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VIA E-FILING

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

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

Dear Director Thomas Jacobs:

San Diego Gas & Electric Company (SDG&E) hereby submits its comments regarding the Draft 2023 Executive Compensation Guidelines (Draft Guidelines) provided by the Office of Energy Infrastructure Safety (Energy Safety) on September 15, 2022. While SDG&E generally supports the Draft Guidelines, it recommends that Energy Safety revise or clarify certain aspects to better comply with and reflect the letter and intent of Assembly Bill (AB) 1054 and Public Utilities Code Section 8389.

Ultimately, Energy Safety's statutory role is to review the structure of the electrical corporations' executive compensation plans and approve them if they meet the requirements established by AB 1054. To date, Energy Safety has found that SDG&E's executive compensation structure complies with the requirements of AB 1054. The addition of further requirements—in particular prescriptive numerical quotas that limit the authority of the Board to align company priorities with both safety and financial stability—unnecessarily and erroneously expand Energy Safety's review beyond that required or permitted by statute. SDG&E thus requests that Energy Safety consider SDG&E's recommendations and revise the Draft Guidelines accordingly.

SDG&E specifically recommends the following:

- Energy Safety should refrain from establishing prescriptive numeric thresholds for AB 1054's "primary portion," "significant portion," and "minimization" requirements. The statute neither explicitly nor implicitly calls for such thresholds and imposing them would be tantamount to dictating the structure of the electrical corporations' executive compensation programs, exceeding Energy Safety's statutory authority.

- Energy Safety should remove supplemental executive retirement plan (SERP) contributions from the definition of "indirect or ancillary compensation," and should not require the reporting of SERP contributions during its review of executive compensation. Consistent with the Securities and Exchange Commission and existing authority, Energy Safety should recognize that SERP contributions are not "indirect or ancillary compensation" within the meaning of AB 1054 because they are post-employment retirement contributions, and reporting such contributions is not relevant to any assessment Energy Safety is required or authorized to undertake.

- Energy Safety should clarify that it will give deference to an electrical corporation's Board of Directors when it comes to whether indirect or ancillary compensation is aligned with stakeholder interests. Applicable law requires the Board to consider these issues, and the Board is best positioned to exercise business judgment about what is and is not aligned with company and stakeholder interests.

- Energy Safety should interpret the statutory phrase "new or amended contracts" in accordance with its ordinary meaning in the employment context, namely, written employment contracts setting out the material terms and conditions of employment. The Draft Guidelines' proposed interpretation—essentially, any at-will employment arrangement—contravenes the text and structure of AB 1054.

- Energy Safety should not require reporting of the reasons for any application of an individual performance modifier, especially if such reporting is paired with employee names and the reasons are unrelated to wildfire safety. Such reporting, even in a confidential submission, would unnecessarily tread on employee privacy.

- Energy Safety should not extend the requirements of Assigned Commissioner's Ruling 9 (ACR 9) beyond Pacific Gas and Electric Company (PG&E). Those requirements go well beyond the scope and intent of AB 1054, were developed by the California Public Utilities Commission (the Commission) uniquely for PG&E in the context of PG&E's Chapter 11 restructuring, and are not appropriate for the other California electrical corporations.

I. Energy Safety Should Not Impose Prescriptive Numeric Thresholds When AB 1054 Itself Does Not Establish Such Thresholds

The Draft Guidelines propose to establish, for the first time, specific numeric thresholds for certain of AB 1054's requirements for executive compensation structures for "new or amended contracts" under Public Utilities Code Section 8386(e)(6). Specifically, Energy Safety proposes to require (i) "greater than 50 percent" for the requirement that the "primary portion" of executive compensation be based on

achievement of objective performance metrics; (ii) "greater than twenty-five percent" for the requirement that a "significant portion" of executive compensation be based on the electrical corporation's long-term performance and value; and (iii) "less than twelve and one-half percent" for the requirement of "minimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest."[1]

Energy Safety is tasked with reviewing the structure of the electrical corporations' executive compensation plans, not dictating the mechanics of how the electrical corporations implement that structure.[2] Because the statute contains no such prescriptive thresholds, Energy Safety should remove these baseline requirements and continue the existing process of assessing the statutory requirements on a holistic and structural basis. This holistic approach accurately reflects the Legislature's intent to balance the regulation of executive compensation to ensure the promotion of safety as a priority with the obligations of the Board to establish that structure within its business judgment.

