

# California Public Utilities Commission Tribal OIR Workshop at Jamul

January 30, 2024

Jamul, California



California Public  
Utilities Commission

# Agenda overview

- Welcome
- Overview of Tribal Policy rulemaking
- Tribal Land Transfer Policy – overview, Staff proposed amendments, panel and open discussion
- Lunch
- Tribal Consultation Policy – overview and Tribal panel on expectations for tribal consultation
- Break
- Open discussion and Q&A regarding Tribal Consultation Policy
- Next steps and closing remarks

# Agenda

- Agenda overview and workshop ground rules
- Welcome by Tribal Leaders
- Commissioner Houck welcome
- Overview of Tribal Policy rulemaking
- Overview of Tribal Land Transfer Policy (TLTP) and proposed Staff amendments
- Tribal and investor-owned utility (IOU) panel on experiences with the TLTP
- Open discussion and Q&A regarding Staff proposed amendments and Tribal and IOU panel
- Lunch

# Welcome

Speakers will begin at 10am

# Agenda (continued)

- Review of Tribal Consultation Policy
- Tribal Panel on expectations for tribal consultation
- Break
- Open discussion and Q&A regarding Tribal Consultation Policy
- Staff report back of feedback to take into consideration
- Next steps
- Closing

# **Welcome and Opening Comments**

- \* Tribal Leaders**

- \* Commissioner Houck**

# **CPUC Tribal Policy Rulemaking Rulemaking (R.) 22-02-002**

Kenneth Holbrook, Tribal Advisor, CPUC

# CPUC Tribal Land Transfer Policy (TLTP) and Order Instituting Rulemaking (OIR)

December 5, 2019: CPUC adopts a **Tribal Land Transfer Policy**

January 14, 2021: CPUC adopts **implementation guidelines** for the Tribal Land Transfer Policy

February 10, 2022 (OIR issued on February 16, 2022): CPUC opened a **rulemaking** to consider any necessary revisions to the Tribal Land Transfer Policy implementation guidelines, the CPUC's Tribal Consultation Policy, and address how to improve participation by Tribes in Commission programs and proceedings



# OIR Areas of Focus

- Implementation and guidance regarding the Commission's TLTP:
  - Review and update requirements set out in TLTP Implementation Guidelines;
  - Assess data and information exchange;
  - Protection of sacred sites and places of cultural importance;
  - Capacity building needs; and
  - Other issues identified by stakeholders regarding the TLTP;
- Review and update the Tribal Consultation Policy;
- Other mechanisms and processes to assist with capacity building and access for Tribal participation in Commission proceedings and programs; and
- Other relevant issues as may be developed

# CPUC Process: How to Engage

Eric Sawyer, Public Advisor's Office, CPUC

# How to Participate

1. Submit comments on the proceeding's Docket Card ([www.cpuc.ca.gov/Docket](http://www.cpuc.ca.gov/Docket)) or email [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).
2. Attend and speak at CPUC meetings where there are opportunities to make public comment.
3. Request Tribal consultation and submit written comments designated as furthering consultation.
4. Request to become a formal party in a proceeding. The Administrative Law Judge assigned to the proceeding will determine whether to grant you party status. All parties have rights, responsibilities, and obligations including providing testimony and cross-examining witnesses.
5. Anyone who would like to participate in a CPUC proceeding must follow the CPUC's Rules of Practice and Procedure ([www.cpuc.ca.gov/Party to a Proceeding](http://www.cpuc.ca.gov/Party_to_a_Proceeding)).

