The Public ADVOCATES OFFICE

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VIA ELECTRONIC FILING

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Subject: **Comments of the Public Advocates Office on the Draft 2022 Executive Compensation Guidelines**
Docket #: 2022-EC

Dear Director Thomas Jacobs,

The Public Advocate's Office at the California Public Utilities Commission ("Cal Advocates") submits the following comments on the *Draft 2022 Executive Compensation Guidelines* ("Draft Exec Comp Guidelines"). We respectfully urge the Office of Energy Infrastructure Safety ("Energy Safety") to adopt the recommendations discussed herein.

INTRODUCTION

On December 2, 2021, Energy Safety issued its Draft Exec Comp Guidelines. The Draft Exec Comp Guidelines outline the process by which Energy Safety proposes to review and approve utility executive compensation plans for 2022.

Cal Advocates largely supports the Draft Exec Comp Guidelines, which are significantly more detailed than the 2021 guidelines and should result in more consistent filings across the utilities.

Cal Advocates makes the following comments regarding Energy Safety's Draft Exec Comp Guidelines:

A. Cal Advocates supports changes to the Draft Exec Comp Guidelines, which will result in more consistency across utilities and more transparent metrics.

B. Energy Safety should require executive compensation plan submissions to include dollar compensation figures when the utility has already publicly reported those figures elsewhere.

C. Energy Safety should clarify the treatment of gas pipeline safety metrics and compensation for executives at dual commodity utilities.

D. Energy Safety should modify the schedule for future executive compensation plan filings to better align with the calendar year.

RECOMMENDATIONS

A. The Draft Guidelines for 2022 make positive changes over the 2021 guidelines.

Cal Advocates appreciates the positive changes made by Energy Safety to the Draft Exec Comp Guidelines. The Draft Exec Comp Guidelines improve standardization across utilities, which will improve the efficiency of the review process. The Draft Exec Comp Guidelines also require utilities to provide additional data, which serves as important context and may reduce the need to perform some discovery in the future.

In particular, Cal Advocates supports the following requirements included in the Draft Exec Comp Guidelines:

- Sections 3d and 4d require utilities to provide transparent metric calculations for Short Term Incentive Programs (STIP) and Long Term Incentive Programs (LTIP) respectively, "such that that if Energy Safety requested the source data/inputs, it would be able to derive the reported results."[1]
- Sections 3f and 4e require five years of historical performance data for STIP and LTIP metrics respectively.[2]

[1] Draft 2022 Executive Compensation Guidelines, pp. 26 and 37-38.

[2] Draft 2022 Executive Compensation Guidelines, pp. 28 and 39.

- Section 3e requires utilities to report significant changes to STIP metrics from the previous year.[3]
- Section 3g requires utilities to report any decreases in 2021 STIP compensation due to failure to meet metric targets, or increases "beyond the levels warranted by the corporation's actual performance."[4]
- Section 4f requires utilities to report any decreases in 2021 LTIP compensation due to failure to meet metric targets, or increases "beyond the levels warranted by the corporation's actual performance."[5]

Cal Advocates appreciates Energy Safety's efforts to make the executive compensation submissions meaningful and comparable. Including historical data and highlighting changes from the previous year will provide valuable context for stakeholders' review of the submissions.

B. Energy Safety should require executive compensation plan submissions to include dollar compensation figures, when the utility has already publicly reported those figures elsewhere.

Energy Safety should require that the utilities provide executive compensation figures in dollars, in addition to the percentages already included in utility executive compensation filings. This requirement will make the incentive compensation plans more meaningful and comprehensible than providing only percentages. Without seeing dollar figures, it is impossible to ascertain whether a utility's incentive compensation plan is reasonable.

Utilities previously opposed providing executive compensation figures in dollars on claims relating to privacy.[6] However, utilities are already required to provide dollar compensation figures for executives as a part of their annual proxy filings with the Securities and Exchange Commission.[7] In addition, large electric and gas utilities are already required to file annual reports detailing the compensation of all executive officers and "the names, titles and duties of all employees … who received compensation

[3] Draft 2022 Executive Compensation Guidelines, p. 27.

[4] Draft 2022 Executive Compensation Guidelines, p. 29.

[5] Draft 2022 Executive Compensation Guidelines, p. 40.

[6] Public workshop on executive compensation guidelines, hosted by Energy Safety, September 29, 2021.

[7] For example, see pages 37-88 of PG&E's 2021 Proxy Statement, available at https://investor.pgecorp.com/financials/sec-filings/sec-filings-details/default.aspx?FilingId=14861731.

including a base salary at the rate of $125,000 or more per annum" in the previous year.[8] [9] To the extent that this information is already required to be publicly available, there is no harm to the utilities or the utilities' managers, and Energy Safety should require them to do so.

