guidelines includes the circular provision that "Disposition" includes "disposition by any other means." As a threshold matter, this phraseology and the redundant use of term "disposition" is confusing. It is not possible to know what transactions are included in "disposition by other means" since interpretation of that directive requires a fixed understanding of what the defined term "Disposition" includes. In other words, use of the word "disposition" to define the term "Disposition" creates ambiguity; rather than being clear on its face, it is necessary to resort to contextual information to derive the Commission's intent regarding the applicability of the Policy. Thus, to promote regulatory certainty and prevent future litigation over questions of applicability, the definition of "Disposition" must be revised to more clearly articulate the transactions to which the Policy applies.

In addition, the definition of "Disposition" should be revised to make clear that it applies only to voluntary transfers of fee simple interests in real property by the IOUs. There are limited instances in which an *in*voluntary transfer of real property owned by an IOU could occur – for example, if a government agency were to exercise eminent domain authority to condemn IOU-owned land or in situations involving IOU default on debt secured by real property. Application of the Policy in such cases could interfere with the IOU's ability to comply with mandatory legal requirements. Thus, the definition of "Disposition" adopted in the Final Guidelines must exclude those instances where the IOU is not legally permitted to offer a fee simple interest in real property before it is transferred to another party.

To address both of the above concerns regarding the definition of "Disposition" appearing in the Revised Draft Guidelines, the definition should be revised as follows:

"Disposition" means the **voluntary** transfer, sale, **or** donation, ~~or disposition by any other means~~ of a fee **simple**⁶ interest in **Real**⁷ property.

⁶ The Joint Utilities recommend use of the formal legal term "fee simple" rather than "fee" for clarity.

⁷ This change ensure consistency with the defined term "Real property" appearing in the Revised Draft Guidelines.

The Joint Utilities further recommend that the proposed definition of “Real Property” included in the Revised Draft Guidelines be modified to apply only to real property owned by the IOUs in fee simple (*i.e.*, to exclude IOU lease interests, etc.) whose disposition is subject to Commission approval under P.U. Code Section 851. This aligns with the Commission’s intent that the Policy be applied only to “transfers of fee interests in real property.”⁸ The definition of “Real Property” should be revised as follows:

“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.

In addition, clarifying revisions are required to prevent confusion regarding the IOUs’ right of first offer obligation. The Revised DR notes the existence of concern regarding use of the term “right of first refusal” in the Original DR. It observes that “[t]he IOUs interpret the term ‘right of first refusal’ as providing a Tribe with the contractual right to acquire property on the same or better terms as has been proposed by another potential purchaser,” and further that “[t]he IOUs are concerned that their ability to negotiate fee conveyances would be hindered if a third party purchaser is aware that any potential agreement could be discarded should a tribe decide to accept the agreed upon terms for the purchase of the real property.”⁹

The Revised DR explains that the intent of the provision “is to provide Tribes with the opportunity to purchase IOU real property *before that same real property is listed for sale on the open market . . .*”¹⁰ The DR concludes that use of the term “Right of First Offer” – which is defined as providing the Tribes “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 into negotiations with other parties”¹¹ – rather than the term “Right of First Refusal” will alleviate the IOUs’ concern and “reassure potential buyers” that their negotiated agreement will not be discarded should a Tribe decide to accept the agreed-upon terms for the purchase of the real property.¹² It notes that the “Right of First Offer” concept accurately captures “the substance of the [Commission’s] policy.”¹³

⁸ Revised DR, p. 2.

⁹ *Id.* at p. 28.

¹⁰ *Id.* at pp. 28-29 (emphasis added).

¹¹ *Id.* at p. 28.

¹² *See* Revised DR, p, 29.

¹³ *Id.*

The Joint Utilities agree with the conclusion reached in the Revised DR and support the definition of “Right of First Offer” that appears in the Revised Draft Guidelines. Additional discussion contained in the Revised DR, however, creates a significant inconsistency that undermines regulatory certainty and would interfere with implementation of the Commission’s directive. Specifically, the Revised DR states:

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.¹⁴

The requirement that the IOU “reoffer the interested Tribe the same price and terms negotiated with the interested third-party purchaser” is plainly tantamount to a right of first refusal. It contemplates exactly the scenario the Commission indicates in the Revised DR it intends to avoid – *i.e.*, the discarding of a negotiated agreement with a third-party buyer should a Tribe decide to accept the agreed-upon terms for the purchase of the real property. This obligation is contrary to the Commission’s stated intent and directly conflicts with the defined obligations included in the Revised Draft Guidelines. Accordingly, the Commission should amend the Revised DR to delete the above paragraph.