# Useful Tools for Tribes

## [Tribal OIR Docket Card](#)

Find information and documents related to the Tribal OIR

## [CPUC Tribal Resources](#)

Connects to the Office of the Tribal Advisor webpage, Tribal Consultation Policy, and Tribal Land Transfer Policy

## [Service List](#)

To receive email updates from all parties and the Commission on the Tribal OIR

## [Subscription Service](#)

Sign up to receive updates on documents published on the CPUC's website around the Tribal OIR

# Useful Tools, not specific to Tribes

## Docket Card

[www.cpuc.ca.gov/documents](http://www.cpuc.ca.gov/documents)

## Subscription Service

<http://subscribe.cpuc.ca.gov>

## Service List

<https://ia.cpuc.ca.gov/servicelists>

## Daily Calendar

[www.cpuc.ca.gov/Events/](http://www.cpuc.ca.gov/Events/)

## People

Tribal Advisor, Tribal Liaison, your local government liaison, Public Advisor's Staff, and industry division staff

# **Tribal Land Transfer Policy (TLTP) Implementation Guidelines**

Overview and Staff Proposal for Modification

Michael Rosauer, Energy Division

# Background: Tribal Land Transfer Policy

- **December 5, 2019:** CPUC adopted the Tribal Land Transfer Policy. The express purpose of the TLTP is to provide tribes with the opportunity to regain ancestral land currently owned by CPUC jurisdictional IOUs.
- **January 14, 2021:** In Resolution E-5076, CPUC adopted TLTP Implementation Guidelines following an extensive second public participation process. Adoption of the Implementation Guidelines made participation mandatory for Electric, Gas, and large water IOUs.
- **February 16, 2022:** CPUC initiated a Rulemaking to consider any necessary revisions to improve the TLTP Implementation Guidelines based on tribal participation experience with the TLTP.

## R.22-02-002 TLTP Areas of Focus

Review and update requirements set out in the TLTP Implementation Guidelines based on tribal experience and comments:

- Assess IOU notification procedures;
- Assess the effectiveness of IOU initiated tribal consultation following notification and the possible development of consultation protocols;
- Assess additional information tribes may need to effectively evaluate PU Code Section 851 land transactions.
- Assess the timelines established in the TLTP Guidelines for tribal response to IOU notification.
- Determine if the scope of the TLTP should be expanded.



# Energy Division Staff Proposal to Modify the TLTP

- Staff Proposal is based on feedback obtained by CPUC staff during tribal consultations held in 2022, formal comments received in response to the OIR, review of IOU TLTP Quarterly Reporting, and comments received during the first OIR workshop held in late 2023.
- Staff Proposal identifies changes to the TLTP Guidelines intended to improve tribal participation in the TLTP and improve TLTP outcomes for tribes.
- Staff Proposal identifies potential workshop topics including proposed changes to TLTP Guidelines, discussion of tribal capacity and financial resource building; development of maps of IOU land holdings within respective service territories; and direct access to CPUC technical staff—all intended to improve tribal participation in the TLTP.

# Staff Proposal: Expand the Scope of the TLTP

Expand the scope of the TLTP to all fee simple dispositions of CPUC jurisdictional IOU Real Property, and to all CPUC proceedings involving transfer of title to real property;

- Currently, the TLTP is limited to PU Code Section 851 fee simple transactions by Energy IOUs and Large Water IOUs.
- Staff Proposal recommends expanding the scope of the TLTP to include all IOU Real Property Transactions including telecommunications IOUs, energy IOUs, and water IOUs, and to all transactions subject to CPUC approval that involve transfer of title of real property—and not limited to fee simple transactions.

# Staff Proposal: Develop IOU TLTP Maps

- Develop maps of IOU land holdings within their respective service territories.
- Specific parcels identified in each map could be identified by a reference number tied to a data base containing useful parcel information.
- This IOU led effort should create maps produced in enough detail to be useful to tribes identifying IOU land of potential interest.
- Once land of interest is identified tribes may choose to proactively approach the IOU with an offer to purchase.

# Staff Proposal: Tribes have direct access to CPUC technical staff

- Tribes should have direct access to CPUC staff assigned to TLTP to facilitate improved communication for the purpose of reporting issues specific to TLTP administration—such as with IOU notice and consultation, and to receive general technical assistance on matters of concern directly related to the TLTP.
- Direct staff access would be targeted to more technical matters of concern to provide immediate response to specific technical issues—larger issues of concern to tribes would remain within the realm of government-to-government consultation between CPUC Leadership and tribal government representatives.

