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VIA E-MAIL

Caroline Thomas Jacobs
Director, Office of Energy Infrastructure Safety
715 P Street, 20th Floor
Sacramento, CA 95814

RE: Comments on Executive Compensation Workshop Docket # 2021-EC

Dear Director Thomas Jacobs:

San Diego Gas & Electric Company (SDG&E) submits its comments on the Office of Energy Infrastructure Safety's (Energy Safety) September 29, 2021, executive compensation workshop. As Energy Safety weights the various workshop presentations and proposals, SDG&E recommends the following:

- Energy Safety's review of executive compensation should remain limited to matters within its jurisdiction and specified by Assembly Bill (AB) 1054—namely to ensure that the electrical corporations are promoting wildfire and public safety through their executive compensation structures.
- Energy Safety's review of the electrical corporations' executive compensation structure is limited to the executive officers defined by statute, specifically those officers who are policy makers of the electrical corporation.
- Energy Safety should not assess whether the "primary portion" of executive compensation is based on the achievement of performance metrics based on threshold levels. SDG&E recommends that using target levels provides a better means to understand whether the "primary portion" of an executive officer's compensation is at risk.
- Energy Safety should not include additional requirements, such as safety metrics, for long-term compensation. AB 1054 specifically allows long-term compensation to take the form of stock.
- Energy Safety should not limit the discretion of the electrical corporations' respective boards of directors through the standardization of metrics, nor should they require metrics to be weighted at specified minimum levels.
- The procedure for review and approval of the electrical corporations' executive compensation plans should be streamlined from that proposed during the workshop.

SDG&E discusses these issues, along with other matters raised during the workshop, in greater detail below.

I. Introduction and Background

SDG&E appreciates Energy Safety's efforts to bring stakeholders together for a comprehensive discussion regarding the electrical corporations' executive compensation plans and potential changes to the guidance related to Energy Safety's assessment and approval of executive compensation. SDG&E supports ongoing refinements to the executive compensation review process. But those refinements should be tailored to adhere to the objectives of AB 1054 and should continue to support the electrical corporations' ability to incentivize safety as well as other important utility goals while attracting and retaining top management talent to run California's utilities.

The Legislature passed AB 1054 to achieve two primary goals: 1) to address the risk of wildfires caused by electrical infrastructure throughout the state, and 2) to allow the electrical corporations the access to needed capital to fund ongoing operations—including enhancements to wildfire safety measures—and to make new investments to promote safety, reliability, and clean energy mandates for California ratepayers.[1] The state established the Wildfire Fund as a mechanism to attract that investment capital.[2] In turn, AB 1054 incentivizes electrical corporations' investment in wildfire safety and encourages prudent and safe management by requiring electrical corporations to meet the requirements of Section 8389 of the Public Utilities Code to receive a safety certification, which carries with it certain benefits related to the Wildfire Fund.

The Legislature incorporated several new requirements related to corporate governance and management required for electrical corporations to receive a safety certification. These include the establishment of the board safety committees at each electrical corporation, board-of director level reporting on safety issues, and two requirements related to executive compensation. It is these two requirements that are the subject of any new regulations currently under consideration. First, to receive a safety certification, an electrical corporation must establish:

> 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 Section 451.5. This may include tying 100 percent of incentive compensation to safety performance and denying all incentive

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1 AB 1054, Stats. 2019-2020, Ch. 79 (Cal. 2019), Section 1, "Legislative Findings."

2 *Id.*

> compensation in the event the electrical corporation causes a catastrophic wildfire that results in one or more fatalities.[3]

Section 8389(e)(4) is aimed purely at the executive "incentive" compensation structure and recognizes that safety should remain a top priority for business operations. Thus, it regulates annual pay that is not guaranteed, but is at risk at the discretion of the board of directors if defined metrics are not achieved. But the statute also recognizes that utilities must remain financially sound by specifically mentioning the need to "ensure…financial stability." Financial stability is also tied to safety, particularly for the electrical corporations who—in the event of a catastrophic wildfire—will likely face significant financial impacts.