With respect to the "primary portion" requirement, the statute provides no basis for interpreting "primary" to mean "greater than 50 percent."[3] "Words used in a statute . . . should be given the meaning they bear in ordinary use,"[4] and the ordinary meaning of "primary" is simply "something that stands first in rank, importance, or value."[5] Thus, although the statute may require that the *largest* component of executive compensation be "based on achievement of objective performance metrics,"[6] it does not require, or even suggest, that the *majority* of executive compensation must be so based.

With respect to the "significant portion" and "minimization" requirements, there is even less basis in the statutory text for the prescriptive thresholds the Draft Guidelines would impose. Nothing in the statute gives any hint that "significant" cuts off at 25%, or that "minimization" cuts off at exactly half of "significant." Nor does the statute provide any basis for supposing, for example, that "minimization" connotes 12.5% instead of, say, 12.4%, 12.6%, or 13.1%. Because such thresholds have no basis in the statutory text, they are arbitrary and should not be adopted.[7] If anything, the statute's omission of specific thresholds indicates that the relevant inquiries must be holistic ones that are not just quantitative, but also qualitative. This holistic approach also reflects the Board's

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[1] Draft Guidelines at A36-A37.

[2] See, Pub. Util. Code §8389(e)(6) (Requiring that electrical corporations have an established "structure for an new or amended contracts for executive officers," based on outlined "principles.")

[3] *Id.* at A36.

[4] *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988).

[5] Webster's Ninth New Collegiate Dictionary 934 (1991).

[6] Pub. Util. Code § 8389(e)(6)(A)(i)(I).

[7] *In re Carter*, 199 Cal. App. 3d 271, 277 (1988) ("[W]here the agency's interpretation of the regulation is clearly arbitrary or capricious or has no reasonable basis, courts should not hesitate to reject it.").

direction in setting company priorities and objectives in a manner that also meets the requirements of AB 1054.

For these reasons, SDG&E urges Energy Safety to remove the prescriptive thresholds for the "primary portion," "significant portion," and "minimization" requirements, and continue its existing practice of reviewing whether the electrical corporations' compensation structures promote safety as a whole, rather than the parts.

II. Energy Safety Should Remove SERP Contributions From the Definition of "Indirect or Ancillary Compensation," and Should Not Require the Reporting of Such Contributions

AB 1054 requires, for executive officers with new or amended contracts, "minimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest in the electrical corporation." This language was intended to minimize the use of what are typically thought of as extravagant perquisites.[8] Attachment 2 of the Draft Guidelines lists examples of what Energy Safety considers to be "[i]ndirect or ancillary compensation," including "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."[9] Attachment 2's list of "indirect or ancillary compensation" generally aligns with common understandings of perquisites, and with the Securities and Exchange Commission's (SEC) own illustrative list of perquisites.[10] But Attachment 2 then departs from well-recognized interpretations of "perquisites" by including SERPs, and Section 6 of the Draft Guidelines would require electrical corporations to report SERP contributions in their submissions to Energy Safety. This is inappropriate for at least four reasons.

First, SERPs fall outside the scope of AB 1054 based on the plain language and intent of the statute. A SERP is a form of non-qualified retirement plan under which benefits are paid *after the executive officer retires* and no longer has any ability to

[8] Pub. Util. Code § 8389(e)(6)(A)(iv).

