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Caroline Thomas Jacobs, Director
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Via Electronic Filing
Docket: 2022-SCs

SUBJECT: Reply Comments of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company on Draft 2022 Safety Certification Guidelines

Dear Director Thomas Jacobs,

Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) (collectively, Joint Utilities) respectfully submit the following reply comments on the Office of Energy Infrastructure Safety's (Energy Safety) Draft 2022 Safety Certification Guidelines (Draft Guidelines) in response to comments submitted on August 8, 2022 by The Public Advocates Office (Cal Advocates).

INTRODUCTION

Joint Utilities support Energy Safety's Draft Guidelines, which are consistent with the statutory requirements set forth in California Public Utilities Code (PUC) Section 8389(e). The Joint Utilities' reply comments focus on Cal Advocates' proposals encouraging Energy Safety to expand the "good standing" safety certification requirement beyond what is required under the statute. Cal Advocates cites Section 8389(2)(e) in support of its proposal that Energy Safety require additional showings and reporting to meet the "good standing" requirement and for the proposition that "the safety certification process must consider whether each utility is implementing the findings of the most recent safety culture assessment."¹ On the contrary, under the plain language of Section 8389(2)(e), if an electric corporation agrees to implement the findings of its most recent safety culture assessment, that satisfies the "good standing" requirement. The statute expressly states

¹ Cal Advocates Opening Comments, p. 2.

that the requirement “can be satisfied by the electric corporation having agreed to implement the findings of its most recent safety culture assessment.”²

Thus, the statute makes clear that if an electric corporation agrees to implement the findings from its most recent safety culture assessment (SCA), that electric corporation has met the “good standing” requirement for its safety certification and no proof of implementation or other showing is required. The proper scope of the “good standing” requirement was already extensively addressed by each of the Joint Utilities, Cal Advocates, and other stakeholders in the Draft 2021 Safety Certification Guidance comment process, and Energy Safety’s final guidance confirmed that the electrical corporations can meet the good standing requirement through an agreement to implement the recommendations of the most recent safety culture assessment.³

CAL ADVOCATES’ PROPOSED CHANGES TO THE “GOOD STANDING” REQUIREMENT ARE INCONSISTENT WITH THE PLAIN LANGUAGE OF PUC SECTION 8389(E)(2)

In its Opening Comments on the Draft Guidelines, Cal Advocates asserts that “the safety certification process must consider whether each utility is implementing the findings of its most recent safety culture assessment.”⁴ Cal Advocates also argues that “Energy Safety should direct each utility that applies for a safety certification in 2022 to file a specific, measurable, achievable, relevant, and timely plan regarding how and when it intends to address the findings of its most recent safety culture assessment. The plan should list actions, identify the person(s) responsible, identify output and outcome metrics, and include intermediate milestones and deadlines. The utility should submit this implementation plan within 30 days of the publication of the safety culture assessment or as part of its application for a safety certification, whichever is sooner.”⁵ Cal Advocates asserts that additional reporting requirements should be required “demonstrating [a utility’s] progress on its implementation plan.”⁶

Cal Advocates’ attempts to impose the above additional requirements to the “good standing” criteria for safety certification misconstrue the plain language of Section 8389(e)(2). The statute clearly provides that “good standing... can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable.” The statute’s plain language thus contemplates only an agreement from the electrical corporation to implement the findings of its most recent SCA as one way to meet the “good standing” requirement; the implementation of those

² “The Director of the Office of Infrastructure Safety shall issue a safety certification to an electrical corporation if the electrical corporation provides documentation of the following: . . . 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.” PUC Section 8389(e)(2).

³ Energy Safety’s Final 2021 Safety Certification Guidance (July 26, 2021) at 4.

⁴ Cal Advocates Opening Comments, p. 2.

⁵ Cal Advocates Opening Comments, p. 3.

⁶ Cal Advocates Opening Comments, p. 3.

recommendations is outside the safety certification process and can be addressed via alternative means.

In fact, the Legislature specifically provided a method for Energy Safety and the Commission to monitor the electrical corporations' implementation of the SCA recommendations. Pursuant to Public Utilities Code §8389(e)(7), the utilities must detail "the implementation of...[the] recommendations of the most recent safety culture assessment" in their Quarterly Notification Letters.⁷ The statute further provides Energy Safety the ability to "perform an audit of the issue of concern" if it "doubt[s] the veracity" of the statements in the quarterly reporting.⁸ Further, as seen in the ongoing SCA, the annual SCA process provides an additional venue by which Energy Safety may obtain information and measure the progress of the utilities' implementation of prior SCA recommendations. Given these forums, Cal Advocates and other stakeholders already have the ability to participate in the SCA process and monitor progress outside of the safety certification process.

The correct reading of Section 8389(e)(2) is that it is specifically focused on obtaining an electrical corporation's agreement to implement its most recent safety culture assessment as one way to meet the "good standing" requirement, leaving implementation to other means. The Legislature made this clear with the use of the term "can be satisfied," rather than a more permissive or discretionary term. Contrary to Cal Advocates' claim, once an electrical corporation has documented the agreement, there is no "flexibility" under the statutes to determine good standing.⁹ Thus, proof of implementation and other additional good standing requirements proposed by Cal Advocates should be rejected. While the "can be" statutory language provides for alternative means of meeting the "good standing" requirement, it does not permit the imposition of additional requirements if the electrical corporation agrees to implement the findings of its latest SCA.