Section 8389(e)(6) also requires electrical corporations to establish compensation structures for "any new or amended contracts for executive officers, as defined by Section 451.5," based on outlined principles that include:

> (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.

Again, Section 8389(e)(6) recognizes the correlation between safety and financial performance of an electrical corporation, and recognizes that a well-run utility should strive for success in both arenas. If an electrical corporation's executive compensation structure meets the principles laid out in Section 8389(e)(6) and satisfies the incentive compensation structure requirements in Section 8389(e)(4), "[Energy Safety] *shall approve* the compensation of the electrical corporation."[4]

SDG&E has historically prioritized safety as a component of executive compensation. And in response to AB 1054, SDG&E reexamined the compensation of the executive officers subject to AB 1054's requirements and continued to develop and refine an executive compensation

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[3] Pub. Util. Code § 8389(e)(4). The statute refers to "the division" referring to the Wildfire Safety Division of the California Public Utilities Commission, which has been succeeded by Energy Safety.

[4] Pub. Util. Code §8389(e)(6)(B) (emphasis added).

structure that emphasizes safety—including wildfire safety—as a top priority. To that end, Energy Safety found that SDG&E's 2021 executive compensation plan met the requirements set forth in Public Utilities Code Section 8389.[5]

Energy Safety has retained NorthStar Consulting Group (NorthStar) to aid development and review of the executive compensation guidelines for 2022 and 2023. At the recent workshop, NorthStar was able to present the preliminary findings of their study of the electrical corporations' executive compensation plans, but their comprehensive written report has not yet been provided to stakeholders. As SDG&E presumes the written report will contain more detail for the record, SDG&E requests that Energy Safety allow stakeholders an additional opportunity to comment on the findings or recommendations contained in NorthStar's written report.

As a preliminary matter, however, SDG&E is concerned that certain executive compensation recommendations made during the workshop—particularly those under consideration in the longer term—go beyond the language and intent of AB 1054. The Legislature did not intend AB 1054 to standardize executive compensation across the electrical corporations, nor was the intent to allow Energy Safety to determine corporate priorities other than ensuring the prioritization of safety. While safety may often go hand-in-hand with other corporate priorities and initiatives, the California electrical corporations are distinct and dynamic organizations that emphasize numerous corporate goals, which are ultimately determined by their respective boards of directors. Given the significant distinctions among the regulated electrical corporations—including with respect to their organizational structures—a one-size-fits-all approach to executive compensation may not work to incentivize innovation and it might result in mis-prioritization of safety and other initiatives. It is important that SDG&E be allowed to balance the safety and regulatory requirements of AB 1054 with the need to remain an innovative, dynamic, and successful corporation on all fronts.

II. AB 1054 Requires Electrical Corporations to Make Safety a Priority, but Energy Safety's Oversight Does Not Extend to Other Priorities Addressed by Executive Compensation Structures

Energy Safety's independent executive compensation expert, John Ellerman, presented a general overview of executive compensation. Mr. Ellerman analyzed the compensation plans of several large utilities nationwide, with an emphasis on certain utilities that prioritized safety in their compensation structures. During Mr. Ellerman's presentation, it became apparent that the California electrical corporations—partially due to AB 1054—place far more emphasis on safety than many of their national peers.[6] SDG&E also notes that Mr. Ellerman referenced the annual

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5 Letter from Lucy Morgans, Acting Program Manager, Safety Policy Division, Office of Energy Infrastructure Safety to Dan Skopec, Senior Vice President, SDG&E, "Subject: Office of Energy Infrastructure Safety Approval of San Diego Gas & Electric Company's 2021 Executive Compensation Structure Pursuant to Public Utilities Code Sections 8389(e)(4) and (e)(6)." (August 11, 2021).

