

October 5, 2022

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

Re: PG&E Comments on Draft 2023 Executive Compensation Structure Submission Guidelines (Docket 2023-EC)

Dear Director Thomas Jacobs:

Pacific Gas and Electric Company (“PG&E”) respectfully submits the following comments on the Office of Energy Infrastructure Safety’s (“OEIS”) Draft 2023 Executive Compensation Guidelines (the “Draft Guidelines”). PG&E’s executive compensation structure is an important component of its multifaceted commitment to safety and operational excellence, and PG&E appreciates the opportunity to comment prior to OEIS’s issuance of final guidelines.

PG&E offers only two comments below, one substantive and one procedural. PG&E thanks OEIS for its consideration.

**1. SERP Contributions Should Be Removed From The Definition Of “Indirect Or Ancillary Compensation,” And Their Reporting Should Not Be Required**

The Draft Guidelines define “indirect or ancillary compensation” to include contributions to supplemental executive retirement plans (“SERPs”), and would require electrical corporations to report SERP contributions in their annual submissions to OEIS.<sup>1</sup> PG&E urges OEIS to reconsider this.

Assembly Bill (“AB”) 1054 does not reach retirement plans, supplemental or otherwise. The statute seeks to ensure that executive compensation structures properly incentivize safety and financial stability, which are things executive officers can influence only prior to retirement. The statute thus focuses on executive officers’ current compensation, not compensation they can enjoy only once they have left the company. Presumably because of the statute’s focus, OEIS correctly excludes SERP contributions when assessing whether the statute’s “primary portion” and “significant portion” requirements are satisfied.<sup>2</sup>

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<sup>1</sup> See Draft Guidelines at A41, A51.

<sup>2</sup> The Draft Guidelines provide that the “primary portion” and “significant portion” requirements shall be assessed by reference to “total direct compensation,” and define “Total Direct Compensation” to exclude “Indirect or Ancillary Compensation.” (*Id.* at A36-37, A53.) Because Energy Safety proposes to define

Because SERP contributions are not relevant to the “primary portion” or “significant portion” requirement, the only remaining question is whether they are relevant to the requirement of “minimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest in the electrical corporation.”<sup>3</sup> Although the Draft Guidelines appear to conclude that SERP contributions are relevant to this issue, such contributions are not “indirect or ancillary compensation,” and in any event, are “aligned with shareholder and taxpayer interest” such that they have no bearing on compliance with the “minimization” requirement.

The phrase “indirect or ancillary compensation” connotes items that are commonly thought of as perquisites. This is clear from comparing (i) the Draft Guidelines’ illustrative list of “indirect or ancillary compensation,” which includes “health club, country club or other memberships, company cars, drivers to and from work, first class travel, the use of company airplanes for personal travel, financial planning services, security services, coverage of relocation costs, [and] home purchase/sale assistance”;<sup>4</sup> and (ii) the Securities and Exchange Commission’s (“SEC”) illustrative list of “perquisites,” which includes the same or similar items.<sup>5</sup> The phrase “indirect or ancillary compensation” does not, as the Draft Guidelines suggest, connote any and all kinds of compensation that happen to be “unique to executives”;<sup>6</sup> the statutory words “indirect” and “ancillary” connote the nature of the compensation—whether it constitutes a perquisite—not the breadth of the employee group that is eligible to receive it.

The federal securities laws’ proxy disclosure rules underscore that SERP contributions are not perquisites and thus are not “indirect or ancillary compensation” for AB 1054 purposes. The proxy disclosure rules distinguish SERP benefits from perquisites, requiring the reporting of SERP benefits in a column entitled “Change in Pension Value and Nonqualified Deferred

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“Indirect and Ancillary Compensation” to include SERP contributions, the effect of these provisions is to exclude SERP contributions from the “primary portion” and “significant portion” calculations. Though PG&E does not agree that SERP contributions belong in the definition of “Indirect and Ancillary Compensation,” it agrees with Energy Safety that SERP contributions should be excluded from the “primary portion” and “significant portion” calculations.

