



# Changing Regulatory Landscape

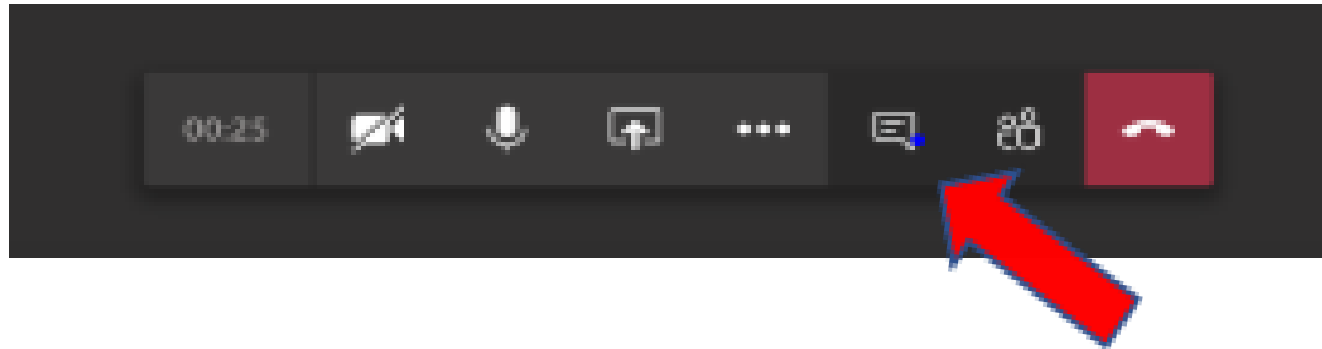
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CPUC Section 851 & Tribal Land Policy

JULY 24, 2020

## Questions

You may enter your questions into the chat box during the presentation.  
Questions will be answered at the end of the presentation.



**\*Please mute your microphone**

**\*Please ensure your webcam is off**

## Vice President of Operations Support



Christina “Christy” Ihrig

Responsible for:

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

# Agenda

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- 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.

# CPUC Section 851

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

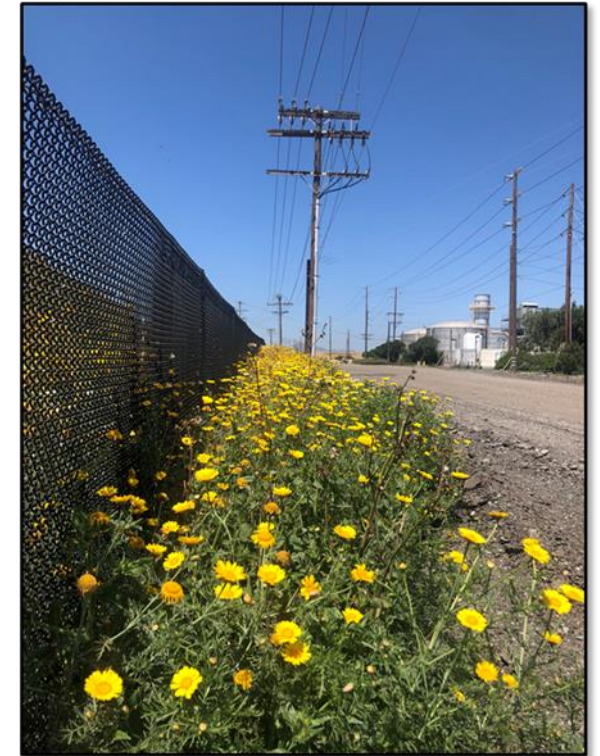
## SDG&E's 851 Review Process

- 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





## Land Constraints and FAQ

CPUC Section 851 and Tribal Policy review applicability



### Land Use Constraints and FAQs

**SDG&E's preference is that you review your options and choose one that will not require you to encroach upon or encumber SDG&E property and easements.**

Please review the questions below and if you answer YES to any of them an SDG&E Corporate Real Estate & Land Services Department representative will need to assess the project request.

- Will the project require relocation of any SDG&E gas or electric facilities (above or below ground wires, transformers, vaults, poles, etc.)?
- Will the project encroach on or be located near any SDG&E fee-owned property, right-of-way, easement, or access road?
- Will the project require the sale or transfer of any SDG&E fee-owned property, right-of-way, easement, or access road?
- Will the project require the quitclaim of any existing SDG&E easement?