# Staff Proposal: Create Tribal Map Overlays of IOU Service territories

- Tribal ancestral territory map overlays on IOU service territory maps to increase knowledge and awareness, and to provide a resource to IOU and CPUC staff.
- Ancestral territorial depictions are acknowledged to be “self-reported” by tribes and will not represent a consensus by tribes on accepted ancestral boundaries.
- Ancestral territorial overlays may also become useful as a resource for IOUs in the absence of NAHC tribal identification referrals to the IOUs.
- The map overlays may improve general understanding of the scope historical tribal presence in each region of California and within each IOU service territory.

# Proposed Modifications to TLTP Guidelines

## Section 2.2(c)

- Modify Section 2.2(c) to extend the current 30-day period for a tribe to express interest to 60 days. Due to the infrequency of tribal leadership meetings, the initial 30-day period is insufficient for effective tribal expression of interest—the critical first step in the TLTP process.
- The mandatory 30-day second notice requirement will remain in place, creating a 90-day period in which the tribe must express interest in a transaction before the IOU has satisfied its noticing responsibility.
- Once notified, the tribal leaders are encouraged to acknowledge receipt of the notice and provide a response as soon as a determination of interest or disinterest can be made. This courtesy will expedite the transaction process.

# Augment Guides Section 2.4 to include in addition to current contents

- A map showing property location
- An aerial photograph showing property boundaries.
- Property Address, APN, and GPS coordinates.
- A description of property and its current uses.
- Size of property including land area and building square footage.
- Deed restrictions that apply to the property.
- Previous uses of the property and an Environmental Site Assessment identifying potential environmental concerns.

# Augment Guidelines Section 2.4(d)

- Augment Guidelines Section 2.4(d) to include both the IOU's Asking price for each parcel and the appraised value as determined by a California Certified Appraiser.



# Augment TLTP Guidelines with New Section

- Augment Guidelines with a new Section that requires a public consultation between CPUC, IOUs, and tribal Governments representatives occur every two years to discuss TLTP implementation effectiveness, and whether additional modification to the TLTP Implementation Guidelines are recommended as tribal experience with the TLTP grows and additional implementation issues are identified.

# CPUC, IOUs, and Tribal Leaders to Discuss

- Potential improvement to the TLTP noticing and consultation procedures, including possible new protocols to promote meaningful consultation.
- Creating provisions within the TLTP to incentivize CPUC jurisdictional IOUs to make fee simple donations or other transfers of real property to tribes.
- Tribal capacity building, and financial resource development to facilitate effective tribal participation in the TLTP.
- Implementation of the recommendations in the Staff Proposal including extending the application of the TLTP to all CPUC jurisdictional IOUs.

# Seeking Input from Tribes

- How should maps and information as to specific IOU properties that are being targeted for divestiture be provided?
- What training or other resources should be provided to the IOUs and Commission staff regarding respectful Tribal consultation that will further the policies of the Commission in engaging with Tribes?
- What training or resources can the IOUs or the Commission offer to Tribes to ensure they have the information and resources needed to effectively participate in Commission proceedings and approved programs, and to engage in discussion regarding land transfers opportunities?
- How can the Commission more effectively consult or engage with Tribes?
- What barriers do Tribes see impacting effective implementation of the TLTP?

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# Panel Discussion: Tribal Land Transfer Policy

**Moderated by Michael Rosauer, CPUC Energy Division**

**Panelists:**

**Chairwoman Erica Pinto, Jamul Indian Village**

**Susan Reckker, Ramona Band of Cahuilla**

**Linnea Jackson, Hoopa Tribe**

**Brian Niemela, San Diego Gas & Electric**

**Dwight Ockert, Pacific Gas & Electric Corporation**

**Richard Fujikawa, Southern California Edison**

# Tribal and utility panel and open discussion

## Key considerations/comments from past Tribal consultations

- Maps: an IOU property map should be created
- Notice should be provided early on
- Cultural resources should be preserved

