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**Via Electronic Filing**

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**Subject: Public Advocates Office Comments on the Draft 2022 Change Order Guidelines**

**Docket: 2022-WMPs**

Dear Director Thomas Jacobs,

The Public Advocates Office (Cal Advocates) at the California Public Utilities Commission (CPUC) respectfully submits the following comments on the Draft 2022 Change Order Guidelines (Draft Guidelines). We urge the Office of Energy Infrastructure Safety (Energy Safety) to adopt the recommendations discussed herein.

## **I. INTRODUCTION**

On July 6, 2022, Energy Safety issued *Draft 2022 Change Order Guidelines* and noticed a public meeting to adopt the Draft Guidelines. Pursuant to the notice, stakeholders may file written comments by July 26, 2022. In these comments, Cal Advocates makes the following recommendations, among others:

- A. Energy Safety should revise the criteria for significance in Section 2 of the Draft Guidelines.
- B. Energy Safety should scale the resource allocation criteria in proportion to the size of the electrical corporation.<sup>1</sup>

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<sup>1</sup> Many of the Public Utilities Code requirements relating to wildfires apply to “electrical corporations.” *See e.g.*, Public Utilities Code Section 8386. These comments use the more common terms “utilities” or “IOUs” and the phrase “electrical corporations” interchangeably to refer to the entities that must comply with the wildfire safety provisions of the Public Utilities Code.

- C. Energy Safety should require utilities to file change order requests for qualifying changes that occur after their wildfire mitigation plans (WMPs) are submitted for approval.
- D. Energy Safety should extend the period allowed for stakeholder comment on change order requests.
- E. Energy Safety should set a standard timeline for approval or denial of change order requests.
- F. Energy Safety should reserve the authority to reject major changes and defer them to the next annual WMP submission.
- G. Energy Safety should clarify that it reserves the authority to determine that a utility is not substantially in compliance with its WMP, notwithstanding the change order process.
- H. Energy Safety should emphasize utilities obtaining approval prior to implementing WMP changes.
- I. Energy Safety should publish future change order guidelines as part of its WMP guidelines for the following year.

## II. DISCUSSION

### A. Criteria for a Change Order Request (Section 2)

#### 1. Energy Safety should revise the criteria for significance in Section 2 of the Draft Guidelines.

Section 2 of the Draft Guidelines lists three criteria—A, B, and C—that a change must meet to be considered “significant.” These criteria include the type of mitigation initiative (criterion A), the planned resource allocation (criterion B), and the predicted increase or decrease in risk reduction associated with a proposed change (criterion C).<sup>2</sup> To be considered “significant,” a proposed change currently must meet all three criteria. Energy Safety should modify the standard of a “significant change” to require only two criteria – criterion A and either criterion B or C.

The current standard for “significant change” is inconsistent with the plain meaning of a “significant change.” A WMP budget change of over \$10 million (or a change in spending by more than 10 percent on a single initiative) is significant, whether or not it yields a large change in estimated risk reduction. Likewise, a large change in estimated risk reduction is undoubtedly important, even if the utility can achieve this without a large change in spending. However, under the current standard, such changes would not be considered “significant.”

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<sup>2</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 1.

Next, under the current standard, a change that substantially changes resource allocation, but does not change risk reduction, would not be considered “significant.” Similarly, a change that substantially decreases risk reduction without a commensurate reduction in resource allocation would also not be considered “significant.” Both of these examples would dramatically alter the risk-spend efficiency of a program, and should be considered “significant,” but neither would not require an IOU to submit a change order request under the current proposal.

It is in the public interest that utilities efficiently allocate resources to reduce the maximum wildfire risk. Major changes in *either* resource allocation or risk reduction, therefore, should be considered “significant,” and should be submitted for stakeholder review and approval by Energy Safety. Energy Safety should revise the standard in Section 2 of the Draft Guidelines to state that a change is “significant” if it satisfies criterion A, and *either* B or C.

