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Via Electronic Filing

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Subject: Public Advocates Office Comments on Draft 2022 Safety Certification Guidelines

Docket: 2022-SCs

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 Safety Certification Guidelines (Draft 2022 SC Guidelines). We urge the Office of Energy Infrastructure Safety (Energy Safety) to adopt the recommendations discussed herein.

I. INTRODUCTION

On July 19, 2022, Energy Safety issued Draft 2022 Safety Certification Guidelines and issued a notice of a public meeting to consider adoption of the Draft 2022 SC Guidelines. The notice also provides the opportunity for stakeholders to file written comments by August 8, 2022. In these comments, Cal Advocates makes the following recommendations:

- A. Energy Safety should require electric utilities¹ to develop comprehensive and specific plans to implement the recommendations from their safety culture assessments.

¹ Many of the Public Utilities Code requirements relating to wildfires apply to “electrical corporations.” *See, e.g.*, Public Utilities Code sections 8386, 8389. Hereinafter, these comments will use the more common term “electric utilities” or “utilities” and the phrase “electrical corporations” interchangeably to refer to the entities that must comply with the wildfire safety provisions of the Public Utilities Code.

- B. Energy Safety should modify the Draft 2022 SC Guidelines to allow stakeholders to comment on each utility’s complete application.

II. DISCUSSION

A. **Energy Safety should require utilities to develop comprehensive and specific plans to implement the recommendations from their safety culture assessments.**

One of the purposes of the safety certification statutes is to encourage continuous improvement in the safety cultures of the electric utilities.² Accordingly, Energy Safety must conduct annual safety culture assessments³ and the safety certification request process must consider whether each utility is implementing the findings of the most recent safety culture assessment.⁴

Energy Safety should require utilities to submit meaningful plans to address known shortcomings in their safety cultures. The Draft 2022 SC Guidelines require each utility seeking a safety certification to “document its agreement to implement the findings of its most recent safety culture assessment.”⁵ Implicitly, this requires that the utility actually perform the work identified in its safety culture assessment. A generic statement of intentions is not a plan.

Unless Energy Safety requires each utility to submit a specific plan to implement the safety culture assessment findings, with clear milestones and timelines, the safety certification process will provide no assurance that the utilities are actually improving their safety culture in a timely and effective manner. Promises to implement safety culture assessment findings ring hollow without measurable commitments and effective accountability measures to back such promises.

Moreover, the Draft 2022 SC Guidelines do not address what happens if a utility has failed to fully implement safety culture assessment findings in the past year(s), or if a utility does not meet its commitments in the coming year. Without a specific plan or accountability measures in place, a utility may fail to implement critical safety recommendations in a timely manner, which would run counter to any reasonable interpretation of “good standing” required for a safety certification,⁶ discussed in Section II.C of these comments.

² See Public Utilities Code section 8389(e)(2) (the director of Energy Safety can issue a safety certification to a utility if, among other things, the utility is in “good standing” or has agreed to implement the findings of its most recent safety culture assessment performed pursuant to section 8386.2 and section 8389(d)(4)); see also Public Utilities Code section 8386.2 (“The commission shall require a safety culture assessment of each electrical corporation to be conducted by an independent third-party evaluator”); section 8389(d)(4) (annually a process for Energy Safety to conduct annual safety culture assessments for each electrical corporation, shall be adopted and approved).

³ Public Utilities Code section 8389(d)(4).

⁴ Public Utilities Code section 8389(e)(2).

⁵ Draft 2022 SC Guidelines, p. 2.

⁶ See Public Utilities Code section 8389(e)(2).

