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VIA ELECTRONIC MAIL

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**Subject: Comments of the Public Advocates Office on the Proposed
Independent Evaluator List for 2022
Docket #: 2022-IE**

I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the guidance of the Office of Energy Infrastructure Safety (Energy Safety),¹ the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) respectfully submits these comments on the Proposed Independent Evaluator (IE) List for Public Comment (Proposed IE List).

Cal Advocates makes the following recommendations and comments:

- The final IE List should identify clear and specific ethical rules.
- Energy Safety should evaluate whether three IE teams will be enough to ensure a thorough assessment of each utility's performance.

II. BACKGROUND

Public Utilities Code Section 8386.3(c)(2)(A) requires Energy Safety, in consultation with the Office of the State Fire Marshal of the Department of Forestry and Fire

¹ Office of Energy Infrastructure Safety, *Proposed Independent Evaluator List for Public Comment*, December 27, 2022, p. 3.

Protection (CAL FIRE), to make available by March 1 annually a list of qualified IEs with experience in assessing the safe operation of electrical infrastructure. Each utility shall engage an IE from this list to review and assess the utility's compliance with its wildfire mitigation plan (WMP).²

Energy Safety recently solicited applications to be included on the Electrical Corporation Independent Evaluator List for 2022, through Request for Qualifications (RFQ) No. 21-89482.³ The RFQ required bidders to disclose potential conflicts of interest.⁴

On December 27, 2021, Energy Safety and CAL FIRE served the Proposed Independent Evaluator List for Public Comment (hereinafter, the Proposed IE List). Energy Safety permits stakeholders to submit comments on the Proposed IE List by January 10, 2022 and will release the final list of independent evaluators by February 28, 2022.⁵

III. DISCUSSION

A. The final IE List should identify clear and specific ethical rules.

IE reports are a key component of Energy Safety's WMP compliance process, outlined in Resolution WSD-012.⁶ While Energy Safety's RFQ appropriately includes broad prohibitions on conflicts of interest,⁷ the language can benefit from further clarity and specificity.⁸ The RFQ requires that for an IE to perform an effective assessment of a utility's compliance with its WMP, the IE must be fair and impartial.⁹ To put this into

² Public Utilities Code Section 8386.3(c)(2)(B)(i).

³ Request for Qualifications, Independent Evaluator List, RFQ No. 21-89482, posted November 5, 2021 with a submission deadline of December 7, 2021 (RFQ No. 21-89482).

⁴ RFQ 21-89482 Conflict of Interest Declaration (Attachment D) requires IE applicants to disclose work for utilities in the past three years. Section 2.2 of RFQ No. 21-89482 defines "Conflict of Interest" to include, "Any financial interest or relationship that may impair the ability of the individual or firm to deliver fair unbiased work for the State."

⁵ Energy Safety, *Proposed Independent Evaluator List for Public Comment*, December 27, 2022, p. 3.

⁶ California Public Utilities Commission, Resolution WSD-012, November 19, 2020, p. 6.

⁷ RFQ 21-89482, Section 2.4.

⁸ For instance, the RFQ stipulates that "During the duration of any contract between a qualified IE and an electrical corporation, the IE and any Team Member shall not engage in any activity that would constitute a Conflict of Interest."

⁹ Request for Qualifications, Independent Evaluator List, RFQ No. 21-89482, p. 3.

practice, the final IE List should include additional clear and specific ethical restrictions. Among these, Cal Advocates recommends that:

- An IE should not have any existing contracts with a utility during the period it is serving as an IE for that utility.
- Firms that have advised on developing WMPs within the 2020-2022 WMP cycle should be prohibited from serving as an IE for the same utility's WMP. Alternatively, the utility must demonstrate that there are no other feasible alternatives to hiring the IE and strong internal firewalls¹⁰ are in place to keep the two types of work separate.
- After serving as an IE for a particular utility, firms should not perform WMP-related work for the same utility for three years.

By adopting these requirements in the final IE List for 2022, Energy Safety can provide concrete and actionable ethical guidance. Transparent rules for IEs are needed to ensure no such conflicts of interest affect the validity and integrity of the compliance process. The Commission has adopted similar rules for independent evaluators in the energy efficiency sector.¹¹

In short, Energy Safety should include guidelines within the final IE List to ensure that IEs' past or future work for a utility does not inappropriately influence their assessments as IE.