**2. Energy Safety should scale the resource allocation criteria in proportion to the size of the utility.**

The Draft Guidelines apply the same dollar value to all utilities when determining whether a change is significant. Given the relatively small California customer base and the lower WMP costs of the Small and Multi-Jurisdictional Utilities (SMJUs), setting a uniform threshold at \$10 million may exclude the SMJUs from submitting change order requests. With average forecast 2022 WMP expenditures of only \$55.8 million,<sup>3</sup> SMJUs may not trigger the \$10 million threshold. By comparison, Pacific Gas and Electric Company’s (PG&E’s) planned 2022 WMP expenditure is approximately \$5.9 billion (that is, 106 times the average spending of the SMJUs). The resource allocation criterion fails to take into consideration utility size and the magnitude of its 2022 WMP expenditures.

The current language in the Draft Guidelines states that a change is significant if it results in, “An increase, decrease, and/or reallocation of more than \$10 million that also results in a greater than 10% change in planned expenditures.”<sup>4</sup> Energy Safety should revise this language to say:

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<sup>3</sup> Bear Valley Electric Service Company’s (BVES’s) forecast 2022 WMP expenditures are \$20.4 million per *First Errata to Bear Valley Electric Service’s 2022 Wildfire Mitigation Plan*, June 8, 2022, p.1. Liberty Utilities (CalPeco Electric) LLC’s (Liberty’s) forecast 2022 WMP expenditures are \$55.1 million per its revised 2022 WMP Update, July 15, 2022, p. 22. PacifiCorp dba Pacific Power’s (PacifiCorp’s) forecast 2022 WMP expenditures are \$91.9 million per its revised 2022 WMP Update, July 18, 2022, p. 27. The average forecast 2022 expenditures across the SMJUs are \$55.8 million.

<sup>4</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 1.

An increase, decrease, and/or reallocation of more than 0.2% of total forecast WMP spending for the current year, or a change of at least 10% in planned future expenditures for an individual initiative.

This revised language would apply to all electrical corporations in a fair and proportional manner. Setting the threshold at 0.2% of total WMP spending is consistent with the current \$10 million figure, as applied to the large utilities.<sup>5</sup> For the SMJUs this would result in a WMP spending change threshold of approximately \$110,000.

Additionally, Cal Advocates' proposed language recognizes that a major change in spending on a single initiative is significant, even if it does not reach the \$10 million level. For example, suppose that a utility planned to spend \$10 million on covered conductor installation and then reduced that to \$3 million. This drastic shift in program scale would appropriately trigger a change order using Cal Advocates' proposed language but not under the current language in the Draft Guidelines.

## **B. Requirements for Change Order Requests (Section 3.1)**

### **1. Energy Safety should require utilities to file change order requests for qualifying changes that occur after their WMPs are submitted for approval.**

The Draft Guidelines state that IOUs may submit a change order request "after approval of an electrical corporation's Wildfire Mitigation Plan."<sup>6</sup> The large IOUs submitted their WMPs in February 2022, while the small IOUs submitted WMPs in May. As of the filing of these comments (in late July of 2022), Energy Safety has not yet released final action statements for four of the six IOUs.<sup>7</sup> If one of these six utilities were to make a substantial change to its WMP at this point (or has already done so), it is unclear whether the utility would be required to submit a change order request.

As Cal Advocates stated in previous comments,<sup>8</sup> it is in the public interest for utilities to file change order requests for qualifying changes that occur after the date the WMP has been submitted to Energy Safety for review, rather than after approval. This will prevent a

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<sup>5</sup> For PG&E, 0.2% of total WMP spending in 2022 would be approximately \$12 million.

<sup>6</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 1.

<sup>7</sup> Energy Safety released its final decisions on San Diego Gas & Electric Company's (SDG&E's) 2022 WMP Update and on Southern California Edison Company's (SCE's) 2022 WMP Update on July 5, 2022 and July 20, 2022, respectively.

<sup>8</sup> *The Public Advocates Office's Comments on Draft Resolution WSD-021 and the Office of Energy Infrastructure Safety's Draft Action Statement on Pacific Gas and Electric Company's 2021 Wildfire Mitigation Plan (WMP) Update Pursuant to Public Utilities Code Section 8386*, August 30, 2021, pp. 6-7.

situation where a utility makes a change to its submitted wildfire mitigation strategy, but does not formally inform Energy Safety of those changes until after its WMP has been approved. Such a situation could render the submitted WMP out of date without the knowledge of Energy Safety or stakeholders, detrimentally affecting the transparency and accountability of the WMP process.