6 Mr. Ellerman's presentation often cited to Duke Energy as a leader in emphasizing safety through executive compensation. A review of Duke Energy's compensation as presented by Mr. Ellerman

incentive compensation plan of Sempra, SDG&E's parent company. But Sempra is a holding company. Under Sempra's parent-subsidiary-enterprise structure, Sempra does not manage the day-to-day affairs or operations of any of its subsidiaries, including SDG&E. Rather, Sempra's board and management team oversee, monitor, and assess safety and risk-management programs on an enterprise-wide basis. Reflecting these corporate and operational distinctions, Sempra has a separate annual incentive compensation structure from SDG&E. Thus the plan outlined in Sempra's proxy statements are distinct from the metrics used for SDG&E's incentive compensation.[7]

SDG&E agrees with Mr. Ellerman's assessment that several considerations influence executive compensation plans. The metrics adopted by a corporation's board of directors reflect the corporation's priorities. These priorities are developed by the board's compensation committee and are subject to review by shareholders.[8] Through its approved executive compensation plans to date, SDG&E has repeatedly acknowledged safety as a top priority. But any review of executive compensation must acknowledge that corporations—large or small—must emphasize a number of priorities. These also include the corporation's financial performance as well as Environmental, Social and Governance (ESG) goals that measure ethical impacts and sustainability of investment.[9] As an example, it is through these ESG goals that SDG&E incentivizes performance with respect to diversity and inclusion, sustainability, and climate initiatives.

While AB 1054 requires electrical corporations to prioritize safety, the Legislature did not intend that they forego other corporate priorities that both incentivize investment and sustainability. To the contrary, AB 1054 was intended to restore the access to capital by making the electrical corporations sound financial investments for shareholders. SDG&E must remain consistent and competitive with similarly situated companies—many of whom are adopting ESG and other corporate governance metrics in their compensation plans. AB 1054 left the ultimate

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indicates that "operational excellence," including safety, is given 10% weight in Duke's annual incentive compensation plan. *See*, John R. Ellerman, *An Overview of Executive Compensation Practices in Investor-Owned Utilities* (September 2021) (Ellerman Presentation) at slide 17. SDG&E's approved annual incentive plan places significantly more weight on safety metrics. *See* SDG&E *Executive Compensation Workshop* (September 29, 2021) (SDG&E Presentation) at slide 4 ("Safety-related performance measures are weighted at 59% of the total target Variable Pay/ICP.").

7 SDG&E has noted this distinction to Energy Safety and NorthStar to inform their review of executive compensation and development of new guidelines.

8 *See* 15 U.S. Code § 78n-1(a)(1), (c)(1) ("Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the [Securities and Exchange] Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives [paid for the prior year, as disclosed in the proxy statement]. . . . [Such] shareholder vote . . . shall not be binding on the issuer or the board of directors of an issuer, and may not be construed . . . as overruling a decision by such issuer or board of directors.").

9 Mr. Ellerman also cited to the emergence of ESG goals as "the biggest change in executive compensation … in the past 20 years." Executive Compensation Workshop Transcript at 36:315. *See also* Ellerman Presentation at Slide 17.

determination of executive compensation with the corporations' boards of directors and the compensation committees thereof to exercise their judgment within the bounds of their fiduciary duties and applicable law.[10] It thus remains imperative that SDG&E and its board of directors are afforded the appropriate level of autonomy over its executive compensation structure so that the company may continue to recognize and emphasize the company's evolving priorities. This autonomy should—among other things—extend to decisions regarding the appropriate weighting for metrics, selection of the metrics themselves, and the number of metrics used.

Safety will remain a top priority for SDG&E, and this will be reflected in the executive compensation plans submitted to Energy Safety for approval. Energy Safety can and should ensure that SDG&E meets its statutory requirements by assessing the "structure" of its executive compensation program.[11] But AB 1054 did not grant Energy Safety license to regulate SDG&E's executive compensation as a whole. Given the breadth of many of the considerations presented by Energy Safety and NorthStar at the workshop, SDG&E is concerned that—among other things—efforts to standardize executive compensation, uniformity of metrics, and proposals to limit the weighting of metrics may curtail that independence and go beyond the authority granted by AB 1054.