- 1. Ethical restrictions concerning serving as an IE for a utility after past and current work for the same utility.**

Energy Safety should not allow utilities to retain a firm as an IE if the firm has recently advised the same utility on the development of its WMP. Some of the proposed IEs have recently performed work related to utilities' WMPs.¹²

¹⁰ In this context, "firewalls" refers to partitions of a single firm in order to keep separate the work of internal teams working on different matters within the same firm, from each other, for the purpose of preventing undue influence of one team's work on another's.

¹¹ See Appendix A, *Comments of the Public Advocates Office on the Proposed Independent Evaluator List*, February 4, 2021, pp. 3-4.

¹² For example, Guidehouse, Inc. (Navigant) assisted Bear Valley Electric Service and Liberty Utilities in preparing their 2020 WMPs. See Bear Valley Electric Service Wildfire Mitigation Plan, filed February 7, 2020, cover page; Liberty Utilities (CalPeco Electric) LLC Revised 2020 Wildfire Mitigation Plan, filed February 28, 2020, Attachment "Liberty CalPeco's Fire Prevention Plan for Overhead Electric Facilities," p. 1.

While Energy Safety has appropriately stated that it may restrict an IE from working for particular utilities to prevent conflicts of interest,¹³ its Proposed IE List does not yet include any such individual restrictions.¹⁴ These restrictions should be clearly stated, because a firm that has recently advised a utility on its WMP may have financial relationships with the utility and should not be asked, in the capacity of an IE, to evaluate its own work.

Energy Safety should revise the Proposed IE List to state the ethical restrictions placed upon each IE and individual IE team members.¹⁵ Listing the restrictions placed on each proposed IE would serve the public interest by providing transparency and ensuring that each utility is scrutinized by an impartial evaluator.

2. Ethical restrictions concerning future WMP-related work, after serving as an IE for the same utility.

RFQ 21-89482 contains language that is intended to prohibit IEs from reaping current or future benefit by using information gained while serving as an IE for a utility.¹⁶ However, neither the RFQ nor the Proposed IE List explicitly restricts IEs from contracting with a utility to perform WMP-related work after they serve as an IE for that utility. Without an explicit restriction, ethically ambiguous situations could arise that may not be indicated by an IE's past work with a utility (which is discussed in the previous section of these comments).

Accordingly, Energy Safety should revise the Proposed IE List to state that utilities may not contract for WMP-related work with any person or firm who has served as an IE for the same utility in the previous three years.¹⁷ The RFQ requires IE applicants to disclose

¹³ Request for Qualifications, Independent Evaluator List, RFQ No. 21-89482, p. 4. Section 2.3 of the RFQ states, "The WSD may conditionally include an independent evaluator on the list with specific restrictions excluding a particular electrical corporation if there is a Conflict of Interest issue with only that electrical corporation but the independent evaluator is otherwise qualified."

¹⁴ See generally Office of Energy Infrastructure Safety, *Proposed Independent Evaluator List for Public Comment*, December 27, 2022.

¹⁵ Energy Safety should be specific by identifying restrictions on individual IE team members or subcontractors if a conflict of interest only affects those individuals.

¹⁶ Request for Qualifications, Independent Evaluator List, RFQ No. 21-89482, p. 5. The RFQ states that an IE must "Avoid any activity that may provide an opportunity to benefit from having access to confidential information related to this work and/or use information gained in the course of this project to provide an unfair competitive advantage to a Team Member."

¹⁷ This restriction should apply to anyone serving as a WMP Independent Evaluator, including team members, partners, affiliates, and subcontractors.

“Prior contracts during the last three years” with a utility or affiliate.¹⁸ Cal Advocates recommends that Energy Safety restrict IEs from performing WMP-related work for a utility for the same period *after* serving as an IE for that utility. Three years is a reasonable period of time because it matches the duration of a WMP cycle. Therefore, work that occurs at least three years in the future will be part of a new comprehensive WMP and will not be directly driven by an IE’s current recommendations.

B. Energy Safety should evaluate whether three IE teams will be enough to ensure a thorough assessment of each utility’s performance.

