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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: SDG&E Comments on 2022 Executive Compensation
Docket 2022-EC**

Dear Director Thomas Jacobs:

SDG&E hereby submits its comments regarding the Draft 2022 Executive Compensation Guidelines (Draft Guidelines) provided by the Office of Energy Infrastructure Safety (Energy Safety) on December 2, 2021. While SDG&E generally supports the Draft Guidelines proposed for 2022, SDG&E recommends that Energy Safety revise or clarify certain aspects of the Guidelines to better comply with and reflect the intent of Assembly Bill (AB) 1054. SDG&E specifically recommends the following:

- The requirements of the Assigned Commissioner's Ruling (ACR) 9, which the California Public Utilities Commission (Commission) imposed on Pacific Gas & Electric Company (PG&E) in decision D.20-05-053, go well beyond the scope and intent of AB 1054, are within the Commission's jurisdiction over PG&E's bankruptcy restructuring, and should not be recommended as applicable to the other California electrical corporations.
- Energy Safety's assessment of the electrical corporations' long-term compensation programs should reflect the California Legislature's intent to balance utility financial stability and performance with public safety and recognize that safety performance and financial performance are necessarily intertwined.
- Supplemental Executive Retirement benefits are generally not considered typical perquisites, and Energy Safety should remove them from the list provided in Appendix A.

Further, SDG&E appreciates Energy Safety's ongoing efforts to refine and improve its process for considering executive compensation pursuant to AB 1054. As Energy Safety continues to assess any potential changes to its review of executive compensation, especially "more substantive changes in executive compensation structures," SDG&E notes that these comments

are specifically limited to the Draft Guidelines for 2022 and looks forward to further opportunities to comment on future proposals for subsequent years.¹

I. The Measures of ACR 9 Exceed the Scope and Intent of AB 1054 and Should Not Be Required of the Other Electrical Corporations

Energy Safety’s Draft Guidelines “encourage[]” the other electrical corporations to “review and consider adopting measures from [PG&E’s] ACR Executive Compensation Proposal 9 in the spirit of transparency and furthering the purpose of AB 1054.”² Some of the requirements of ACR 9, however, go far beyond the scope of AB 1054’s objective to ensure the compensation of electrical corporation executives promotes safety and financial stability. Instead, ACR 9 provides additional oversight of PG&E’s corporate governance and financial structure in light of its “safety history, criminal probation, and recent financial condition,” at the time of its bankruptcy, consistent with the Legislature’s direction regarding the PG&E reorganization in AB 1054.³

AB 1054 imposed several requirements upon the Commission to assess and approve PG&E’s reorganization plan and emergence from bankruptcy in order to permit PG&E to participate in the Wildfire Fund.⁴ Through that process, the Legislature tasked the Commission to approve “the reorganization plan and other documents resolving the insolvency proceeding, including the electrical corporation’s resulting governance structure as being acceptable in light of [PG&E’s] safety history, criminal probation, recent financial condition, and other factors deemed relevant by the Commission.”⁵ It was thus through the bankruptcy proceeding and the Commission’s statutory oversight over the corporate reorganization that the requirements of ACR 9 were developed. Many of these requirements, including a presumption against the provision of executive compensation in the event PG&E’s infrastructure is determined to be the source of a catastrophic wildfire (a presumption that may be reviewed and reversed by the Commission), far exceed AB 1054’s regulation of executive compensation. Instead, they specifically seek to impose additional requirements on PG&E in light of its past performance.

The various California electrical corporations are all uniquely situated. The relative maturity of the various wildfire mitigation programs and the electrical corporations’ safety outcomes continue to differ and evolve. For over a decade, SDG&E has been recognized as a leader in safety and wildfire mitigation. Energy Safety should continue to recognize the salient differences in approaches and outcomes. Imposing (or encouraging) uniformity for uniformity’s sake fails to continuously incentivize safety improvements and is inconsistent with the intent of AB 1054.

Ultimately, Energy Safety’s statutory role is to review the structure of the electrical corporations’ executive compensation plans and approve them if they meet the requirements established by AB 1054. It is AB 1054 that sets the baseline that the electrical corporations must

¹ Draft Guidelines at 7.