**If SDG&E is able to accommodate your project request, your project may also require:**

- Approval by the California Public Utilities Commission (CPUC), which by law must review and approve any sale, lease, encumbrance or other disposal of all or any part of the property of a public utility. The law is found in Section 851-857 of the California Public Utilities Code. CPUC review could add a **minimum of 6 to 12 months to a project's timeline and approval is not guaranteed.** Approval is required before SDG&E could proceed.
- If CPUC approval is required, SDG&E may also be required to first offer the property under CPUC review to a tribe whose ancestral territory surrounds the property under the CPUC's Tribal Land Policy, which was adopted in December, 2019. The Tribal Land Policy may add an **additional 4 months minimum to a project's timeline** and may result in a tribe's involvement in the process.

#### 1. What is an easement or right-of-way?

An easement or right-of-way is a right to use the property of another for certain purposes. SDG&E obtains easements on property, owned by others, for the right to install, maintain, operate and access our facilities on that property. The easement may restrict certain uses within the easement or right-of-way area.

#### 2. What is a utility corridor?

An SDG&E utility corridor is a strip of land that forms a passageway through which SDG&E installs, operates and maintains its gas and electric facilities both above and below ground. An SDG&E utility corridor can either be located within land owned by SDG&E, or within land owned by another upon which SDG&E has an easement or right-of-way.

#### 3. What is an encroachment?

An encroachment occurs when a person builds on or intrudes on, under or over the property of another, including within an easement, without permission.

#### 4. What if I want to use SDG&E land or space within an SDG&E easement?

At SDG&E, we take great care to keep our facilities clear of anything that might cause a safety or reliability issue. SDG&E typically does not allow other structures within SDG&E-owned land or an SDG&E easement area.

#### 5. What happens if an encroachment onto SDG&E's land or easement is discovered?

SDG&E may choose to enforce its easement or ownership rights to require removal of the encroachment at the property owner's expense.

#### 6. Does SDG&E have an easement on my property?

Property owners should order a title report or refer to their title policy for the easements encumbering their property.

#### 7. If SDG&E has an easement on my property, who maintains the easement area?

The Owner of the property has the responsibility to maintain clearance of all encroachments from an SDG&E easement, which can include clearing of vegetation, trash, or any other materials that interfere with SDG&E facilities. SDG&E's easements give us the right, but not the obligation, to trim trees and remove vegetation as needed. SDG&E may choose to enforce its easement rights to require such clearing at the property owner's expense.

#### Requests

**Types of encroachments typically denied:**

- Buildings, homes, porches, additions and decks
- Stored trailers, recreational vehicles and inoperable vehicles
- Swimming pools located above and below ground
- Retention ponds
- Fuel storage facilities, above ground or below grade
- Billboards
- Fences that deny SDG&E access to the easement corridor
- Uses of easement area for fill dirt or other refuse
- Lights, flag poles and antennas
- Swing sets, slides and climbing equipment
- Certain types of trees and other vegetation
- Fire hydrants
- Retaining walls
- Flammable or combustible materials

If your project request cannot be completed or designed without encroaching into an SDG&E property or easement, then keep in mind that you may encounter delays in your project timeline. If you would like to proceed, please provide the documents listed below with your project submittal to Builder Services or the Service Order Team. SDG&E cannot begin internal review of your project without the required documents. Once your complete forms and required documents are received by SDG&E, an internal review will be completed to ensure the proposed project will not interfere with operations, maintenance and access to SDG&E facilities.

#### Required Documents to Provide

- Title Report
- All available plans (e.g., grading, improvement/site, landscape, irrigation)
- Map or plan illustrating the easement location and any existing or proposed SDG&E facilities
- Any other relevant documents that pertain to your request

#### Contact Us

Website: <https://www.sdge.com/landservices>  
Feel free to contact us if you have any questions.  
SDGELandServices@sdge.com

Frequently Asked Questions

Encroachment exclusions, project requests & contact info

# CPUC Section 851

## 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 straight forward 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)