Energy Safety should carefully consider whether the three IE teams currently included on the Proposed IE List have sufficient capacity to handle the requisite work for all electrical corporations.¹⁹ Cal Advocates recognizes that Energy Safety is trying to address this issue by extending the application period for interested companies to January 12, 2022.²⁰

The importance of high-quality work by the IEs cannot be understated; having an adequate number of qualified IE teams is vital to ensure that Energy Safety obtains an accurate and thorough description of each utility’s performance. The IEs play a crucial role in providing input as part of Energy Safety’s compliance process.

Having only three eligible IE teams for the utilities to choose from could result in a rushed analysis, rather than a complete and rigorous review of each utility’s performance. There are fewer IEs on the Proposed IE List than in 2021. All six of the 2021 IE reports, conducted by six different IEs,²¹ noted that the IEs did not have enough time to properly evaluate the utilities in 2021. Furthermore, the small number of approved IE teams ensures that some or all IEs will work for multiple utilities, which further limits the time available to review each utility.

¹⁸ RFQ 21-89482, Conflict of Interest Declaration (Attachment D).

¹⁹ Office of Energy Infrastructure Safety, *Proposed Independent Evaluator List for Public Comment*, December 27, 2022, p. 2.

²⁰ Office of Energy Infrastructure Safety, *Proposed Independent Evaluator List for Public Comment*, December 27, 2022, p. 2:

Due to a limited number of applications received from interested companies to obtain IE list eligibility, RFQ 21-89482 was reposted on December 17, 2021, and will remain open until January 12, 2022. Applications received in response to the reposting will be subject to the same process used to develop this initial proposed list. Any applicants that are deemed qualified will supplement this initial list upon final approval and following public comment.

²¹ Bureau Veritas North America, Inc. and C2 Group, NV5, Guidehouse, 4LEAF, Inc., AerialZeus LLC, and Sargent & Lundy.

If the extended application period does not elicit additional qualified applicants, Energy Safety should evaluate whether the rates paid to IEs are sufficient to attract skilled IE teams. It may be reasonable and prudent to increase the compensation for IE work to ensure it is done properly. While wildfire mitigation plans are costly, the work of the IEs is a minor cost in the context of the WMPs. IE reviews help ensure that utilities properly implement their WMPs and reduce wildfire risk.

IV. CONCLUSION

Cal Advocates respectfully requests that Energy Safety adopt the recommendations discussed herein. Please contact Aaron Louie (Aaron.Louie@cpuc.ca.gov) or Henry Burton (Henry.Burton@cpuc.ca.gov) with any questions relating to these comments.

Sincerely,

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Appendix A

Cal Advocates' Comments on 2021 IE List

Submitted February 4, 2021



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February 4, 2021

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Subject: Comments of the Public Advocates Office on the Proposed Independent Evaluator List

I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the guidance of the Wildfire Safety Division (WSD),¹ the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these comments on the Proposed Independent Evaluator (IE) List for Public Comment.

In these comments, Cal Advocates makes the following recommendations:

- The WSD should revise the Proposed IE List to state the ethical restrictions placed upon each IE.
- The WSD should prevent IEs from contracting with a utility for WMP-related work for a specified period after serving as an IE for that utility.

II. BACKGROUND

Public Utilities Code Section 8386.3(c)(2)(A) requires the WSD, in consultation with the Department of Forestry and Fire Protection (CAL FIRE), to make available by March 1, 2021 a list of qualified IEs with experience in assessing the safe operation of electrical infrastructure. Each utility shall engage an IE from this list to review and assess the utility's compliance with its wildfire mitigation plan (WMP).²

¹ Wildfire Safety Division, *Proposed Independent Evaluator List for Public Comment*, January 7, 2021, p. 3.

² Public Utilities Code Section 8386.3(c)(2)(B)(i).