# BREAK FOR LUNCH

Workshop will reconvene at 1pm

# Tribal Consultation Policy (TCP)

Overview and Panel Discussion

Kenneth Holbrook, Tribal Advisor



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# CPUC Tribal Policies

April 26, 2018: CPUC adopts a **Tribal Consultation Policy**

December 5, 2019: CPUC adopts a **Tribal Land Transfer Policy** after an extensive public participation process

February 16, 2022: CPUC adopts **Order Instituting Rulemaking to Implement Resolution E-5076 and Review of Tribal Policies**

Ongoing: Explore pathways to improve two-way communication between CPUC and Tribes on how to improve and ensure early notice of issues and consultation is meaningful



# CPUC Tribal Consultation Policy (2018)

On April 26, 2018, the CPUC adopted its first Tribal Consultation Policy. It requires that the CPUC:

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

# Tribal Consultation Policy *in action*

- Full-time CPUC Tribal Advisor position created and appointment made in July 2020
- Strengthened CPUC communication with tribes about energy resilience efforts, Public Safety Power Shutoffs, equitable broadband deployment, and microgrid development.
- Tribal Technical Assistance Grant Program for communications infrastructure
- Equity and Access Grant program: \$3 million set aside to support Tribal participation in CPUC process (2024/25 Budget proposed a reduction in total funding amount that would reduce this to roughly \$1 million of a set aside to support Tribal participation)
- Tribes qualify for the Equity budget in the Self Generation Incentive Program (SGIP)
- Increased tribal awards in the Electric Program Investment Charge (EPIC) program
- Tribal set asides for customer incentive programs, such as CARE/FERA/ESA, along with tailored program support required of utilities and program administrators
- Launch of "CONNECTED" CPUC's monthly newsletter dedicated to Tribes
- Subscription list for Tribal outreach, accessible via CPUC's Tribal webpage

# Seeking Input from Tribes

- What is working well based on your experience with the CPUC Consultation? What is not working well?
  - What if any revisions to the Tribal Consultation Policy would you recommend?
  - What if any anything is missing from the current Tribal Consultation Policy?
- What are Tribes' expectations regarding consultation on cultural preservation and environmental impacts?
- What do Tribes expect with respect to receiving notice of potential CPUC actions and other CPUC issues of interest to Tribes?
- What processes or support do Tribes expect to ensure that Tribes are able to meaningfully participate in CPUC proceedings and programs?

# Input received from Tribes (so far)

- Tribes require that notice and outreach for events must happen early and often, seek improved informational resources such as a Tribes focused newsletter
- Tribes seek added time for conducting comprehensive review of our policy and program development efforts, and for establishing meaningful Tribal Consultation in response to agency actions
- Capacity building is necessary for many Tribes who seek to participate in our policy and program development efforts, including trainings that should be developed in partnership with Tribes, and then provided by CPUC to Tribes requesting support
- Continued training for CPUC staff is necessary, to understand past Tribal policy, Tribal history, and Tribal legal issues - particularly for CPUC staff who work closely with Tribes

# Input received from Tribes (so far)

- Tribes are asked to volunteer a lot of staff time for the review of and participation in CPUC processes – there is a need for compensation of the cost incurred by Tribes
- Tribes prioritize the protection of cultural resources and see the TCP as a means to improve regulated entities' project outcomes related to cultural resource protection required by AB52 and CEQA
- In-person Tribal events are highly valued by Tribes seeking to participate in CPUC processes
- Cooperation and coordination among state agencies working on similar or overlapping issues aids the efforts that Tribes make in participating meaningfully

# Office of Tribal Advisor

- Enrolled member of the Pit River Tribe, descendent of Maidu Tribe
- Executive Director at Maidu Summit Consortium 2013-2019, oversaw acquisition of 2,325 acres of Maidu ancestral homeland through grant from PG&E
- CPUC's Tribal Advisor is your primary point-of-contact, can direct you to whomever you need to connect with at CPUC