C. Energy Safety should clarify the treatment of gas pipeline safety metrics and compensation for executives at dual commodity utilities.

Because they are dual commodity utilities, the executive compensation plans for Pacific Gas and Electric Company (PG&E) and for San Diego Gas & Electric Company (SDG&E) each include metrics related to gas pipeline safety, and cover compensation for executives who are primarily responsible for gas pipeline safety. While the covered executives and compensation metrics relating to wildfire safety are clearly within Energy Safety's remit, the regulatory oversight regime for gas pipeline safety is less clear.[10]

Energy Safety's Draft Exec Comp Guidelines may create ambiguity as to which utility executives are covered. The Draft Exec Comp Guidelines state that "Energy Safety considers divisions or units responsible for electrical operations or wildfire-related functions principal business units, divisions or functions of the public utility."[11] This statement could be interpreted as excluding executives who oversee gas operations. However, the applicable statute requires an executive incentive compensation structure to be established for "all executive officers."[12] Cal Advocates recommends that Energy Safety clarify that the executive compensation submissions must include all executive officers of any utility that seeks a safety certification.

Energy Safety should clarify whether it intends to review gas safety metrics, and whether it considers executives with primary responsibility for gas pipeline safety to be "executive officers" covered under Public Utilities Code § 451.5(c). If Energy Safety

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[8] California Public Utilities Commission, General Order 77-M, available at https://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/66148.htm. Cal Advocates notes that per General Order 77-M, for utilities with gross annual operating revenues of $1 billion or more, names of Executive Officers and employees subject to reporting requirements may be disclosed only in conditional access reports not disclosed publicly, or on the condition that the utility also files a report for public inspection in which the individual names are redacted.

[9] Since *actual* dollar compensation amounts are available after the fact, there should be no privacy objection to submitting *planned* compensation amounts with their annual executive compensation filings.

[10] For example, the Dig Safe Board is moving to the Office of Energy Infrastructure Safety on January 1, 2022. https://dig.fire.ca.gov/media/nfdnazux/2020-results-report.pdf.

[11] Energy Safety, Draft Guidelines, p. 13.

[12] Public Utilities Code § 8389(c)(4), 451.5(c).

will not review the areas of utility executive compensation plans relating to gas pipeline safety, it should work with staff at the California Public Utilities Commission to ensure that these aspects of executive compensation plans receive appropriate oversight.[13]

D. Energy Safety should modify the schedule for future executive compensation plan filings to better align with the calendar year.

In 2021, the executive compensation plans for Southern California Edison Company (SCE), SDG&E, and Bear Valley Electric Service (BVES) were approved in August, while PG&E's plan was approved in October. The Public Utilities Code requires that approved executive compensation plans be "structured to promote safety as a priority and to ensure public safety and utility financial stability;"[14] and that "the primary portion of the executive officers' compensation [is] based on achievement of objective performance metrics."[15]

In comments on PG&E's request for a 2021 safety certification, Cal Advocates recommended that "Energy Safety should require utilities to file their 2023 executive compensation structures by mid-2022, with the intent to approve or deny such structures prior to the end of 2022."[16] Lacking certainty as to the final metrics until so late in the year dilutes the incentive in the approved safety metrics, resulting in less effective incentives for executive officers to prioritize safety.

Energy Safety should move the schedule for executive compensation plan approval forward. Alternatively, Energy Safety should consider facilitating stakeholder discussions to develop a consensus schedule. Aligning executive compensation plan approvals with the calendar year will result in better incentives and may promote safer utility service.

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[13] The California Public Utilities Commission has clear authority to regulate pipeline safety. See Public Utilities Code § 451, requiring all public utilities to "furnish and maintain such adequate, efficient, just, and reasonable service;" and Pub. Util. Code §955 which states that "the Commission is the state authority responsible for regulating and enforcing intrastate gas pipeline transportation and pipeline facilities."

[14] Public Utilities Code § 8389(e)(4).

[15] Public Utilities Code § 8389(e)(6)(A)(i).

[16] *Comments of the Public Advocates Office on the Safety Certification Request of PG&E*, December 13, 2021, Case No. 2021-SCs, p. 10.

CONCLUSION

Cal Advocates respectfully requests that Energy Safety adopt the recommendations discussed herein. For any questions relating to these comments, please contact Henry Burton (Henry.Burton@cpuc.ca.gov).

Sincerely,

/s/ *CAROLYN CHEN*

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