[9] Draft Guidelines at A51. As discussed below, these items of indirect or ancillary compensation can be aligned with shareholder and taxpayer interests by, for example, serving a recruiting and retention function.

[10] *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.

influence the electrical corporation's operations. As such, a SERP is similar to a pension plan or other retirement vehicle. Such plans are not subject to AB 1054, which on its face evinces no intent to regulate retirement plans, supplemental or otherwise, and instead is focused on ensuring that executive officers are properly incentivized to promote safety and financial stability *while they are setting policy for the company*. Including SERP contributions in the definition of "indirect or ancillary compensation" therefore has no basis in the statute.

Second, a SERP is not a perquisite, and SERP contributions therefore are not "indirect or ancillary compensation." This is clear from Attachment 2 itself, in which the other examples of "indirect or ancillary compensation" tend to be short-term or immediate benefits that go above and beyond traditional financial compensation and are wholly unrelated to the executive's performance. A SERP is of a different character.

Notably, the SEC does not consider SERP contributions to be perquisites. Item 402 of Regulation S-K, which provides instructions for filling out summary compensation tables for SEC reporting, requires that pension plans, including SERP benefits, be reported in the "Change in Pension Value and Nonqualified Deferred Compensation Earnings" column.[11] By contrast, Item 402 requires reporting perquisites in a separate column entitled "All Other Compensation."[12] Because a SERP is a type of retirement or pension benefit, the SEC does not treat it as a perquisite, and correspondingly, Energy Safety should not treat it as such by classifying a SERP as "indirect or ancillary compensation." There is no rational reason for why a SERP, which is considered a retirement benefit by shareholders and federal securities regulators, should be treated any differently by Energy Safety.

Third, and more broadly, the Draft Guidelines' proposed test for determining what is and is not "indirect or ancillary compensation" has no basis in AB 1054, and in fact, is in tension with the statutory text. The Draft Guidelines propose a test based on who is eligible to receive a particular item of compensation, *i.e.*, "Benefits unique to executives are indirect or ancillary compensation."[13] Nothing in the statute supports this. To the contrary, the statutory words "indirect" and "ancillary" dictate that the focus must be on the *character* of the compensation—*i.e.*, whether it constitutes a perquisite—not on how broad or narrow the employee group is that is eligible to receive it. For all the reasons stated above, SERP contributions, regardless of who is eligible to receive them, are not

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[11] 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).

[12] *Id.* § 229.402(c)(1) at 402(c)(2)(ix)(A).

[13] 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.").

in the nature of a "perquisite" and thus do not qualify as "indirect or ancillary compensation."

Fourth, including SERP contributions in the definition of "indirect or ancillary compensation," and requiring their reporting in electrical corporations' submissions to Energy Safety, would serve no purpose. SERP contributions have no relevance to whether AB 1054's "primary portion" and "significant portion" requirements are satisfied; Energy Safety already properly excludes SERP contributions from those calculations.[14] Further, SERP contributions have no relevance to AB 1054's requirement of "minimization or elimination of indirect or ancillary compensation *that is not aligned with shareholder and taxpayer interest in the electrical corporation*."[15] This is because a SERP, which is a commonly used tool to recruit and retain top-level executives by allowing certain tax advantages, is directly aligned with shareholder and taxpayer interests in recruiting the talent necessary to promote safe, reliable utility service in California.

Further, Energy Safety erroneously proposes only to consider SERPs "that are structured so that electrical corporation contributions are based at least in part on executive officer Short-Term Incentive Payment program awards based at least in part on wildfire and other public safety performance" as aligned with shareholder and taxpayer interests,[16] contrary to established practice. A SERP is aligned with public and shareholder interests in the electrical corporation irrespective of the basis of the electrical corporation's contributions to the SERP. The Draft Guidelines recognize that if SERP contributions are based "at least in part" on performance metrics in a short-term incentive plan, and if such metrics, in turn, are based "at least in part on wildfire and other public safety performance," then SERP contributions necessarily are "aligned with shareholder and taxpayer interest[s]."[17] But given the importance of a SERP to recruiting and retaining talented executives (and the public, shareholder, and safety/reliability interests associated with that recruitment and retention), SERP contributions would be aligned with shareholder and taxpayer interests even if those contributions were unrelated to wildfire and/or safety performance.