From October 21, 2020 through November 30, 2020, the WSD solicited applications for the Electrical Corporation Independent Evaluator List through Request for Qualifications (RFQ) No. 20NC0427. The RFQ required bidders to disclose potential conflicts of interest.³

On January 7, 2021, the WSD and CAL FIRE served the Proposed Independent Evaluator List for Public Comment (hereinafter, the Proposed IE List). The WSD permits stakeholders to submit comments on the Proposed IE List by February 4, 2021 and will release the final list of independent evaluators by March 1, 2021.⁴

III. DISCUSSION

A. **The WSD should revise the Proposed IE List to state the ethical restrictions placed upon each IE.**

Independent evaluator reports are a key component of the WSD's WMP compliance process, outlined in Resolution WSD-012.⁵ In order for an IE to perform an effective assessment of a utility's compliance with its WMP, the IE must be fair and impartial.⁶ An IE should not have any existing contracts with a utility during the period it is serving as an IE for that utility, nor should an IE have recently performed WMP-related work that the IE may be required to evaluate as part of its assessment. Transparent restrictions on IEs are needed to ensure no such conflicts of interest affect the validity and integrity of the compliance process.

Several of the proposed IEs have recently performed work related to utilities' WMPs. For example, Guidehouse, Inc. (Navigant) assisted Bear Valley Electric Service and Liberty Utilities in preparing their 2020 WMPs.⁷ ⁸ The WSD has appropriately stated that it may restrict IEs

³ RFQ 20NC0427 Conflict of Interest Declaration (Attachment D) requires IE applicants to disclose work for utilities in the past three years.

⁴ Wildfire Safety Division, *Proposed Independent Evaluator List for Public Comment*, January 7, 2021, p. 3.

⁵ Resolution WSD-012, p. 6.

⁶ Request for Qualifications, Independent Evaluator List, RFQ No. 20NC0427, p. 3. Section 2.2 of the RFQ defines "Conflict of Interest" to include, "Any financial interest or relationship that may impair the ability of the individual or firm to deliver fair unbiased work for the State."

⁷ Bear Valley Electric Service Wildfire Mitigation Plan, filed February 7, 2020, cover page. Liberty Utilities (CalPeco Electric) LLC Revised 2020 Wildfire Mitigation Plan, filed February 28, 2020, Attachment "Liberty CalPeco's Fire Prevention Plan for Overhead Electric Facilities," p. 1.

⁸ Utility responses to data requests from Cal Advocates indicate that several other proposed IEs have performed WMP-related work for utilities within the last two years. NV5, Inc. performed engineering and design, survey, and permitting support for SDG&E. Pride Resources performed project management for SDG&E. Sargent & Lundy Engineers provided engineering, project management, and construction oversight services to Horizon West Transmission, LLC. Jensen Hughes provided fire risk and resilience assessments for Horizon West and Trans Bay Cable.

from working for particular utilities to prevent conflicts of interest;² however, the Proposed IE List does not yet identify any such restrictions placed upon individual IEs.

Transparency and fairness in the WMP compliance process are matters of public concern. Listing the restrictions placed on each proposed IE would serve the public interest by providing transparency and ensuring that each utility is scrutinized by an impartial evaluator. The WSD should be specific by identifying restrictions on individual IE team members or subcontractors, if a conflict of interest only affects those individuals.

The WSD should adopt clear rules to mitigate conflicts of interest. First, the WSD should prohibit utilities from contracting with any IE firm that has worked for the same utility in a WMP-related capacity in the previous two years.¹⁰ The purposes for this cooling off period are to disentangle any previous financial relationships between the IE and the utility and to prevent the type of conflict of interest whereby an IE is asked to evaluate work that the IE helped shape.¹¹ Two years of separation is sufficient for these purposes. This two-year cooling off period after WMP-related work is a stronger but more targeted requirement than disclosure of past utility work in the last three years, as the RFQ appropriately requires.¹² In a somewhat analogous situation, the Commission permanently prohibits firms that evaluate the impact of energy efficiency programs from also designing or implementing energy efficiency programs.¹³

Second, the WSD should specify that utilities may not retain any IE firm that simultaneously maintains a contractual relationship with the same utility in *any* capacity, including for non-WMP work. Non-WMP contract work could include performing routine vegetation management or project management services for capital projects, and such contracts could be significantly more valuable than contracts for IE services. This separation will serve to prevent current financial relationships from influencing IEs' findings.

The Commission has previously dealt with similar issues in the energy efficiency space. When the Commission required energy utilities to retain IEs to oversee energy efficiency program

² Request for Qualifications, Independent Evaluator List, RFQ No. 20NC0427, p. 4. Section 2.3 of the RFQ states, "The WSD may conditionally include an independent evaluator on the list with specific restrictions excluding a particular electrical corporation if there is a Conflict of Interest issue with only that electrical corporation but the independent evaluator is otherwise qualified."