To date, Energy Safety has ensured SDG&E's compliance with AB 1054 through a thorough examination of the methods by which its executive compensation plan prioritizes safety. Some further regulatory examination of executive compensation may be warranted, and SDG&E welcomes a dialogue about how it can better prioritize safety by continuing to understand corporate best practices and understanding tools that work in other contexts. But over-regulation of executive compensation, especially if it goes beyond the prioritization of safety, exceeds the scope of AB 1054 and may ultimately hinder the competition and innovation necessary to continuously improve safety and limit the electrical corporations' status as sound financial investments for shareholders. Energy Safety can achieve the goals of AB 1054 through the existing review process with certain enhancements and should reject proposals that exceed the intent of the statute.

III. AB 1054 Applies to Policy Making Executives Enumerated by the Statute

Section 8389 specifically provides that in order to receive a safety certification, the electrical corporations' executive compensation must meet specific requirements for a limited number of executives, as clearly defined by statute. During the workshop, Energy Safety proposed a new requirement that executive compensation submissions specify "[w]hich internal executive officer classifications or positions are subject to the submitted executive compensation structure"

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[10] *See* New York Stock Exchange Listed Company Manual § 303A.05 ("The compensation committee must . . . have direct responsibility to: (A) review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation; [and] (B) make recommendations to the board with respect to non-CEO executive officer compensation, and incentive compensation and equity-based plans that are subject to board approval . . . .").

[11] Pub. Util. Code §8389(e)(4).

and provide a list of positions not included in the executive compensation structure and justification as to why they are not included.[12] NorthStar similarly questioned who should be included as an executive officer, and whether "all senior vice presidents," or "selected vice presidents" should be included.[13]

The answer to this question is simple. These executive officers subject to AB 1054's requirements are defined in Public Utilities Code Section 451.5 and include "any person who performs *policy making functions* and is employed by the public utility subject to approval of the board of directors, and includes the president, secretary, treasurer, and any vice president in charge of a principal business unit, division, or function of the public utility."[14] The first requirement, therefore, is that to be subject to regulation, the executive must be performing a policy function within the utility. Because the statute includes the conjunctive "and," rather than "or," the executive must be performing the policy making function *and* be on the list of included positions.

Thus, to answer the questions posed by NorthStar, the list of executive officers subject to AB 1054's executive compensation structure is enumerated by statute. It is the senior policy makers of the public utility. Notably, Section 451.5(c) specifically does not include *all* vice presidents (or even senior vice presidents) of the public utility because the legislature intended the statute to regulate a far smaller subset of executives. Additionally, the statute specifically excludes regulation of the executives of the corporate holding companies of the public utilities. SDG&E's parent company, Sempra, is not a "public utility." Because Section 451.5 provides a specific list of executives to whom Section 8389 applies, Energy Safety is not authorized to expand the scope of the legislation to include a broader list of public utility executives, nor may it extend the reach of the statute to regulate the compensation of holding company executives, including Sempra executives who are not "employed by the public utility."[15]

The officers enumerated in Section 451.5 are largely similar to the definition of "executive officer" found in Securities and Exchange Commission (SEC) Rule 3b-7. Under the SEC rule, executive officers include the "president, any vice president of the [company] in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the [company]."[16] The California Public Utilities Commission recently observed and affirmed this similarity in Southern California Edison's General Rate Case

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12 Office of Energy Infrastructure Safety, *Executive Compensation Guidance Workshop* (Sept. 29, 2021) ("OEIS Presentation") at slide 9.

13 *See* NorthStar Consulting Group, *Executive Compensation Structure Workshop* (Sept. 29, 2021) ("NorthStar Presentation") at slide 5.

14 Pub. Util. Code Section 451.5(c) (emphasis added).

15 *Id.*

16 17 C.F.R. § 240.3b-7.

Decision.[17] The Commission noted that Rule 3b-7 officers are limited to "senior-level management, responsible for policy decisions of the company, and directly answerable to the [utility's] Board of Directors because their hiring and firing are determined by the Board."[18] Because of the similarities between the Rule 3b-7 and Section 451.5, Energy Safety should continue to interpret "executive officer" in the same manner.

