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Questions

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Introduction

Vice President of Operations Support

Responsible for:

- Supply Management
- Supplier Diversity
- Logistics
- Fleet
- Real Estate
- Land Services
- Facilities

Christina “Christy” Ihrig
Agenda

- Virtual Meeting Norms/Housekeeping
- Introductions
- CPUC Section 851
- CPUC Tribal Land Transfer Policy
- Questions & Answers
What is California Public Utilities Code Section 851?

- Prohibits SDG&E from selling, leasing, assigning and otherwise disposing of or encumbering the whole or any part of any property without Commission approval.

- Regulatory decisions make clear that the Commission desires review of any land transaction (including easements) between a utility and any third party, including public agencies.

- In October 2019, the Governor signed SB 550, which amended Section 851.

- In December 2019, the Commission adopted a tribal land transfer policy, which now requires any proposed real property transaction between the utility and a third party to be first offered to tribes whose ancestral territory surrounds said property, if the transaction requires Section 851 review.
Examples of property and transactions that may be subject to CPUC section 851 approval:

- Utility owned real property, and SDG&E rights held through easements, permits, licenses, etc.
- Utility-owned Rights of Way (ROW), whether SDG&E owns the property or holds an easement.
- Utility-owned buildings and structures.
- Utility transmission towers.
- Granting easements, encroachment permits, and licenses.
- Quitclaiming existing easements.
- Utility sale of NOx emission reduction credits.
- Utility sale of license rights to intellectual property.
CPUC Section 851 Process

SDG&E’s 851 Review Process

• Primary consideration is safety for public and employees.
• Review impacts to existing and future utility operations.
• Review impacts to ratepayers including easement rights and valuation.
• Environmental considerations including CEQA review.
• Tribal land transfer policy impacts including notifications.
CPUC Section 851

What steps are we taking to improve the process?

• Internal training and external awareness
• BIA Presentations/Workshops
• Earlier engagement in the project submittal/intake process
• Improving internal review process for projects
• Updating information on our web site and in project applicant welcome package
# CPUC Section 851

## Land Constraints and FAQ

### Frequently Asked Questions (FAQs)

1. **What is an encroachment or risk area?**
   - An encroachment or risk area is any property of another for certain purposes. SDG&E retains an easement or property, owned by others, for the right to install, maintain, operate and access our facilities on that property. The easement may restrict certain activities within the easement or right-of-way area.

2. **What is a utility corridor?**
   - An SDG&E utility corridor is a corridor that forms a passageway through which SDG&E builds, maintains, and maintains its gas and electric facilities. These passageways, known as utility corridors, can encroach into the natural landscape and may be the size of a household.

3. **What is an encroachment?**
   - An encroachment occurs when a person, entity, or organization enters or uses property that is inside an easement without permission.

4. **What is a risk area?**
   - SDG&E has taken great care to ensure our facilities serve customers that might cause a safety or reliability risk. SDG&E routinely does not allow other structures or encroachments within SDG&E-owned land or on SDG&E easement areas.

5. **What happens if an encroachment occurs within SDG&E’s land or easement?**
   - SDG&E may choose to eliminate the encroachment or permanently remove the encroachment at the property owner’s expense.

6. **Does SDG&E have an easement over my property?**
   - Property owners should verify if there is a right-of-way for the easement covering their property.

7. **If SDG&E has an easement on my property, who maintains the easement?**
   - The owner of the property has the responsibility to maintain clearances of all encroachments from SDG&E’s easement, which can include clearing of vegetation, trees, or any other materials that hinder our access to SDG&E facilities.

### Required Documents to Provide

- Title Report
- All construction plans (e.g., grading, improvements, landscaping, irrigation)
- Maps showing the location of underground or existing utility/SDG&E facilities
- Any other relevant documents that pertain to your request

### Contact Us

- Website: [sdge.com](http://sdge.com)
- Email: [contactus@sdge.com](mailto:contactus@sdge.com)
- Phone: [619-451-5000](tel:619-451-5000)

Feel free to contact us if you have any questions.

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**Encroachment exclusions, project requests & contact info**

**CPUC Section 851 and Tribal Policy review applicability**
CPUC Request and Approval Process

- SDG&E cannot file the advice letter until plans are final and transaction documents have been negotiated.

- Obtaining CPUC approval - can take anywhere from 6 months for a straightforward advice letter or beyond 2 years for an application.
  - Determined by CPUC process, not SDG&E.

- CPUC approval (§ 851 and often CEQA) is not certain.

- Default: Application
  - Lengthier, more formal, full Commission review - minimum 12 months.

- GO 173 Advice Letter only if CPUC not CEQA Lead Agency, <$5M, doesn’t warrant more thorough review, etc.
  - Typically less time, may require full Commission review (e.g., if protested)
  - 6 month minimum; add 4 months if it involves Tribal Land Transfer Policy

Required Documents
- Detailed Project Description
- Title Report
- All Available Final Plans (e.g., grading, site improvements, landscape)
- Map Illustrating Easement Location and Existing/Proposed SDG&E Facilities
- Completed CEQA
- Appraisal (if required)
Tribal Land Transfer Policy

- On December 5, 2019, the CPUC approved a new Tribal Policy governing actions under Section 851, consistent with Executive Order B-10-11, N-15-19.

- Requires a utility provide a first right of offer to the appropriate Tribe(s) to purchase an interest in land that the utility proposes to transfer to another entity, including public agencies and private developers prior to filing § 851 request.