Finally, as the Revised DR acknowledges, many of the concerns raised by stakeholders in connection with the Policy were addressed in the context of the development of the implementation guidelines rather than in the Policy itself.¹⁵ Thus, the Final Guidelines, once adopted, will represent the most complete and accurate statement of the Commission’s direction regarding the issues addressed in the Policy. Given the obvious conflict between certain provisions of the Policy and the requirements set forth in the Revised Draft Guidelines, the Commission must make clear that upon adoption of the Final Guidelines, those Final Guidelines control in the event of a conflict between the language of the Policy and the rules adopted in the Final Guidelines. Section 1.1 of the Revised Draft Guidelines should be amended to include the following sub-section addressing this issue:

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

¹⁴ *Id.*

¹⁵ *See, e.g., id.* at p. 9 (“Many of the clarifications of the [Tribal Land Transfer Policy] requested by commenters is provided in Section 1.3 Definitions *of the Draft Guidelines.*”). (Emphasis added).

II. SECTION 3.3 OF THE REVISED DRAFT GUIDELINES MUST BE AMENDED TO AVOID INVALIDATION ON LEGAL GROUNDS

Section 3.3 of the Revised Draft Guidelines provides that when an IOU requests approval to dispose of real property located 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” While it is appropriate to consider as one of several factors in the public interest evaluation the potential for real property located within a Tribe’s ancestral territory to be returned to that Tribe, designating the Tribe as a “preferred transferee” and establishing a rebuttable presumption that transfer to a Tribe best serves the public interest violates the plain language of P.U. Code Section 453(a). As noted above, this aspect of the proposed implementation framework makes it vulnerable to legal attack.

Rather than risking invalidation by the court, the Commission should amend the Revised Draft Resolution to stay within the confines of the law. The Commission should eliminate the rebuttable presumption in favor of transfer to a Tribe and instead require that the public interest evaluation undertaken in the context of a P.U. Code Section 851 consider the potential for a fee interest in real property to be transferred to a Tribe as a relevant but not conclusive factor.

If the Commission elects to retain the rebuttable presumption favoring transfer to the Tribes, certain critical modifications to Section 3.3 must be made. The rebuttable presumption favoring transfer to the Tribes is presented in the Revised Draft Guidelines without necessary context, thus it could be interpreted as requiring the IOU sell its fee-owned property to the Tribe on whatever terms are offered, even if those terms are unfavorable compared to what might be available in the market. This plainly violates P.U. Code Section 453(a), as noted above, and could run afoul of other legal principles as well. Accordingly, if the rebuttable presumption favoring transfer to the Tribes remains in place, the Commission must revise the language in Section 3.3 of the Revised DR in the manner described below.

The Joint Utilities acknowledge the importance of Tribal sovereignty. As sovereign nations, federally-recognized Tribes possess inherent governmental powers, including for example, the right to self-govern, determine membership, legislate and enact laws, as well as possess sovereign immunity.¹⁶ A Tribe may engage in business activity in its capacity as a governmental entity or as a separate tribally-owned business entity.¹⁷ Contracting with Tribes requires careful understanding and consideration of these issues to ensure contract enforceability and fairness.

¹⁶ Cohen’s Handbook § 4.01.

¹⁷ Tribally owned business entities can take many forms including unincorporated tribal enterprises, entities organized under federal law, entities organized under tribal law and entities organized under state law. The “entities” may be corporations, limited liability companies, partnerships, joint ventures, special purpose entities and non-profits, among others.

Contracting under commercially marketable terms does not infringe on Tribal sovereignty; rather, holding Tribes to commercially marketable terms is consistent with Tribal self-determination. A rebuttable presumption favoring transfer to the Tribes with no additional context effectively creates a *de facto* requirement that the IOU sell its fee-owned property to the Tribe on whatever terms are offered, even if those terms are comparatively unfavorable. Under the Revised Draft Guidelines, as currently drafted, a Tribe could, for example, potentially refuse to agree to reasonable compensation. In addition to violating P.U. Code Section 453(a), this could be deemed to be an unlawful regulatory taking.¹⁸

Forcing an IOU to agree to any and all terms set forth by a Tribe also raises serious concerns regarding contract enforceability and IOU ratepayer protections. For example, a Tribe could refuse to agree to a limited waiver of sovereign immunity with respect to contractual disputes, effectively rendering any agreement unenforceable, calling into question Commission jurisdiction and authority and creating unmanageable risk for IOUs.¹⁹ As another example, a Tribe could require that IOUs refrain from paying state taxes or assessments for improvements or economic activity on certain lands. In fact, this very issue has arisen in SDG&E's negotiation with a Tribe located in its service territory. The potential for such provisions is likely to prevent IOUs and Tribes from reaching mutually amicable agreements unless the Revised Draft Guidelines are amended to include more definite limitations on the reasonability of terms.