<sup>3</sup> Pub. Util. Code § 8389(e)(6)(A)(iv).

<sup>4</sup> Draft Guidelines at A51.

<sup>5</sup> See SEC RIN 3235-A180, *Executive Compensation and Related Person Disclosure* (“[E]xamples 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.”), available at <https://www.sec.gov/rules/final/2006/33-8732a.pdf>.

<sup>6</sup> Draft Guidelines at A50; see also *id.* at 51 (“Indirect or ancillary compensation are special entitlement programs made available to all executives or a select group of executives.”).

Compensation Earnings,”<sup>7</sup> while requiring the reporting of perquisites in a separate column entitled “All Other Compensation.”<sup>8</sup>

Even if, moreover, SERP contributions could be considered “indirect or ancillary compensation,” they are aligned with shareholder and taxpayer interests and thus have no relevance to the “minimization” requirement. SERPs spring in part from the fact that the tax laws impose inflexible dollar limits on contributions to certain types of retirement plans, including limits based on the amount of the employee’s compensation.<sup>9</sup> This is despite the fact that standard financial planning guidance is that retirees should expect annually to spend not a fixed dollar amount in retirement, but a *percentage* of their “annual income while . . . still working.”<sup>10</sup> Thus, without a supplemental plan, executive officers, who tend to be more highly paid than other employees, would suffer a comparative disadvantage in retirement. A SERP mitigates this financial penalty, and therefore is important to recruiting and retaining the talent that is necessary to lead an electrical corporation in its mission of delivering safe, reliable, affordable, and clean energy to Californians. Because a SERP is inherently aligned with shareholder and taxpayer interests, SERP contributions would have no relevance to the “minimization” requirement even if they could be considered to be “indirect or ancillary compensation.”

Finally, even if the proper test for “indirect or ancillary compensation” could be whether the compensation is “unique to executives,”<sup>11</sup> including SERP benefits in the definition would not be in keeping with the spirit of that test. As explained, the point of a SERP is not to treat executive officers *better* than other employees, but to ensure that, when it comes to taxes, they are not treated *worse*. A SERP thus seeks to foster equality of tax treatment, not special treatment.

For these reasons, PG&E urges OEIS to exclude SERPs from the definition of “indirect or ancillary compensation,” and not to require the reporting of SERP contributions, consistent with other retirement benefits.

## 2. Timing Of OEIS Guidance

As OEIS knows, designing an executive compensation program is a lengthy and complex annual process involving, among other things, consulting with management in various lines of

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<sup>7</sup> 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 benefit plans and *supplemental executive retirement plans*, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans.”) (emphasis added).

<sup>8</sup> *Id.* § 229.402(c)(1) at 402(c)(2)(ix)(A).

<sup>9</sup> See 26 U.S.C. § 415.

<sup>10</sup> *E.g.*, Fidelity Brokerage Services, LLC, *How Much Will You Spend in Retirement?* (Sept. 24, 2021) (“Expect to spend 55%-80% of your current income annually in retirement.”), available at <https://www.fidelity.com/viewpoints/retirement/spending-in-retirement>.

<sup>11</sup> Draft Guidelines at A50.

business, gathering input from outside consultants, evaluating performance results from the prior performance period, and developing appropriate metrics and metric targets in a dynamic and multifaceted business environment. The process requires many months of work prior to finalizing program features (which at PG&E typically occurs in February). The Draft Guidelines do not set forth a timeline for issuing final guidelines, for electrical corporations to make their submissions, or for OEIS to conduct its review. Whatever specific schedule OEIS sets, PG&E urges OEIS to bear in mind, as OEIS always has in the past, that sudden changes to guidance have the potential to be disruptive and to undercut an orderly process. PG&E believes that significant additional requirements contained in OEIS guidance, if any, are best presented and commented on in one year, but not implemented until the following year (*e.g.*, any significant additions to the requirements in the existing Draft Guidelines for 2023 should apply no earlier than 2024).

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PG&E thanks OEIS for its consideration of the foregoing.

Sincerely,

/s/

Lisa Laanisto  
Director, Compensation  
Pacific Gas and Electric Company