For these reasons, SERP contributions should be excluded from the definition of "indirect or ancillary compensation." Further, Energy Safety should remove the presumption implied in the Draft Guidelines that a SERP must be based "at least in part on wildfire and other public safety performance" to be aligned with shareholder and taxpayer interests in the corporation for purposes of Public Utilities Code Section 8389(e).

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[14] *Compare id.* at A36-A37 (providing that the "primary portion" and "significant portion" requirements shall be assessed by reference to "total direct compensation") *with id.* at A53 (defining "Total Direct Compensation" to exclude Energy Safety's proposed definition of "Indirect or Ancillary Compensation").

[15] Pub. Util. Code § 8389(e)(6)(A)(iv) (emphasis added).

[16] Draft Guidelines at A37.

[17] Pub. Util. Code §8389(e)(6)(A)(iv); Draft Guidelines at A37.

III. Energy Safety Should Clarify That It Will Give Significant Deference to an Electrical Corporation's Board of Directors When Considering Whether Indirect or Ancillary Compensation Is Aligned With Stakeholder Interests

SDG&E recognizes that AB 1054 charges Energy Safety with assessing whether the electrical corporations' compensation structures minimizes items that genuinely qualify as "indirect or ancillary compensation," *i.e.*, perquisites, that are not "aligned with shareholder and taxpayer interest in the electrical corporation."[18] SDG&E urges Energy Safety to clarify, however, that it will give significant deference to an electrical corporation's Board of Directors when determining whether compensation is aligned with shareholder and public interests. This is appropriate for two reasons.

First, the Board is in the best position—and is legally obligated—to determine, in the exercise of their business judgment, what is in the best interests of the electrical corporation, and by extension, shareholders and other stakeholders.[19] AB 1054 recognizes this by not tasking Energy Safety with superintending an electrical corporation's executive compensation program as a general matter, but, instead, requiring Energy Safety simply to ensure that certain limited criteria are satisfied. AB 1054 leaves the responsibility for designing an appropriate program where the law has always placed it—with the Board of Directors. The statute does not contemplate a general second-guessing of an exercise of business judgment—or a forward-looking prescription of that business judgment—about what is and is not in the best interests of the electrical corporation and its stakeholders.[20]

Second, before a Board authorizes a particular type of compensation, they presumptively will have determined that doing so is in the best interests of the electrical corporation and its stakeholders. This is because the law has long prohibited simply giving away corporate assets, and instead requires the Board and any respective committees to take only such discretionary actions as are in the best interests of the corporation and its shareholders.[21] Perquisites of various kinds, for example, are often

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[18] Pub. Util. Code § 8389(e)(6)(A)(iv).

[19] *See Smith v. Van Gorkom*, 488 A.2d. 858 (Del. 1985) (recognizing the "fundamental principle" under Delaware corporations law that "in carrying out their managerial roles, directors are charged with an unyielding fiduciary duty to the corporation and its shareholders.").

[20] *See Beehan v. Lido Isle Cmty. Ass'n*, 70 Cal. App. 3d 858, 865 (1977) ("[N]either a court nor minority shareholders can substitute their business judgment for that of a corporation where its board of directors has acted in good faith and with a view to the best interests of the corporation and all its shareholders.").