The Commission decision interpreting executive officer relates to Public Utilities Code Section 706, which does not specifically define "officer." AB 1054 resolved any ambiguities regarding the definition of executive officer for purposes of Section 8389 by specifically referencing the list of qualified executives in Section 451.5(c). Because of the specificity of the statutory language referenced, in addition to its similarity to SEC Rule 3b-7, it is apparent that the definition of executive officer for purposes of Section 8389 does not go beyond the Rule 3b-7 officers. The Legislature used this settled definition to achieve consistency with federal securities laws and other relevant statutes. Energy Safety should thus not expand the list beyond that statutory intent.

IV. Energy Safety's Proposed Changes Implicate Issues Outside of Safety and Diminish the Oversight and Discretion of the Board

Energy Safety proposed that the 2022 guidance may require the electrical corporation to certify or explicitly state in their executive compensation submissions that they meet the following requirements:

- "[F]or all executive officer positions as defined in Section 451.5, a majority of the executive compensation reward, at both the threshold and maximum reward levels, is awarded based on the achievement of objective performance metrics."
- "[C]ompensation associated with a performance metric(s) will not be earned if the threshold metric target for that performance metric is not achieved."[19]

At the outset, SDG&E is concerned that if Energy Safety requires certification of the first requirement at *threshold* levels, this proposal will contort the requirements of AB 1054 well beyond their intent. Section 8389(e)(6) requires that "the primary portion of the executive officers' compensation [be] based on achievement of objective performance metrics."[20] If Energy Safety requires this metric to apply even to the threshold level, it would defeat the purpose of the statute and require significant changes to SDG&E's compensation structure. For instance, if the utility failed to meet threshold levels of performance on several metrics, but awarded executive compensation for others, it's entirely possible that the ultimate award could end up being a less than "the majority" of overall compensation. Moreover, if a utility failed to meet the threshold for

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[17] D.21-08-036 at 418-419.

[18] *Id.*

[19] OEIS Presentation at slides 11-12.

[20] Pub. Util. Code Section 8389(e)(6)(A)(i)(I).

any metric and thus did not pay out any incentive compensation, the "primary portion" of the executive's pay would be in guaranteed compensation. That is precisely how the executive compensation structure is supposed to work, because the incentive pay is at risk if the company does not meet or achieve the measured objectives. But per Energy Safety's proposed guidelines it appears that this structure would be insufficient to receive approval.

In requiring the "primary portion" of executive compensation to be based upon achievement of performance metrics, the Legislature signaled an intent require that the "primary portion" of executive officers' compensation be *at risk* rather than guaranteed. To meet this intent, SDG&E proposes that instead of "threshold" reward levels, Energy Safety deem that the "primary portion" requirement of Section 8389(e)(6) is met using the "target" benchmark. This achieves the goals of AB 1054 in that it incentivizes electrical corporations to meet safety requirements, rewards the achievement of those goals, and potentially penalizes the failure to meet them. The target threshold is also more consistent with industry norms and would avoid significant necessary changes to SDG&E's executive compensation structure.

With respect to the second proposal, requiring a bright line rule restricting the payment of compensation if a threshold target for a metric is not achieved 1) goes beyond the authority granted to Energy Safety by AB 1054 because it exceeds their safety oversight, and 2) overly restricts the board's discretion to respond to external events. Section 8389(e)(6) requires only that the electrical corporations' executive compensation *structures* include that the primary portion of compensation be based on "achievement of objective performance metrics." It does not forbid the payment of compensation in the event a metric is not achieved. The legislative goal was to incentivize performance with respect to safety and limit guaranteed cash compensation. Energy Safety is thus tasked with assessing the structure of the executive compensation plans; approval of the plan should not be tethered to an overly detailed assessment of individual metrics or the amount of compensation associated with a specific metric, but should look at the amount of guaranteed versus at risk compensation. Moreover, it is outside the jurisdiction of Energy Safety to assess or require compliance with performance metrics that are unrelated to safety, such as ESG goals or financial performance.[21]