² Draft Guidelines at 8.

³ D.20-05-053 at 13.

⁴ D.20-05-053 at 2-3; Pub. Util. Code § 3292(b).

⁵ Pub. Util. Code §3292(b)(1)(C).

meet to receive a safety certification. And as evidenced by the Draft Guidelines, AB 1054 already creates a comprehensive and transparent method to promote safety and properly align executive incentive structures. As is clear from the nearly 50 pages of guidance, Energy Safety has effectively leveraged the tools of AB 1054 to create a method of understanding the utilities' executive compensation structures and ensuring they adequately “promote safety as a priority and [] ensure public safety and utility financial stability.”⁶ Any further expansion of the requirements is both unnecessary and contrary to AB 1054.

II. Regulation of Long-Term Incentive Programs Should Continue to Recognize the Interplay of Safety Performance and Financial Performance

The Draft Guidelines have two distinct reporting requirements related to long-term incentive programs. Section 4 addresses the provisions of Public Utilities Code Section 8389(e)(4) and the general structure of the electrical corporations' executive incentive compensation. Notably, Section 8389(e)(4) does not mention, nor does it prescribe the specific structure and application of long-term incentive compensation. Section 7 of the Draft Guidelines addresses the requirements of Public Utilities Code Section 8389(e)(6), which applies to new or amended executive contracts and has specific requirements regarding the structure and vesting period of executive long-term incentive compensation. In the examples tables and templates provided, Section 4 of the Draft Guidelines implies an intent by Energy Safety to require additional reporting metrics on long-term incentive compensation pursuant to Section 8389(e)(4). To the extent Energy Safety seeks to impose specific metrics related to long-term compensation beyond financial performance in the form of company stock, such regulation would run afoul 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.⁷ Public Utilities Code Section 8389(e)(6) 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.”⁸ The market rewards strong safety performance, and correspondingly punishes companies with poor safety or governance records. This is why the Legislature specifically permitted the electrical corporations to structure their long-term compensation through grants of stock. And the interplay between safety performance and financial stability is also recognized in Public Utilities Code Section 8389(e)(4) through its directive that executive compensation should ensure both “public safety and *utility financial stability*.”⁹ Financial stability is inexorably intertwined with an electrical corporation's financial performance and its available capital, and stock price is an ideal metric to measure this goal of AB 1054. Energy Safety should thus continue to refrain from imposing any additional metrics related to long-term compensation.

⁶ Pub. Util. Code §8389(e)(4).

⁷ 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. At present, it trades even below those levels.

⁸ Pub. Util. Code §8389(e)(6)(A)(iii).

⁹ Pub. Util. Code §8389(e)(4) (emphasis added).

III. Energy Safety Should Remove Supplemental Executive Retirement Plans from Appendix A, As They Are Not Considered Perquisites

To achieve AB 1054's direction to minimize "indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest in the electrical corporation,"¹⁰ Section 6 of the Draft Guidelines instructs the electrical corporations to list perquisites provided to executive officers with new or amended contracts. Appendix A then provides the list of example perquisites, including benefits such as health and country club memberships, company cars, first class travel or the use of company airplanes, financial planning services, relocation assistance and security services. Appendix A also lists the Supplemental Executive Retirement Plan (SERP) as a proposed example of a perquisite. The SERP should be removed from the list in Appendix A as it is a form of a retirement or pension plan, and generally not considered a perquisite. Inclusion of the SERP as a perquisite would be inconsistent with the aims of AB 1054 and the generally accepted categorization of SERPs as a retirement benefit.

A SERP is a form of a non-qualified retirement plan under which benefits are paid after the executive retires. A SERP is in no way akin to the other forms of perquisites listed in Appendix A, which are all short term or immediate perks, generally for personal pleasure, that go above and beyond traditional financial compensation. A SERP is also a commonly used tool to recruit and retain top-level executives by allowing certain tax advantages, which is completely distinct from the type of benefits that Public Utilities Code Section 8389(e)(6)(a)(iv) sought to minimize. Unlike potential high-profile examples such as excessive private jet travel or extravagant country club memberships, a SERP is directly aligned with taxpayer and shareholder (and Energy Safety's) interest in recruiting the talent necessary to promote safe, reliable utility service in California.

