



July 26, 2021

**SUBJECT: Office of Energy Infrastructure Safety’s Final 2021 Safety Certification Guidance Pursuant to Public Utilities Code § 8389(f)(2)**

**1. Background**

All electrical corporations seeking a Safety Certification must satisfy requirements pursuant to Public Utilities Code (Pub. Util. Code) § 8389(f)(1) and must submit their request for a Safety Certification to the Office of Energy Infrastructure Safety (Energy Safety)<sup>1</sup> prior to the expiration of their current Safety Certification. Pursuant to Pub. Util. Code § 8389(e), the Director of Energy Safety shall issue a safety certification to an electrical corporation if the electrical corporation provides documentation of the following:<sup>2</sup>

1. The electrical corporation has an approved wildfire mitigation plan.
2. The electrical corporation is in good standing, which can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment performed pursuant to Section 8386.2 and paragraph (4) of subdivision (d), if applicable.
3. The electrical corporation has established a safety committee of its board of directors composed of members with relevant safety experience.
4. The electrical corporation has established an executive incentive compensation structure approved by Energy Safety and structured to promote safety as a priority and to ensure public safety and utility financial stability with performance metrics, including incentive compensation based on meeting performance metrics that are measurable and enforceable, for all executive officers, as defined in Pub. Util. Code § 451.5. This may include tying 100 percent of incentive compensation to safety performance and denying all incentive compensation in the event the electrical corporation causes a catastrophic wildfire that results in one or more fatalities.
5. The electrical corporation has established board-of-director-level reporting to the California Public Utilities Commission (Commission) and Energy Safety on safety issues.
6.
  - A. The electrical corporation has established a compensation structure for any new or amended contracts for executive officers, as defined in § 451.5, that is based on the following principles:
    - i.

<sup>1</sup> As of July 1, 2021, the Wildfire Safety Division transitioned to the Office of Energy Infrastructure at the California Natural Resources Agency, as statutorily required by Assembly Bill (AB) 111 (signed by the Governor in July of 2019) pursuant to Gov. Code § 15475.

<sup>2</sup> Pub. Util. Code § 8389(e)

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- I. Strict limits on guaranteed cash compensation, with the primary portion of the executive officers' compensation based on achievement of objective performance metrics.
      - II. No guaranteed monetary incentives in the compensation structure.
    - ii. It satisfies the compensation principles identified in paragraph (4).
    - iii. A long-term structure that provides a significant portion of compensation, which may take the form of grants of the electrical corporation's stock, based on the electrical corporation's long-term performance and value. This compensation shall be held or deferred for a period of at least three years.
    - iv. Minimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest in the electrical corporation.
  - B. Energy Safety shall approve the compensation structure of an electrical corporation if it determines the structure meets the principles set forth in subparagraph (A) and paragraph (4).
  - C. It is the intent of the Legislature, in enacting this paragraph and paragraph (4), that any approved bankruptcy reorganization plan of an electrical corporation should, in regards to compensation for executive officers of the electrical corporation, comply with the requirements of those paragraphs.
7. The electrical corporation is implementing its approved wildfire mitigation plan. The electrical corporation shall file a notification of implementation of its wildfire mitigation plan with Energy Safety and an information-only submittal with the Commission on a quarterly basis that details the implementation of both its approved wildfire mitigation plan and recommendations of the most recent safety culture assessments by the Commission and Energy Safety, and a statement of the recommendations of the board of directors safety committee meetings that occurred during the quarter. The notification and information-only submittal shall also summarize the implementation of the safety committee recommendations from the electrical corporation's previous notification and submission. If the office has reason to doubt the veracity of the statements contained in the notification or information-only submittal, it shall perform an audit of the issue of concern. The electrical corporation shall provide a copy of the information-only submittal to Energy Safety.

If these requirements are met, then Energy Safety shall issue a Safety Certification. Currently, there are four electrical corporations with active Safety Certifications.<sup>3</sup>

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<sup>3</sup> Safety Certifications are available at <https://www.cpuc.ca.gov/safetycertificates/>.