It may be logical and even likely that, if SDG&E fails to meet the threshold level for a performance metric, compensation will not be paid on that metric. That is the reason the metrics exist. But there are instances in which, in the exercise of business judgment, the board may exercise either upward or downward discretion depending on performance. The NorthStar presentation implied a continuing acceptance of downward discretion but did not include upward discretion. The board should retain full discretion to address circumstances where either the payment or non-payment of compensation would be unfair or at odds with the duties of the board or the corporation. The elimination of positive discretion would be overly punitive to executive officers if, for instance, performance did not meet threshold metrics due to circumstances entirely outside of SDG&E's control (such as the COVID-19 pandemic). Through the executive compensation approval process and its regulatory oversight, Energy Safety already has the ability to understand

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[21] Energy Safety's "primary objective is to ensure that regulated entities are reducing wildfire risk and complying with energy infrastructure safety measures as required by law." Ca. Gov. Code § 15475.1(b).

instances where the board exercises such discretion. Therefore, SDG&E recommends that Energy Safety eliminate this proposed guideline.

V. Changes to 2022 Guidelines and the Process for Developing 2023 Guidance Should Take Time Constraints Into Account

As noted during SDG&E's workshop presentation, the executive compensation plans for 2022 are currently in development. Preliminary plan metrics will be presented to the SDG&E board of directors in November of this year.[22] The board will consider and finalize the metrics through January 2022 and will formally approve the executive compensation plan in February.[23] While Energy Safety does not seem to be considering proposals related to new or revised metrics for the 2022 plans, as noted in the comments above, the 2022 proposals may require significant revisions to SDG&E's executive compensation plan. SDG&E continues to request that Energy Safety take the utilities executive compensation timelines into account when formulating the 2022 guidelines, and refrain from recommending significant changes that cannot be made during the timeframe.

For 2022, NorthStar proposed an extensive executive compensation review timeline, with initial submissions in March to "streamline the process."[24] Rather than streamlining, however, NorthStar recommends a *four month* timeline of data requests, responses, follow up requests, and a comment period.[25] While AB 1054 requires Energy Safety's review and approval of executive compensation to receive a safety certification, NorthStar's proposal goes well beyond the statute. Section 8389(e)(6))(C) recognizes the discretion afforded the boards of the electrical corporations in establishing compensation and requires that they formulate the structure of executive compensation to meet the statutory requirements. But it is incumbent upon Energy Safety to efficiently review and approve that structure if it meets the principles laid out in Section 8389.[26]

SDG&E appreciates the ongoing efforts to align the review and approval of executive compensation to the typical calendar. The effectiveness of an executive compensation structure depends on establishing clear annual goals early so that all employees understand the corporation's priorities. Leaving the structure in flux or subject to second guessing through rounds of data requests diminishes the plan's incentive effect. To that end, Energy Safety should adopt a much

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22 SDG&E Presentation at slide 8.

23 *Id.*

24 NorthStar Presentation at slide 12.

25 *Id*. SDG&E also notes that this executive compensation process is scheduled to occur simultaneously with review and approval of the electrical corporations' Wildfire Mitigation Plans and the numerous data requests associated with that process.

26 Pub. Util. Code §8389(e)(6)(B) ("The division *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)") (emphasis added).

more "streamlined" 2022 guidance and approval process that encourages prompt review and stakeholder input, and does not include several months of data requests.