Additionally, including a SERP as a perquisite would be inconsistent with Energy Safety's proposed definition of the "denominator" to assess the "primary portion" requirement of AB 1054. Energy Safety proposes using Total Direct Compensation as the denominator, which specifically does not include "benefit programs," including those programs that "provide financial security in the case of ... retirement."¹¹ Using this definition, because the SERP is a retirement benefit with a value deferred until the executive's retirement, it should not be considered a perk, nor should it be counted as a part of the executive's Total Direct Compensation.

As an example, the Securities and Exchange Commission (SEC) does not consider SERP benefits to be perquisites for reporting purposes. In Item 402 of Regulation S-K, which provides instructions to complete the summary compensation tables for SEC reporting, it requires that pension plans, *including SERP benefits*, be reported in the "Change in Pension Value and Nonqualified Deferred Compensation Earnings" column. But perquisites are reported in the "All Other Compensation" column.¹² The "Change in Pension Value and Nonqualified Deferred

¹⁰ Pub. Util Code §8389(e)(6)(iv).

¹¹ Draft Guidelines at 55-57. Energy Safety proposes calculating Total Direct Compensation as "Base Salary + Short Term Incentive Program compensation + Long Term Incentive Program compensation + Perquisite compensation." *Id.* at 57.

¹² 17 C.F.R. §229.402 (Item 402) at 402(c)(2)(viii) ("The disclosure required pursuant to paragraph (c)(2)(viii)(A) of this Item applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined

Compensation Earnings” column (Column H in the below table) includes the aggregate change in the actuarial present value of the named executive officer’s accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant’s audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant’s audited financial statements for the covered fiscal year.

SUMMARY COMPENSATION TABLE

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

Because a SERP is a type of retirement or pension benefit, the SEC does not treat it as a perquisite, nor should Energy Safety. Retirement benefits are not a perk related to an executive’s discretionary position. The SEC separates the reporting of perquisites as “other compensation,” and the list of example perquisites includes many of the same “perks” listed in Appendix A of the Draft Guidelines, such as club memberships, the use of company vehicles for personal travel, security, and financial planning advice.¹³ Notably, AB 1054 makes no mention of an intent to regulate or examine the retirement or pension benefits of executives. There is no rational explanation for why a SERP, which is considered a retirement benefit by shareholders and federal

benefit plans and *supplemental executive retirement plans*, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans.”)(emphasis added).

¹³ In proposing the current Item 402, the SEC noted that “applying the concepts that we outline above, examples of items requiring disclosure as perquisites or personal benefits under Item 402 include, but are not limited to: club memberships not used exclusively for business entertainment purposes, personal financial or tax advice, personal travel using vehicles owned or leased by the company, personal travel otherwise financed by the company, personal use of other property owned or leased by the company, housing and other living expenses (including but not limited to relocation assistance and payments for the executive or director to stay at his or her personal residence), security provided at a personal residence or during personal travel, commuting expenses (whether or not for the company’s convenience or benefit), and discounts on the company’s products or services not generally available to employees on a non-discriminatory basis.” SEC RIN 3235-A180 “Executive Compensation and Related Person Disclosure,” available at <https://www.sec.gov/rules/final/2006/33-8732a.pdf>).

securities regulators, should be treated any differently by Energy Safety. Energy Safety's definition of Total Direct Compensation correctly excludes retirement benefits. Because a SERP is retirement benefit, and not the "indirect" nor "ancillary" compensation anticipated by AB 1054, Energy Safety should not require additional reporting on SERP benefits in Section 6 of the Draft Guidelines.

IV. Conclusion

SDG&E requests that Energy Safety take these recommendations into account in its Final Guidelines for 2022 Executive Compensation Plans.

Respectfully submitted,

/s/ Laura M. Fulton

Attorney for
San Diego Gas and Electric Company