Accordingly, Section 3.3(b) of the Revised Draft Guidelines should be revised as follows to require that the terms offered by the Tribe are on par with what would be expected in a similar market transaction:

- 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 fair market value and manner of compensation, limited waivers of sovereign immunity, no preemption of IOU compliance with applicable federal, state and municipal laws and regulation, and other provisions as would be expected in similar market transactions.**

¹⁸ See *Penn Central Transportation Co. v. City of New York* (1978) 438 U.S. 104.

¹⁹ States and the federal government regularly waive sovereign immunity with respect to breach of contract claims when contracting with private entities. Cohen's Handbook § 21.02 ("Tribes may waive their sovereign immunity by tribal law or contract, as long as the waiver is clear and unequivocal. Tribes, like governments generally, have used limited waivers of tribal immunity as a means of stimulating economic development.").

III. THE DISPUTE RESOLUTION PROVISIONS PROPOSED IN THE REVISED DRAFT GUIDELINES SHOULD BE AMENDED AND ADOPTED ONLY ON AN INTERIM BASIS

As the Joint Utilities explained in their prior comments on the Draft Guidelines, the dispute resolution process suggested by the Commission raises major concerns. Section 4.3 of the Revised Draft Guidelines is particularly problematic. It provides that when a dispute arises between one or more Tribes regarding available real property, the IOU should attempt to resolve the dispute taking 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.”²⁰ In other words, the provision would require the IOU to resolve intertribal disputes regarding ancestral territory by making independent judgments concerning the superiority of one Tribe’s connection with a property, or a Tribe’s planned use of what may be a culturally significant property, over that of another.

Section 4.3 is unworkable and should be deleted from the Revised Draft Guidelines in its entirety. While the Commission has broad authority to regulate the IOUs, it is not clear that the Commission has jurisdiction to direct IOUs to interfere in or resolve territorial disputes between sovereign nations. Resolution of intertribal disputes regarding ancestral territory is within the power of the Tribes as sovereign nations.²¹ Neither the State of California nor the Commission has jurisdiction to resolve such disputes.²² Since the Commission cannot delegate to IOUs a power that it does not have, it is improper to require the IOUs to resolve intertribal disputes as part of the P.U. Code Section 851 process. Indeed, the suggestion that IOUs do so – *i.e.*, that the IOUs impose their independent judgments regarding the superiority of one Tribe’s connection with a property or its planned use of what may be culturally significant property – directly contradicts the Commission’s own declaration in the Revised DR that “[o]nly the Tribes . . . can determine the spiritual, symbolic, or cultural value that each available parcel of land holds for a specific Tribe.”²³

Moreover, the proposal to require the IOUs to resolve intertribal territorial disputes presents significant practical concerns. As the Joint Utilities have pointed out, they do not have the requisite expertise to make informed judgments about which Tribes hold superior claims to certain properties. In addition, Section 4.3 would delay consideration of the IOU’s proposed resolution of the intertribal dispute until *after* the P.U. Code Section 851 application has been filed by the IOU.²⁴ Under the proposed dispute resolution process, the IOU would consider the intertribal dispute, issue a unilateral resolution if no consensus is reached, negotiate an

²⁰ Revised DR, Section 4.3.

²¹ See Cohen’s Handbook § 4.01.

²² See *id.* § 6.01 (“The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation’s history.”) (quoting *Rice v. Olson* (1945) 324 U.S. 786, 789).

²³ Revised DR, p. 37; see also Cohen’s Handbook § 15.01 (“Land forms the basis for social, cultural, religious, political, and economic life for American Indian Nations.”).

²⁴ Section 4.3 requires that if the dispute remains unresolved, the IOU “shall propose a reasonable resolution to the dispute **as part of its request for approval.**” (Emphasis added).

agreement with the Tribe, prepare and file the application for Commission approval – a process that could take many months – and *then* the Commission would consider the IOU’s proposed resolution of the territorial dispute.

If the dispute resolution is challenged by the losing Tribe(s), as it almost certainly would be given the lack of authority by either the IOU or the Commission to resolve such a dispute and the absence of objective criteria for doing so, significant delay in the approval process would result. It is equally possible that the IOU’s proposed resolution of the intertribal dispute would ultimately be rejected. This would make the IOU’s negotiated transfer agreement and application for approval untenable and would force the IOU to start over from the beginning with its intended disposition, or would simply prevent the IOU from being able to dispose of the property indefinitely until the intertribal dispute is resolved. The result would be a tremendous waste of Commission and ratepayer resources.

Put simply, the IOUs cannot and should not be responsible for resolving disputes between the Tribes, particularly when those disputes involve core elements of Tribal sovereignty. As the Commission acknowledges, “*both* Tribes and IOUs reject the proposal that the IOUs be given responsibility for resolving disputes with and among Tribes.”²⁵ This fact should clearly signal the need for a markedly different approach to resolving territorial disputes between Tribes.