[21] *See, e.g.*, Corp. Code § 309 ("A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances."); *Dodge v. Ford Motor Co.*, 170 N.W. 228 (Mich. 1919)

in the best interests of a corporation and its stakeholders because, among other reasons: (i) they can help the corporation recruit and retain talented executives in a highly competitive market for such talent; (ii) they may conserve corporate resources on a net basis by enabling the corporation to pay less in other compensation than it would have to pay if it did not provide such perquisites; and (iii) they may tend to make the executive officer more productive (*e.g.*, health club memberships, moving expenses, or driver services). For this reason, it is incorrect for the Draft Guidelines to imply that "indirect or ancillary compensation" is aligned with shareholder and taxpayer interests *only* if it is somehow tied to wildfire safety.[22] Any such presumption regarding perquisites should be removed.

SDG&E therefore urges Energy Safety to clarify that the Board retains significant discretion on this issue with respect to indirect or ancillary compensation and will instead review the Company's efforts to minimize only the indirect and ancillary compensation that is truly not "aligned with shareholder and taxpayer interest in the electrical corporation," consistent with statute.[23]

IV. Energy Safety Should Interpret "New or Amended Contracts" to Mean Traditional Written Employment Contracts

AB 1054's executive compensation requirements appear in two separate subsections of Public Utilities Code § 8389: subsection (e)(4) which applies to *all* executive compensation structures, and subsection (e)(6) which applies *only* to "a compensation structure for any new or amended contracts for executive officers." The Draft Guidelines, however, erroneously collapse the two subsections and read the limiting language of subsection (e)(6) out of the statute by equating "new or amended contracts" with virtually any employment arrangement. SDG&E urges Energy Safety to correct this error and interpret "new or amended contracts for executive officers" in accordance with its ordinary meaning in the employment context—written employment contracts setting out the material terms and conditions of employment.

The Draft Guidelines provide that "executive officers are presumed to have a compensation contract under California law," without identifying any basis for such a presumption.[24] They then provide that simply continuing to work for an electrical corporation from one year to the next constitutes entering into a "new contract." The Draft Guidelines do this by providing that "[a]ny modifications in compensation terms and conditions, including modifications to Short-Term and/or Long-Term Incentive Program structures is an amendment to a contact," and "[c]ontinuing employment under those modified terms and conditions implies an employee's acceptance of the modified terms

(seminal case establishing the bedrock principal of corporate law that a board cannot give away corporate assets gratuitously, but instead may convey such assets only if doing so is, in the board's business judgment, in the best interests of shareholders).

[22] *See, e.g.*, Draft Guidelines at A37.

[23] Pub. Util. Code §8389(e)(6)(A)(iv).

[24] Draft Guidelines at A38.

and conditions."[25] Given that base salaries and incentive compensation programs *inevitably* change from year to year—in part due to requirements imposed by Energy Safety itself—the upshot is that *all* executive officers *necessarily* would be treated as having "new or amended contracts" simply by being or remaining employed.

This redundant reading of the statute contravenes the structure and text of AB 1054. If the Legislature had intended the requirements of subsection (e)(6) to apply to all executive officers, it would have placed those requirements in subsection (e)(4). But the Legislature did not do that. Instead, it placed those requirements in an entirely different subsection, and went out of its way to specify that such requirements apply *only* to "a compensation structure for any new or amended contracts for executive officers."[26] The Draft Guidelines' treatment of "new or amended contracts" fails to give effect to this statutory structure and turns the "new or amended contracts" limitation into surplusage. This is error; the Legislature is presumed to have intended subsection (e)(6) to apply more narrowly than subsection (e)(4),[27] and it is a bedrock principle of statutory construction that "interpretations that render any language surplusage" are to be "avoid[ed]."[28]

Because the structure and text of the statute make clear that the Legislature did not intend the phrase "new or amended contracts" to have the limitless meaning ascribed to it in the Draft Guidelines, Energy Safety should construe the term in accordance with its ordinary, commonly understood meaning in the employment context: "a signed agreement between an individual employee and an employer" that "establishes the rights and responsibilities of the two parties," such as "[s]alary or wages," "[d]uration of employment," "[g]eneral responsibilities," "[b]enefits," and the like.[29]

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[25] *Id.* at A51.