- Applies to the disposition of utility Real Property where
  - “dispose of” and “disposition” in this Resolution refer to the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in real property.
  - “Real Property” subject to this policy is defined as any utility property whose disposition is subject to approval in accordance with California Public Utilities Code Section 851.
Tribal Land Transfer Policy

- Utilities are expected to provide the Tribe a right of first offer when transferring property within a Tribe’s ancestral territory. The Tribe will have 90 days to respond to the notification as to its interest in the property.

- The Policy’s preference is for the tribe to be preferred transferee, absent a finding supported by evidence:
  - the Tribe is not interested in acquiring the Real Property (e.g., the Tribe declined consultation or confirmed that it is not interested);
  - the utility acted in good faith and, after reasonable effort, was unable to agree with the Tribe on reasonable terms to transfer the Real Property consistent with Commission policy;
  - conveyance of the Real Property to another entity is necessary to achieve utility operational requirements, or to comply with any law, rule, or regulation; or
  - conveyance of Real Property to another entity would be in the public interest.
Tribal Lands – SDG&E Service Territory
Example 1:

- A developer plans to build 24 residential units on a currently vacant parcel. The developer is requesting that SDG&E relocate an overhead distribution line which includes three poles, serving multiple customers that traverses the vacant parcel. This easement was acquired under tariff at no cost and allows for overhead rights only. The overhead line would be replaced and relocated underground into franchise along with the new service. The developer is also requesting that SDG&E quitclaim the existing overhead easement after installation of the new service.

Question:

- Does this project require an 851 Filing for approval? Why or why not?

Answer:

Unless the easement specifies that SDG&E relocate the assets and quitclaim the easement at the Grantors request, the answer is yes, this will require an internal review and approval and then require an 851 Filing for CPUC approval.

- 1) it is a distribution easement serving more than one property (customer) and not a service line

- 2) even though the easement was originally acquired under tariff at no cost there is a value to the easement and there are administrative and overhead costs that SDG&E has incurred to maintain that easement. It is considered a ratepayer asset that has value, appreciates costs over the life of the asset, and depreciates as an asset over a 45-year period unless removed from service earlier.

- 3) there is a relocation involved which will require SDG&E to move into franchise. This puts our equipment in a position that provides less land rights than our original easement. The new franchise location has to be appraised and the difference of value may need to be reconciled by the developer.
Example 2:

- A local school high school is proposing to upgrade their scoreboard and install a platform for additional seating in our transmission easement. The proposed improvements are over a 30" high pressure gas line and under a 230kV overhead transmission lines. The proposal does not include relocating any SDG&E facilities. The language in the easement specifically allows for the university to construct a sports stadium as long as it does not interfere with our existing facilities.

Question:

- Does this project require an 851 Filing for approval? Why or why not?

Answer:

- This does require an internal review and approval but does not likely require an 851 Filing for CPUC approval. The easement specifically gives the Grantor the right to make the specified changes. This would likely be approved internally if the changes do not conflict with SDG&E gas and electric minimum clearance standards AND the changes do not interfere with the safe access, operation and maintenance of our assets.
Example Number 3:

- A developer wants to convert a vacant parcel of land into a residential development of multi-story condominiums. SDG&E has a transmission easement with current 230kV and 69kV overhead lines running through the parcel. There are no poles or towers located on the parcel. As part of the development, the developer is requesting to install paved parking lots, curb and gutter and streetlights in the easement area. The easement language prohibits any buildings or structures in the easement.

Question:

- Does this project require an 851 Filing for approval? Why or why not?

Answer:

- This does require an internal review and approval AND will likely require an 851 Filing for CPUC approval. This is considered an encroachment into our easement because the easement specifically prohibits the desired improvements. This may be approved internally and by the CPUC if the changes do not conflict with SDG&E gas and electric minimum clearance standards AND the changes do not interfere with the safe access, operation and maintenance of our assets.
Example 4:

- A developer project is requesting a relocation of SDG&E’s overhead 69kV and 12kV electric facilities. The facilities will be relocated into a new easement underground to make way for the construction of the housing development. Once the line has been relocated and energized, the facilities no longer needed will be removed and the unused portion of the existing easement will be quit claimed.

Question:

- Does this project have the potential to require an 851 Filing? Why or why not?

Answer:

Unless the easement specifies that SDG&E relocate the assets and quitclaim the easement at the Grantors request, the answer is yes, this will require an internal review and approval and then require an 851 Filing for CPUC approval because:

- 1) it is a transmission and distribution easement serving more than one property (customer) and not a service line
- 2) there is a value to the easement and there are administrative and overhead costs that SDG&E has incurred to maintain that easement. It is considered a ratepayer asset that has value, appreciates costs over the life of the asset, and depreciates as an asset unless removed from service earlier.
- 3) there is a relocation involved that requires SDG&E to move into underground. The new easement has to be appraised and the difference in value may need to be reconciled by the developer
Example 5:

- SDG&E received a request from a City agency for a Joint Use Agreement to install a sewer line within our Easement in a city road. SDG&E has an Easement with the City for UG gas from 1957. The Easement does not allow for any buildings or structures within the easement.

Question:

- Does this require an 851 Filing? Why or why not?

Answer:

- Because the easement does not allow for this type of request, allowing the City to install a sewer line adjacent to our gas line within this easement will require an 851 filing. It would be beneficial for the City to exercise its eminent domain power to obtain the easement right for the installation of the sewer line.
Summary of Key Points

- Safety and Regulatory Compliance
- Engage SDG&E early in the planning process
- Realize the process takes a considerable amount of time
- Consider alternatives which may be faster
- Build extra time in your schedules for CPUC review and approval.
Questions?
Thank you

Email Nbadillo@sdge.com for questions or comments