The legislative history of AB 1054 also contradicts Cal Advocates' premise that actual implementation of the SCA recommendations must be demonstrated to meet the "good standing" requirement for safety certification. As initially proposed, the language would have required "substantial compliance... with the findings of [an electrical corporation's] most recent safety culture assessment." This language was explicitly rejected; instead, the final version of the statute stopped at requiring an electrical corporation's agreement to implement its most recent safety culture assessment.¹⁰ Substantial compliance is akin to proof of implementation and neither is required to demonstrate "good standing" as determined by the State Legislature.

⁷ Public Utilities Code §8389(e)(7).

⁸ *Id.*

⁹ Cal Advocates Opening Comments, p. 5.

¹⁰ Draft of AB 1054 at 86 (Feb. 21, 2019) (striking out this language); see also Proposed Amendments to AB 1054 at 44 (June 27, 2019) (replacing this language with the "agreed to implement" language); Pub. Util. Code § 8389(e)(2); 2019 Cal. Legis. Serv. Ch. 79 (A.B. 1054) § 1(a)(4).

CAL ADVOCATES' ARGUMENT THAT IT IS BEING DENIED MEANINGFUL OPPORTUNITY TO PROVIDE INPUT ON THE ELEMENTS OF THE SAFETY CERTIFICATION IS WITHOUT MERIT

Joint Utilities disagree with Cal Advocates that the draft safety certification guidelines proposed by Energy Safety undercut “the purpose of the public comments process, which is to allow stakeholders a meaningful opportunity to provide input.”¹¹ This statement does not reflect the fact that stakeholders are allowed to comment on the individual elements that comprise the safety certification application, including through the SCA, Wildfire Mitigation Plan (WMP), and Executive Compensation proceedings. It is through these individual proceedings that stakeholders both gain significant insight and have the ability to influence the utilities’ wildfire mitigation and safety efforts. Indeed, Cal Advocates is a frequent participant in each of these proceedings, and its feedback has been incorporated into Energy Safety’s decisions.¹²

The safety certification application is the culmination of that process, whereby each electrical corporation documents that it has satisfied the required elements for a safety certification for the year. Cal Advocates has had multiple opportunities to comment on both the guidance and submissions for each of these elements. The safety certification application is not an opportunity for stakeholders to relitigate or second guess the actions of Energy Safety or argue for changes to outcomes that are already in place.

Furthermore, each utility also provides quarterly reports on the progress of many of the elements that form the foundation of the safety certificate through its respective Quarterly Initiative Updates (QIU) and Quarterly Notification letters so that the information being provided in the safety certification application has already been made public. Additional public comment is also permitted on each utility’s QIU, further refuting Cal Advocates’ argument that it is being denied “meaningful opportunity to provide input.”¹³

Energy Safety should also reject Cal Advocates’ argument that PG&E’s application for a safety certification be delayed because a decision will not have been issued on PG&E’s WMP by the safety certification application deadline.¹⁴ Cal Advocates already commented on both PG&E’s initial WMP filing, as well as its revised WMP filing, and will have the opportunity to provide comment on the draft decision Energy Safety publishes on PG&E’s WMP. Energy Safety is scheduled to publish its decision on PG&E’s WMP prior to making its decision on any future application for safety certification by PG&E. As a result, Energy Safety will be able to take into account any comments Cal Advocates files on the draft decision on PG&E’s WMP when making a determination on PG&E’s

¹¹ Cal Advocates Opening Comments, p. 4.

¹² For example, in its Final Decision on Southern California Edison Company’s WMP 2022 Update, Energy Safety noted that it evaluated stakeholder comments, concurred with and, in some instances, incorporated stakeholder input on SCE’s 2022 Update, including from Cal Advocates (*see pp. 12-14*). Further, Energy Safety noted that, “...Energy Safety’s review benefited from the discovery materials generated by data requests submitted to SCE by the stakeholders named above, in particular Cal Advocates and MGRA” (*see p. 14*). Similar language was included in SDG&E’s Final Decision.

¹³ Cal Advocates Opening Comments, p. 4.

¹⁴ Cal Advocates Opening Comments, p. 5.

safety certification application. Therefore, Cal Advocates does in fact have multiple, meaningful opportunities to provide input throughout the WMP process.

Given the importance of the safety certification process, Joint Utilities see value in standardizing the safety certification timeline to provide certainty to the process and to align the schedules of the utilities.

CONCLUSION

Joint Utilities appreciate the opportunity to submit these reply comments, and respectfully request that Energy Safety retain the current Draft Guidelines without modification. If you have any questions, or require additional information, please contact me at michael.backstrom@sce.com.

Sincerely,

//s//

Michael A. Backstrom
VP Regulatory Affairs
Southern California Edison