VI. Proposals Regarding Long-Term Compensation Should Align With AB 1054

Both Energy Safety and NorthStar addressed potential additional guidance related to long-term executive compensation. Energy Safety proposed that, for 2022, the electrical corporations be required to certify or explicitly state that "all executive positions as defined in Public Utilit[ies] Code §451.5, receive a portion of their performance-based compensation that is delayed three or more years, with that compensation based on the electric corporation's performance and value over those proceeding three or more years."[27] AB 1054 specifically permits that long term compensation "may take the form of grants of the electrical corporation's stock, based on the electrical corporation's long-term performance and value."[28] While the significant portion of that compensation must be "held or deferred for a period of at least three years," the statute does not prohibit electrical corporations from structuring long term compensation with additional grants of stock with a vesting period that is shorter than three years.[29] As noted by NorthStar, a portion—but not the significant portion—of SDG&E's Long Term Incentive Plan (LTIP), is comprised of grants of compensation that vest at intervals shorter than three years. Because SDG&E's LTIP provides a "significant portion of compensation" that is held or deferred for at least three years, it meets the requirements related to long term compensation.

NorthStar's presentation addressed potential longer-term and far more problematic changes to the regulation of long-term compensation. On the list of "potential modifications" under consideration for long-term compensation were the inclusion of safety metrics ("must safety be included?"), "links to Wildfire Mitigation Plan metrics and Safety and Operational metrics," and "potential compensation design/structural changes."[30] Given the clear statutory instruction that long term compensation "may take the form of grants of the electrical corporations stock," mandating any of these new requirements would exceed the objective of AB 1054. In drafting AB 1054 the Legislature recognized—and was keenly aware of—the interplay between an electrical corporation's safety performance and its stock performance.[31] The market rewards strong safety performance, which is why the Legislature specifically permitted electrical corporations to structure their long-term compensation through grants of stock. The performance of various electrical corporation's stock since 2017 starkly reflects the direct link between safety performance and stock performance.

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27 OEIS Presentation at slide 16.

28 Pub. Util. Code §8389(e)(6)(A)(iii).

29 *Id.*

30 NorthStar Presentation at slides 10-11.

31 For instance, in the wake of the catastrophic fires in 2017 and 2018, PG&E's stock price went from $46.81 to $26.81 from October to November 2018.

Incorporating additional metrics, such as Wildfire Mitigation Plan performance, safety metrics, and restricting the use of modifiers or discretion pose additional difficulty for SDG&E because of its status as a closely held company. SDG&E's long term compensation structure is tied to its corporate parent, Sempra, because SDG&E does not issue its own publicly traded stock. Thus, new long-term requirements may have unintended impacts well beyond the executives at SDG&E. Both because of this limitation and because adding additional requirements related to long term compensation exceeds AB 1054, SDG&E requests that Energy Safety refrain from incorporating additional regulations related to long term compensation in future years.

VII. Metrics Should Not be Standardized, Nor Should There be a Minimum Weighting For Any Metric Determined by the Board

NorthStar vaguely addressed several "additional requirements" related to "short term incentive metrics, weightings, and targets."[32] The imposition of these "additional requirements" again exceeds the scope of AB 1054, which left the responsibility for executive compensation with the electrical corporations' boards. SDG&E's annual incentive executive compensation plan is comprised of several metrics, each of which—regardless of their weighting—represents a priority of the company. The requirement that utilities standardize weighting, with "safety at least a minimum of 25% of the short-term incentive, and/or no metric less than 5% weighting"[33] would diminish the board's ability to set company priorities and measure performance with respect to each of those priorities. There is also no evidence that such a requirement would improve SDG&E's safety performance. SDG&E is further concerned that NorthStar seeks to standardize safety metrics across all utilities, which has anti-competitive implications and diminishes innovation across the California utilities.

The "additional requirements" proposed by NorthStar have no foundation in AB 1054 and lack any statutory support. Because Energy Safety is tasked with regulating the electrical corporation's "structure" rather than the details of the compensation plans themselves, Energy Safety should reject any proposals that attempt to standardize metrics or their weighting.

VIII. Conclusion

SDG&E requests that Energy Safety incorporate the recommendations described in this letter in future executive compensation guidelines, and looks forward to continued dialogue with Energy Safety and interested stakeholders on these issues.

Respectfully submitted,

/s/ Laura M. Fulton
Attorney for
San Diego Gas and Electric Company

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32 NorthStar Presentation at slide 9.

33 *Id.*