In 2021, Pacific Gas and Electric Company (PG&E),⁷ Southern California Edison Company (SCE),⁸ and San Diego Gas & Electric Company (SDG&E)² each submitted letters to Energy Safety accepting the recommendations of their safety culture assessments. Notably, none of these letters included a plan to implement these recommendations, a timeline for implementation, nor any promises of accountability measures such as annual reporting to Energy Safety. Crucially, none of the utilities offered any verifiable or measurable commitments. Therefore, based on the utility letters and Energy Safety’s current requirements, the public has no assurance about how Energy Safety will determine whether the utilities have progressed in their efforts to implement the safety culture assessment findings.

The consultants that conducted the 2021 safety culture assessments listed a number of findings for each utility. In many cases, these findings identified broad and complex issues; these were not simple, discrete tasks that could easily be added to a manager’s to-do list.¹⁰ At a minimum, the safety culture assessments warrant an upfront and specific plan from the utilities on how they intend to address the findings from their safety culture assessments.

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.

If a utility’s most recent safety culture assessment report was issued more than four months before the utility requests a safety certification, Energy Safety should also require the utility to demonstrate its progress on its implementation plan. This should include a list of actions taken to date, with output and outcome metrics for each.

Finally, going forward, Energy Safety should require utilities to file progress reports on their implementation of the safety culture assessment recommendations on a quarterly basis.

⁷ “By this letter, PG&E agrees to implement all of the findings and recommendations for improvement of the Safety Culture Assessment Report for PG&E.” *Agreement of Pacific Gas and Electric Company to Implement the Recommendations of the Final Safety Culture Assessment Report*, October 25, 2021.

⁸ “By this letter, SCE agrees to implement all of the findings and recommendations for improvement in the SCA report, thereby meeting the “good standing” requirement of Section 8389(e)(2).” *Southern California Edison Company’s Agreement to Implement the Findings (Including Recommendations) of the 2021 Safety Culture Assessment Report*, September 9, 2021.

² “By this letter, SDG&E agrees to implement all of the findings and recommendations for improvement of the Safety Culture Assessment Report for SDG&E.” *Agreement of San Diego Gas & Electric Company (U 902 M) to Implement the Recommendations of the Final Safety Culture Assessment Report*, September 3, 2021.

¹⁰ See, e.g., *Comments of the Public Advocates Office on the Safety Certification Request of PG&E*, Case No. 2021-SCs, December 13, 2021, pp. 7-8.

These measures will hold utilities accountable to their promises and set a meaningful standard for the statutory requirement that utilities be in “good standing” to receive a safety certification. These measures will also help the utilities publicly demonstrate to Energy Safety how they are progressing in their safety culture improvements.

B. Energy Safety should modify the Draft 2022 SC Guidelines to allow stakeholders to comment on each utility’s complete application.

The Draft 2022 SC Guidelines state that utilities may submit a request for safety certification even if required elements are missing.¹¹ This is contrary to the plain letter of the law, which unambiguously specifies seven prerequisites for obtaining a safety certification.¹² Public Utilities Code section 8389(e) does not make these prerequisites optional. In order for Energy Safety to approve a utility’s request for a safety certification, that utility must “provide documentation” of all seven prerequisites.¹³ It is problematic for Energy Safety to allow a utility to submit a safety certification request missing documentation of all required elements.

The Draft 2022 SC Guidelines as currently written provide only one opportunity for intervenors and members of the public to comment. If a utility’s safety certification application has missing elements, stakeholders will be expected to file comments on an incomplete request.¹⁴ Further, the Draft 2022 SC Guidelines make clear that, even after the utility submits the missing elements, the public comment period will be neither extended nor reopened to allow stakeholders to file comments on the complete application package.¹⁵

This deviation from the requirements in Section 8389(e) undercuts the purpose of the public comment process, which is to allow stakeholders a meaningful opportunity to provide input on the complete application. The current rule allowing comment only on the initially submitted application effectively prohibits stakeholders from commenting on what could be material changes in the supplemental application. It is analogous to asking an engineer to evaluate the safety of a new aircraft design before the engines have been selected, or requiring a real estate assessor to value a property without viewing the entire house. Energy Safety should strengthen its procedures, thereby making the decision on the applications less vulnerable to legal challenge.¹⁶

¹¹ Draft 2022 SC Guidelines, p. 4.