Energy Safety should revise the Draft Guidelines to specify that utilities must file change order requests for qualifying changes that occur after the WMP is submitted for approval, rather than after the WMP has been approved. Energy Safety should also include this clarification in future change order guidelines.

### **C. Stakeholder Comments (Section 3.2)**

#### **1. Energy Safety should extend the period allowed for stakeholder comment on change order requests.**

In the Draft Guidelines, Energy Safety's current language states, "Stakeholders may comment on change order requests within 15 days of the date the electrical corporation submits a change order request to Energy Safety's 2022-WMPs docket."<sup>2</sup> A 15-day evaluation period may not be adequate to properly review and provide feedback on substantive changes to WMPs (which could include important changes in program design and priorities). This period also does not allow stakeholders adequate time to perform discovery.

To remedy this concern, Energy Safety should reconsider the proposed time period for stakeholder comments on change order requests. Cal Advocates recommends that Energy Safety allow a 20-day comment and evaluation period. This increase in time for evaluation and review would allow for a more complete and robust analysis of each change order request. Energy Safety should additionally specify that the 3-day deadline for discovery during the WMP review period also applies during stakeholder review of change order requests.

### **D. Change Order Evaluation (Section 4)**

#### **1. Energy Safety should set a standard timeline for approval or denial of change order requests.**

The Draft Guidelines do not provide an expected timeline for approval or denial of a utility's change order request. The guidelines should state how long Energy Safety expects to take to approve a change order. If Energy Safety takes a long time to approve change orders, then the change either may not be implemented, or it may be completed before the change order is approved. Neither situation is ideal.

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<sup>2</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 3.

Additionally, Section 4 (titled Change Order Evaluation) states, “Electrical corporations must not include updated targets or approaches in any filing to Energy Safety, including Quarterly Data Reports, until the change is approved.”<sup>10</sup> If a utility begins implementing a change during Energy Safety’s review of its change order request, the utility’s reported targets and progress in its quarterly data report may not accurately reflect the work the utility is actually performing, reducing transparency and accountability in the WMP process. By the same token, a lengthy or open-ended review process by Energy Safety would create uncertainty over when the quarterly report would be corrected.<sup>11</sup>

To address these concerns, Cal Advocates recommends that Energy Safety include a standard 40-day timeline for approval or denial of change order requests.<sup>12</sup> As previously noted, Cal Advocates recommends a period of 20 days for stakeholder comments. This would allow Energy Safety to review change order requests, while also benefiting from stakeholder input. A standard timeline for decisions on change order requests will help provide clarity and predictability to all parties.

**2. Energy Safety should reserve the authority to reject major changes and defer them to the next annual WMP submission.**

In the Draft Guidelines, Energy Safety provides Table 1 which describes the criteria that Energy Safety will use to approve or deny change order requests.<sup>13</sup> Cal Advocates has expressed concerns previously that the utilities may try to submit and implement major changes through the change order process.<sup>14</sup> Any major change to an already approved WMP should require a higher burden of justification, including an explanation of why the change cannot wait until the next annual WMP submission.<sup>15</sup>

The change order process is not an appropriate forum to review any major change that alters a program’s strategy or focus. The change order process is rapid and provides limited scrutiny of utility proposals. In particular, the short comment period allows little time for

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<sup>10</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 4.

<sup>11</sup> “Upon approval, the electrical corporation may amend any previous filings via submission of an amended filing to the relevant service list.” *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 4.

<sup>12</sup> Dates falling on a Saturday, Sunday or holiday as defined in Government Code Section 6700 have been adjusted to the next business day in accordance with Government Code Section 6707.

<sup>13</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 4.

<sup>14</sup> *Comments of the Public Advocates Office on the 2021 Wildfire Mitigation Plan Updates of the Large Investor-Owned Utilities*, March 29, 2021, p. 65.

<sup>15</sup> *Comments of the Public Advocates Office on the 2021 Wildfire Mitigation Plan Updates of the Large Investor-Owned Utilities*, March 29, 2021, p. 65.

discovery. Therefore, this process may not allow for thorough consideration of new approaches or new initiatives. Accordingly, Energy Safety should add the following language as a possible reason for rejection in the “Rejected” line of Table 1:

Proposed change has a major impact on the strategy or focus of the utility’s approved WMP, or requires greater factual scrutiny, and will be deferred until the utility’s next annual WMP submission.