## **2. 2021 Safety Certification Guidance**

Energy Safety provides the following guidance for the submission of 2021 Safety Certification requests based on the criteria set out in Pub. Util. Code § 8389(e):

### **2.1. Approval of Wildfire Mitigation Plans**

To receive a safety certificate, Pub. Util. Code § 8389(e)(1) requires that the electrical corporation provide documentation that “the electrical corporation has an approved wildfire mitigation plan.”

Pursuant to Pub. Util. Code § 8386.3, Energy Safety must evaluate WMPs within 3 months of submission unless this period is extended with appropriate justification. Pursuant to Resolution WSD-011, if Energy Safety finds that an electrical corporation’s WMP contains critical issues, errors or omissions, Energy Safety may issue a Revision Notice. The electrical corporation must respond to the Revision Notice prior to Energy Safety continuing its evaluation of the WMP submission.

To date, Energy Safety has required submission of WMPs in the first quarter of the calendar year, upon which begins the three-month review period as required by statute. Issuance of Revision Notices may result in an extension of the review period; however, Energy Safety does not anticipate this will impact the timing of Safety Certification submissions and review. Therefore, electrical corporations are expected to have an approved WMP prior to submission of a Safety Certification request.<sup>4</sup>

### **2.2. Implementation of Wildfire Mitigation Plan**

To receive a safety certificate, Pub. Util. Code § 8389(e)(7) requires that the electrical corporation provide documentation that “the electrical corporation is implementing its approved wildfire mitigation plan.” The statute requires an electrical corporation to file a notification of implementation of its wildfire mitigation plan with Energy Safety and an information-only submittal with the Commission on a quarterly basis detailing WMP and safety culture assessment implementation.

The statute does not define what level of progress constitutes “implementation” to warrant issuance of a Safety Certification. The electrical corporation must demonstrate meaningful progress in implementing its WMP. In this case, meaningful progress means that the electrical corporation is progressing towards the targets set forth in its WMP.

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<sup>4</sup> Per Pub. Util. Code § 8386.3 (a), each electrical corporation’s approved WMP remains in effect until Energy Safety approves the electrical corporation’s subsequent plan.

### **2.3. Implementation of the Safety Culture Assessment (SCA)**

To receive a safety certificate, Pub. Util. Code § 8389(e)(2) requires that the electrical corporation provide documentation that “the electrical corporation is in good standing, which can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable.”

On November 19, 2020, in Resolution WSD-011, the Commission approved an annual SCA process. Energy Safety’s first SCA commenced in March 2021 and is expected to be complete by the end of August 2021. Upon completion, Energy Safety will document its findings, which shall include recommendations for improvement. An electrical corporation can satisfy the “good standing” requirement by agreeing to implement all of the findings (including recommendations for improvement) of its most recent safety culture assessment performed pursuant to Pub. Util. Code §§ 8386.2 and 8389(d)(4), if applicable.<sup>5</sup>

### **2.4. Board Structure**

To receive a safety certificate, Pub. Util. Code §§ 8389(e)(3) and 8389(e)(5) require that an electrical corporation provide documentation that it meets two requirements related to its board of directors, each discussed below.

Pub. Util. Code § 8389(e)(3) requires that the electrical corporation’s board of directors must have a safety committee comprised of members with appropriate and relevant experience. To ensure that this requirement is satisfied, electrical corporations shall include the following in 2021 Safety Certification requests:

1. Any updates of the electrical corporation’s safety committee members, including sharing new members’ relevant experience and expertise via a resume or other documents;
2. A description of how the safety committee aligns with overall company governance;
3. A report on significant topics covered by the safety committee; and
4. A description of any actions recommended by the safety committee that were implemented by the electrical corporation.

Pub. Util. Code § 8389(e)(5) requires that electrical corporations have established board-level reporting to the Commission and Energy Safety on safety issues. Energy Safety will work with Commissioners to coordinate at least one public meeting prior to submission of 2021 Safety Certification requests in order to ensure this requirement is met in a transparent manner. For each electrical corporation, a board member, along with the chief safety/risk officer (or equivalent), should brief the Commission and Energy Safety on safety performance. Details

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<sup>5</sup> The process by which electrical corporations agree to implement these findings will be specified in the Safety Culture Assessment process.