¹² Public Utilities Code section 8389(e).

¹³ Public Utilities Code section 8389(e).

¹⁴ Stakeholders may only file comments within 20 days of the utility submitting its application, even if the application is incomplete. Draft Guidelines, p. 5.

¹⁵ Draft 2022 SC Guidelines, p. 5 n.14.

¹⁶ See, e.g., *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612 (the most fundamental requirements of procedural due process include an opportunity to be heard before a fair and impartial hearing body, as well as notice); *People v. Ramirez* (1979) 25 Cal.3d 260, 268-69 (California due process includes “freedom from arbitrary adjudicative procedures.”); see also *Horn*, 24 Cal.3d at 614 (governmental actions such as approvals of permits and applications, are adjudicatory in nature and trigger due process concerns).

The Draft 2022 SC Guidelines require all utilities to submit safety certification requests by September 14, 2022.¹⁷ At that time, neither PG&E nor Bear Valley Electric Service (BVES) will have approved 2022 WMPs.¹⁸ Energy Safety found the 2022 WMP Updates of both utilities to contain a number of critical issues and subsequently ordered both utilities to file revised plans, with draft action statements to be released after September 14, 2022. As a result, it is guaranteed that at least these two utilities will file incomplete applications for safety certifications in September.¹⁹

To allow stakeholders adequate time to review the full requests for safety certifications, Energy Safety should modify the Draft 2022 SC Guidelines in the following ways:

- Revise the deadlines for PG&E’s and BVES’s requests for safety certifications so that the deadlines occur after the expected approval or denial of their 2022 WMPs.
- Require utilities to submit all required elements with their 2022 safety certification requests.

In the event that a utility files a required element late, the public comment period shall be extended by an equal amount of days, to allow stakeholders the due process of the full 20 days to comment on the complete safety certification application package, rather than requiring stakeholders to submit comments on an incomplete safety certification request that violates the statutory requirements.

C. Energy Safety has discretion to determine when a utility is in good standing.

Public Utilities Code section 8389(e)(2) requires that, for a utility to be granted a safety certification, it must be “in good standing.”²⁰ Section 8389(e)(2) further states that good standing “can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment” performed pursuant to Sections 8386.2 and 8389(d)(4). As Cal Advocates has noted previously,²¹ these statutes provide flexibility to Energy Safety regarding when to make a finding of good standing. Cal Advocates urges Energy Safety to undertake a public process that will expand what else is required to meet good standing other than the electrical corporation having agreed to implement our most recent safety culture assessment.

¹⁷ Draft 2022 SC Guidelines, pp. 4-5.

¹⁸ Per its Revision Notices for PG&E’s and BVES’s 2022 WMP Updates, Energy Safety will issue draft decisions by September 30, 2022 for PG&E, and by October 17, 2022 for BVES. Final decisions will be issued at least 30 days thereafter.

¹⁹ Public Utilities Code section 8389(e)(1) states: “The Director of the Office of Energy Infrastructure Safety shall issue a safety certification to an electrical corporation if the electrical corporation provides documentation of the following: (1) The electrical corporation has an approved wildfire mitigation plan.”

²⁰ Public Utilities Code section 8389(e)(2).

²¹ *Comments of the Public Advocates Office on the Safety Certification Request of PG&E*, Case No. 2021-SCs, December 13, 2021, pp. 3-4.

III. CONCLUSION

Cal Advocates respectfully requests that Energy Safety adopt the recommendations discussed herein. Please contact Program Manager Nathaniel Skinner (Nathaniel.Skinner@cpuc.ca.gov) or Program and Project Supervisor Henry Burton (Henry.Burton@cpuc.ca.gov) with any questions relating to these comments.

Respectfully submitted,

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