## **CONTACT US**

[TribalAdvisor@cpuc.ca.gov](mailto:TribalAdvisor@cpuc.ca.gov)

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Sacramento, CA 95814



# Panel Discussion: Tribal Consultation Policy

**Moderated by Kenneth Holbrook, CPUC Tribal Advisor**

**Panelists:**

**Sam Cohen, Santa Ynez Band of Chumash Indians**

**Ray Teran, Viejas Band of Kumeyaay Indians**

**Dorothy Alther, CA Indian Legal Services**

# Panel and open discussion

## Key questions and considerations

- What is working well based on your experience of/with the Tribal Consultation Policy? What is not working well?
  - What if any revisions to the Tribal Consultation Policy should the CPUC consider?
  - What if anything is missing from the current Tribal Consultation Policy?
- What are Tribes' expectations:
  - on how to improve cultural preservation?
  - on how to address potential environmental impacts on Tribal lands?
  - on receiving notice of potential CPUC actions and issues of concern to Tribes?
- What information and/or support do Tribes expect to meaningfully participate in CPUC proceedings and programs?
- Tribes' Tribal consultation policies



# Next Steps – Tribal OIR (R.22-02-002)

Overview of Timeline and Milestones

Valerie Kao, Administrative Law Judge



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# Tribal OIR R.22-02-002

- CPUC Workshops on TLTP and TCP 2023 Q4 and 2024 Q1
- Issuance of CPUC Staff Proposal for TLTP and TCP 2024 Q1
- CPUC Virtual Workshop TLTP and TCP Staff Proposals 2024 Q2
- Issuance of Proposed Decision TLTP and TCP Proposals 2024Q3

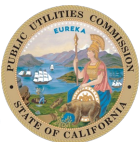


# California Public Utilities Commission

# Additional Information

Background and definitions

Please reach out to CPUC's Tribal Advisor if you any further questions,  
at [TribalAdvisor@cpuc.ca.gov](mailto:TribalAdvisor@cpuc.ca.gov)



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# Quasi-Legislative Proceedings

- Quasi-Legislative proceedings can be initiated by legislation, petition, or by the Commission to establish policy or rules affecting a class of regulated entities.
- Ex Parte Communications are any communications between a decision-maker and a person with an interest in a matter before the Commission.
  - Ex parte communications concern substantive, but not procedural issues, which occur outside of a public hearing, workshop, or other public meeting or outside the official record of the proceeding.
  - Ex parte communications are permitted in quasi-legislative proceedings without restrictions or reporting requirements.

# State Policies Related to CPUC Consultation Policy

## **Executive Order B-10-11** (Governor Brown, 2011)

Declares that “the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus,” and directs state executive agencies and departments to “encourage communication and consultation with California Indian Tribes.”

## **AB 52** (Gatto, 2014)

Requires state agencies to develop tribal consultation policies and directs staff to engage in meaningful outreach and engagement

## **Executive Order N-15-19** (Governor Newsom, 2019)

Reaffirms and incorporates the principles set out in B-10-11. The Executive Order recognizes that the State historically sanctioned for over a century “depredations and prejudicial policies against California Native Americans” and establishes a Truth and Healing Council to be led and convened by the Governor’s Tribal Advisor.

# State Policies Related to CPUC Consultation Policy (continued)

- **Statement of Administration Policy- Native American Ancestral Lands** (September 25, 2020)
  - The purpose of the policy is to partner with California tribes to facilitate tribal access, and co-management of State-owned or controlled natural lands and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of State needs, and to action in accordance with the Policy that support such efforts.
- **Governor Newsom Proposes \$100 Million to Support Tribal-Led Initiatives that Advance Shared Climate and Conservation Goals** (March 18, 2022)
  - The proposed funding would support tribal initiatives that advance shared climate and biodiversity goals including research, development and implementation of traditional knowledge; workforce training, capacity building and technical support; and tribal nature-based climate conservation programs, among others.