¹⁰ This cooling off period should start when the contract ends or the last invoice is paid, whichever is later. The cooling off period should cover anyone serving as a WMP Independent Evaluator, including partners, affiliates and subcontractors.

¹¹ In comparison, energy efficiency IEs must wait six months to one year after working for a utility on energy efficiency programs before serving as an IE for energy efficiency.

¹² RFQ 20NC0427 Conflict of Interest Declaration (Attachment D) requires IE applicants to disclose work for utilities in the past three years.

¹³ D.05-01-055, pp. 121-126 and Findings of Fact 53-56.

procurement, the Commission stated a need for “arms-length expertise”¹⁴ and the contracting process included broad restrictions on recent, current or future work that could present conflicts of interest.¹⁵

The WSD should revise the Proposed IE List to reflect the ethical restrictions placed upon each IE and individual IE team members.

B. The WSD should prevent IEs from contracting with a utility for WMP-related work for a specified period after serving as an IE for that utility.

The impartiality of an IE’s assessment could also be affected by the prospect of future work with a utility, even if an IE meets all conflict of interest restrictions based on past work. For example, an IE could conceivably give a utility an unjustifiably favorable evaluation in expectation of future contract work with the utility. Alternately, an IE could recommend that the utility create a program or project that the IE is well- positioned to compete for. An IE could also structure an evaluation in a way that would provide the IE an advantage in competing for work suggested or required by the evaluation.

The RFQ contains language intended to prohibit IEs from reaping future benefit by using information gained while serving as an IE for a utility.¹⁶ However, neither the RFQ nor the Proposed IE List explicitly restrict IEs from contracting with a utility to perform WMP-related work after they have served as an IE for that utility. Without an explicit restriction, conflicts of interest could arise that may not be indicated by an accounting of IE’s past work with a utility, as discussed in the previous section of these comments.

The WSD should adopt clear rules to minimize such potential conflicts of interest. The WSD should revise the Proposed IE List to state that utilities may not contract for WMP-related work

¹⁴ D.18-01-004, p. 38.

¹⁵ See, e.g., PG&E’s 2018 Independent Evaluator RFP, available at https://www.pge.com/en_US/for-our-business-partners/energy-efficiency-solicitations/2018-independent-evaluator-rfp.page. See the Specific Conditions, p. 6. Among other things, energy efficiency (EE) IEs are prohibited from bidding on EE programs, having any relationship to firms bidding on EE programs, or consulting for utilities related to EE strategy or programs “in the past six months, current, or future.” PG&E also stated:

If any conflict of interest, or potential conflict of interest arises, IE will disclose it and the nature of the circumstances to PG&E immediately. ... If in doubt, IE shall assume there is a conflict of interest and promptly disclose the nature of the solicitation [in which] IE would like to participate.

¹⁶ Request for Qualifications, Independent Evaluator List, RFQ No. 20NC0427, p. 5. The RFQ states that an IE must “Avoid any activity that may provide an opportunity to benefit from having access to confidential information related to this work and/or use information gained in the course of this project to provide an unfair competitive advantage to a Team Member.”

with any person or firm who has served as an IE for the same utility in the previous three years.¹⁷ The RFQ requires IE applicants to disclose “Prior contracts during the last three years with the Covered Entities or any parent, subsidiary, or affiliate thereof.”¹⁸ Cal Advocates recommends that the WSD restrict IEs from performing WMP-related work for a utility for the same amount of time—three years—after serving as an IE for that utility. Three years is a reasonable period of time, because it matches the duration of a WMP cycle. Therefore, work that occurs at least three years in the future will be part of a new comprehensive WMP and is not directly driven by an IE’s current recommendations.

IV. CONCLUSION

Cal Advocates respectfully requests that the Wildfire Safety Division adopt the recommendations discussed herein. Please contact Alan Wehrman (alan.wehrman@cpuc.ca.gov) or Henry Burton (henry.burton@cpuc.ca.gov) with any questions relating to these comments.

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¹⁷ This restriction should apply to anyone serving as a WMP Independent Evaluator, including team members, partners, affiliates, and subcontractors.

¹⁸ RFQ 20NC0427 Conflict of Interest Declaration (Attachment D).