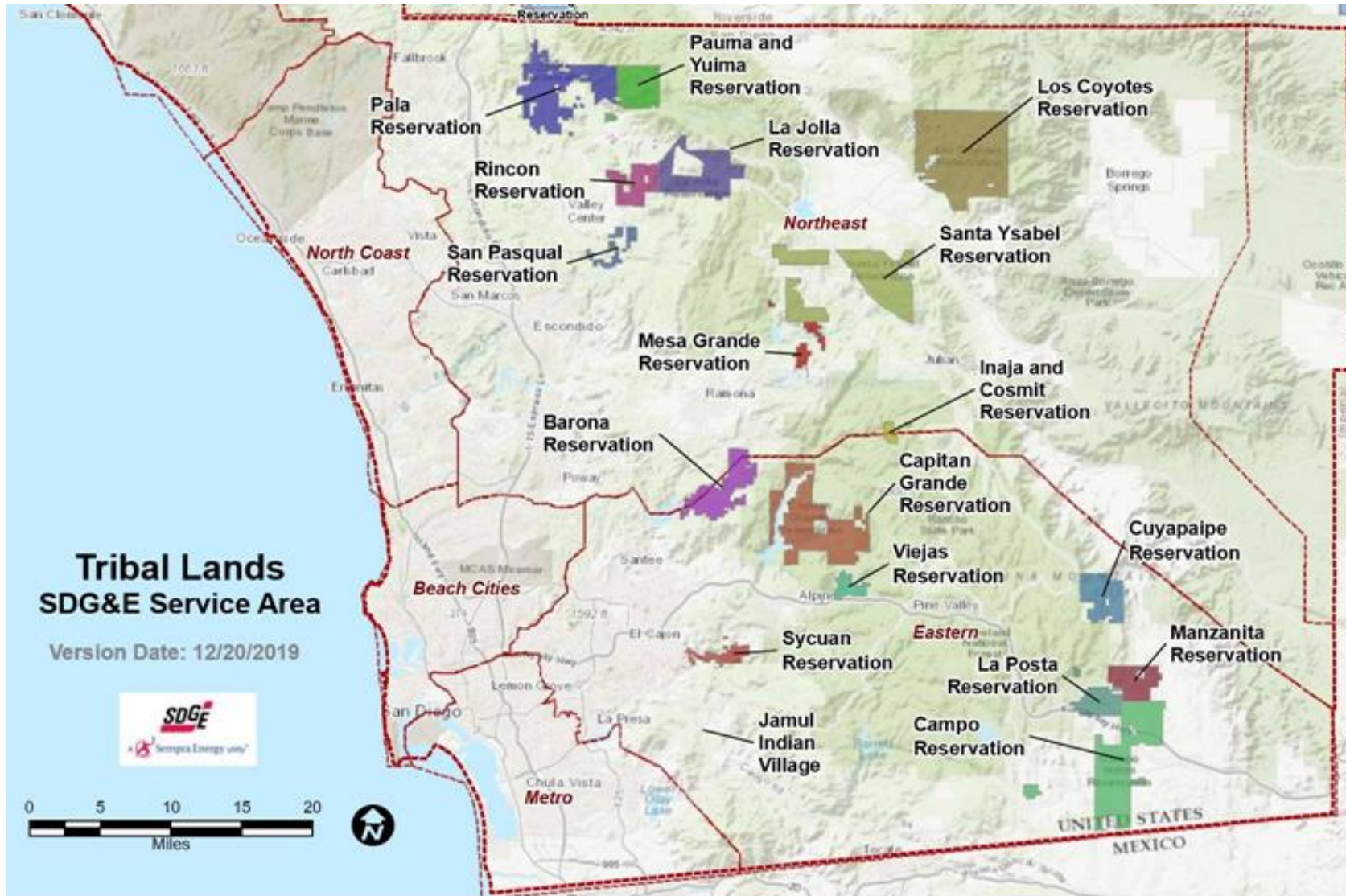
# Tribal Land Transfer Policy

- 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



# Examples

## 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.

# Examples

## 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.***

# Examples

## 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.***



# Examples

## 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

# Examples

## 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:

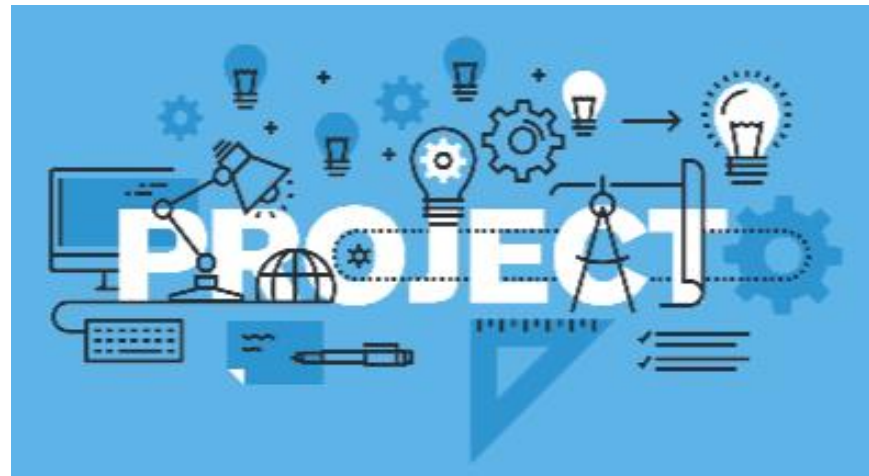
- Does this require an 851 Filing? Why or why not?

## 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](mailto:Nbadillo@sdge.com) for questions or comments