Accordingly, the Joint Utilities agree with the Commission’s proposal to hold a technical workshop within 90 days of adoption of the Final Guidelines to arrive at a consensus on an accepted method of determining Tribal ancestral territory and dispute avoidance.²⁶ However, the Joint Utilities request specific modifications to Section 4 of the Revised Draft Guidelines to apply in the interim.

First, Section 4.1 should be revised to clearly indicate that the Dispute Resolution provisions will be amended based upon the results of the technical workshop:

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. **The Commission shall hold a technical workshop within 90 days of the formal adoption of these Guidelines to**

²⁵ Revised DR, p. 35 (emphasis added); *see also, e.g.*, Pechanga Band of Luiseno Indians Comments on Resolution E-5076, p. 3 (Sept. 24, 2020) (“Given the IOUs’ general lack of familiarity with the Tribes’ histories and current legal and political configurations, it would be a disservice to both the IOUs and the Tribes to require the IOUs to mediate disputes regarding ancestral land claims.”); Yurok Tribe Comments on Resolution E-5076, p. 4 (August 26, 2020) (“[p]otential disputes between multiple interested Tribes is a sensitive issue”); Agua Caliente Band of Cahuilla Indians Comments on Proposed Tribal Land Transfer Policy, pp. 4-5 (Oct. 8, 2019) (raising concerns regarding how IOUs will resolve disputes among tribes); Habematolel Pomo of Upper Lake Comment on Proposed Tribal Land Transfer Policy, p. 2 (Aug. 29, 2019) (same).

²⁶ Revised DR, pp. 23, 36-37.

determine a method for identifying Tribal ancestral territories and resolving disputes among Tribes. Within 30 days of that technical workshop, Commission staff shall revise Section 4 consistent with the results of that workshop.

Second, as discussed above, the IOUs cannot be responsible for adjudicating disputes or differences of opinion that may exist regarding Tribes' ancestral territories. Thus, the references in Section 4.2 to IOUs "resolving" disputes regarding notification are inapposite. Section 2 of the Revised Draft Guidelines establishes the notification procedures the IOUs are required to follow; so long as the IOU has followed these procedures, its actions should be deemed reasonable and it should have no role in resolving disputes that might arise if, for example, a Tribe disagrees with information provided by the Native American Heritage Commission ("NAHC"). Thus, in the event of a dispute regarding notification, the IOU should be required only to provide documentation establishing that it reasonably followed the notification requirements set forth in Section 2. To that end, Section 4.2 should be revised as follows:

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 **demonstrate that it reasonably complied with the notification requirements set forth in Section 2 of these Guidelines.** ~~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.~~

Finally, for the reasons discussed herein, the proposed text of Section 4.3 should be struck until more appropriate provisions for dispute resolution between multiple Tribes can be agreed upon. On an interim basis only, pending development of a permanent consensus solution through the workshop process described above, the adopted Final Guidelines should require that in the event of an intertribal territorial dispute, the Tribes involved in the dispute shall have a 30-day period after receipt of notice pursuant to Section 2.1 to determine between themselves which Tribe has the superior claim on the relevant land. After that 30-day period, if the dispute remains unresolved, the IOU's obligation to provide a right of first offer to any Tribe or to otherwise comply with the Policy and Final Guidelines is eliminated as to the land in question.

To effectuate this change, the Commission should amend Sections 4.3 and 2.2.b.iii as follows:

4.3 Multiple Interested Tribes

If more than one tribe seeks ownership of available real property, **the interested tribes shall** ~~and if the tribes are unable to resolve the dispute themselves~~ **within 30 days of receipt of the IOU's notice of intent to dispose of the real property provided in accordance with Section 2 of these Guidelines, and shall jointly provide notice to the IOU specifying which tribe has the superior right to the available real property. If the tribes do not provide such joint notice within this 30-day period, the IOU's disposition of the available real property shall no longer be subject to these Guidelines or the Tribal Land Policy. ~~the IOU shall engage in meaningful consultation with the tribes to attempt to resolve the dispute. If that fails to resolve the dispute, the IOU, in consultation with the tribes, shall propose a reasonable resolution to the dispute as part of its request for approval. The IOU 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.~~**

2.2.b.iii Following IOU notification, **and following the 30-day dispute resolution period provided for in Section 4.3, if applicable,** 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 the Tribe fails to respond to the second notice within an additional 30 days, the IOU has satisfied its noticing responsibility.

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IV. CONCLUSION

For the reasons set forth above, the Commission should suspend the Policy, withdraw the Revised DR, and initiate a formal rulemaking to develop a policy regarding disposition of IOU fee-owned property subject to P.U. Code Section 851 that is located in a Tribe's ancestral territory. If the Commission elects not to initiate a rulemaking, it should modify the Revised DR and Revised Draft Guidelines in accordance with the comments provided herein.

Respectfully Submitted,

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Revised Tribal Service List