Including this additional rationale for rejection in the change order guidelines recognizes that the annual WMP submissions are the main venue for utilities to propose new ideas and alter their priorities for the year. This language allows Energy Safety to reject major changes and defer them to the next annual WMP submission. This will help ensure that the utilities make and provide accurate and well-thought out plans when they are due, rather than adjusting them on the fly after the review process is well underway. Furthermore, it will make the change order process more transparent and straightforward for all parties.

**3. Energy Safety should clarify that it reserves the authority to determine that a utility is not substantially in compliance with its WMP, notwithstanding the change order process.**

The Draft Guidelines state that a utility must request approval prior to making any “significant” change (as defined) to a mitigation initiative in its 2022 WMP Update.<sup>16</sup> The Draft Guidelines do not, however, specify how utilities should approach changes that do not meet the standard of significance (listed in Section 2).

A change that does not meet the standard to be considered a “significant change” could still represent a substantial departure from the utility’s approved WMP. Cal Advocates recognizes the necessity of setting clear thresholds for change order requests so that Energy Safety will not be inundated with minor changes. However, it should not be assumed that all “non-significant” changes are given tacit approval.

Energy Safety should revise the Draft Guidelines to clarify that it reserves the authority to determine (through audits and other reviews) that a utility is not substantially in compliance with its WMP, notwithstanding whether the utility was required to file a change order request. The Draft Guidelines should additionally state that a utility must use its best judgment to determine if a change that does not meet the Section 2 criteria nevertheless represents a substantial departure from its WMP, and should optionally submit a change order request in those situations.

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<sup>16</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 1.

## **E. Overarching Issues**

### **1. Energy Safety should emphasize utilities obtaining approval prior to implementing WMP changes.**

While the Draft Guidelines are clear that specific changes to the 2022 WMP Updates require review and approval, Energy Safety should give particular emphasis to utilities obtaining approval prior to implementing any changes. Cal Advocates is concerned that utilities will proceed with proposed changes to WMP updates once a change order request is initially submitted, without waiting for approval.

The current language of the Draft Guidelines suggests that merely submitting a change order request entitles a utility to make substantial changes to a WMP that has already been reviewed and approved. The Draft Guidelines state that, “An electrical corporation must *request* approval from Energy Safety prior to making any significant change to a mitigation initiative described in its 2022 Update.”<sup>17</sup> Energy Safety should revise this statement to state, “An electrical corporation must *obtain* approval from Energy Safety prior to making any significant change to a mitigation initiative described in its 2022 Update.” Electrical corporations that proceed with changes prior to approval are potentially wasting limited ratepayer money should Energy Safety reject the change, and diverting efforts from approved, effective risk reduction. This concern is heightened because Energy Safety has not indicated the expected timeframe to review and dispose of change orders.

### **2. Energy Safety should publish future change order guidelines as part of its WMP guidelines for the following year.**

The Draft Guidelines urge utilities to submit change order requests “as soon as practicable after the electrical corporation determines a change is warranted.”<sup>18</sup> However, the release date of these guidelines hampers the ability of utilities to identify and develop change order requests promptly. Energy Safety issued its Draft Guidelines for 2022 WMP change orders in July 2022, more than halfway through the implementation year. This gives utilities limited time to assess any potential changes in their wildfire mitigation strategy against the criteria in the Draft Guidelines.

Publishing the Draft Guidelines in the latter half of the year also limits the ability of stakeholders to anticipate change orders, as the change order criteria were not previously known.

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<sup>17</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 1, emphasis added.

<sup>18</sup> *Draft 2022 Change Order Guidelines For Electrical Corporations*, July 6, 2022, p. 2.



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Publishing the change order guidelines earlier in the process would allow utilities to more effectively navigate changes to their wildfire mitigation strategies. It would also improve efficiency by ensuring stakeholders can assess the reasonableness of the change order guidelines at the same time they assess the WMP guidelines.

Energy Safety should publish future change order guidelines as part of its WMP guidelines for the following year. Energy Safety should publish 2023 change order guidelines at the same time that it publishes its 2023 WMP guidelines.

### **III. CONCLUSION**

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

Sincerely,

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