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regarding the public meeting will be noticed in accordance with open meeting laws. Electrical corporations shall provide any materials used in the public meeting in their Safety Certification requests to demonstrate that the electrical corporation has met this requirement.

### **2.5. Executive Compensation**

To receive a safety certification, Pub. Util. Code §§ 8389(e)(4) and 8389(e)(6) requires that an electrical corporation provide documentation that it has established an Executive Compensation structure approved by Energy Safety.

Energy Safety issued guidance<sup>6</sup> on December 22, 2020, instructing the electrical corporations to submit their 2021 Executive Compensation plans on January 15, 2021. Supplemental submissions were received from Pacific Gas and Electric, Southern California Edison, San Diego Gas & Electric on March 5, 2021, following their respective board meetings. Energy Safety is currently evaluating these submissions. In their Safety Certification Requests, electrical corporations shall cite to Energy Safety's disposition of Executive Compensation plans.

### **3. Safety Certification Timeline**

In 2021, all electrical corporations, with the exception of Bear Valley Electric Service, Inc. (BVES), must submit Safety Certification requests according to the schedule set forth below. Requests for 2022 Safety Certifications must be submitted within 12 months from the date of issuance of the 2021 certifications.

Energy Safety is currently evaluating BVES's 2021 Safety Certification request. As such, the timeline associated with BVES's Safety Certification will not align with the other electrical corporations' Safety Certification processes this year. In 2022 there will be another opportunity to synchronize the timeline for all Safety Certification requests, including that of BVES.

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<sup>6</sup> [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About\\_Us/Organization/Divisions/WSD/WSD%20Executive%20Compensation%20Guidance%2020201222.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/WSD%20Executive%20Compensation%20Guidance%2020201222.pdf)

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*Table 1: Timeline for Safety Certification Requests and Decision Dates<sup>7</sup>*

<b>Electrical Corporation</b>	<b>Request Date of Current Safety Certification</b>	<b>Approval Date of Current Safety Certification</b>	<b>Submission Deadline for 2021 Safety Certification Request</b>	<b>Opening and Reply Comments</b>	<b>2021 Safety Certification Dispositions</b>
SDG&E	June 16, 2020	September 14, 2020	September 13, 2021	October 13, 2021/October 23, 2021	December 13, 2021
SCE	June 19, 2020	September 17, 2020	September 13, 2021	October 13, 2021/October 23, 2021	December 13, 2021
PG&E	July 29, 2020	January 14, 2021	September 13, 2021	October 13, 2021/October 23, 2021	December 13, 2021
BVES	December 18, 2019	August 18, 2020	February 2, 2021 <sup>8</sup>	To be determined	To be determined

**4. Comments and Review Process**

Stakeholders may submit comments and reply comments on 2021 Safety Certification requests. Comments are due 30 days from the electrical corporations’ submission. Reply comments are due 10 days thereafter. Comments and reply comments must be e-filed in the “2021 Safety Certifications” docket (2021-SCs).<sup>9</sup>

The Energy Safety Director will review each electrical corporation’s Safety Certification request for compliance with Pub. Util. Code § 8389(e) and the requirements and principles set forth herein and will issue a letter of approval or denial. Energy Safety may require that electrical corporations provide missing information or request changes in advance of approval.

<sup>7</sup> If any of these dates need to change due to unforeseen circumstances, Energy Safety will notify the impacted electrical corporations.

<sup>8</sup> Although Energy Safety initially denied BVES executive compensation structure, which is a requirement for the 2021 Safety Certification, BVES’s 2020 Safety Certification remains valid until Energy Safety acts on BVES’s 2021 Safety Certification request.

<sup>9</sup> The 2021 Safety Certification docket can be found at:

<https://efiling.energysafety.ca.gov/EFiling/DocketInformation.aspx?docketnumber=2021-SCs>

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Sincerely,

A handwritten signature in black ink that reads "Lucy Morgans". The signature is written in a cursive, flowing style.

Lucy Morgans

Acting Program Manager

Office of Energy Infrastructure Safety