[26] Pub. Util. Code § 8389(e)(6).

[27] *See People v. Wandrey*, 80 Cal. App. 5th 962, 975 (2022) (interpreting a statute by reference to its structure, including that some provisions appeared in one subsection and other provisions appeared in another); *see also In re Jennings*, 34 Cal. 4th 254, 273 (2004) ("It is a settled rule of statutory construction that where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.").

[28] *Brennon B. v. Superior Court*, 13 Cal. 5th 662, 691 (2022); *accord In re Ogea*, 121 Cal. App. 4th 974, 980-81 (2004) ("The language is construed in the context of the statute as a whole and the overall statutory scheme, so that we give significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.") (internal quotation marks and citation omitted); *Mundy v. Superior Court*, 31 Cal. App. 4th 1396, 1405 (1995) ("[W]e must strive to give effect and meaning to all parts of a law if possible and avoid interpretations which render statutory language superfluous.").

[29] Alison Doyle, *What Is an Employment Contract?*, The Balance (Apr. 21, 2022), *available at* https://www.thebalancemoney.com/what-is-an-employment-contract-2061985; *accord* Brian

V. Energy Safety Should Not Require Reporting of the Reasons for Any Application of an Individual Performance Modifier

The Draft Guidelines would require electrical corporations to report on any application of an individual performance modifier, including the name and position of any affected executive officer and the "Factors in/Reason for Adjustment."[30] Although SDG&E has no objection to submitting quantitative information about any applicable adjustment, SDG&E urges Energy Safety not to require information about the reasons. This is especially the case if the reasons are paired with executive officer names/positions or if application of the modifier occurs for reasons that are unrelated to wildfire safety and thus outside of the scope of AB 1054. There could be many reasons for application of an individual performance modifier that have nothing to do with matters that fall within Energy Safety's executive jurisdiction (*e.g.*, performance on goals conveyed during a prior performance review concerning maintaining good working relations with fellow employees). Submitting such information would tread on employee privacy concerns, regardless of whether the submission is confidential. And more generally, AB 1054 does not place individual employee job performance within Energy Safety's purview; the statute merely tasks Energy Safety with ensuring that the overall executive compensation "*structure*" fulfills the statutory criteria.[31] SDG&E therefore urges Energy Safety not to require the reporting of such information.

VI. Energy Safety Should Not Impose ACR 9 on the Other Electrical Corporations Because It Exceeds the Scope and Intent of AB 1054

The Draft Guidelines state that "[o]ther electrical corporations are encouraged to review and consider adopting measures from the ACR Executive Compensation Proposal 9 in the spirit of transparency and furthering the purposes of AB 1054."[32] Some of the requirements of ACR 9, however, go far beyond the scope of AB 1054's objective of ensuring that executive compensation is structured to promote safety and financial stability. Instead, ACR 9 provides additional oversight of PG&E's corporate governance and financial structure in light of its "safety history, criminal probation, and recent financial

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O'Connell, *What Is an Employment Agreement?*, The Street (May 28, 2019) ("Basically, an employment agreement is a binding document signed by an employer and an employee, when the latter comes on board in a new job."); Belle Wong, *New Employee Forms & Paperwork*, Forbes Advisor ("Most states don't require an employment agreement or contract for new hires. But an employment agreement clarifies the rights and obligations of both parties . . . ."), *available at* https://www.forbes.com/advisor/business/new-employee-forms; Rachel Blakely-Gray, *Want It in Writing? What To Know About an Employment Contract*, Patriot Software, LLC (Nov. 29, 2021) ("An employment contract is generally a written, legal document between and employer and employee that outlines relationship terms and conditions."), *available at* https://www.patriotsoftware.com/blog/payroll/what-is-employment-contract.

[30] Draft Guidelines at 11.

[31] Pub. Util. Code § 8389(e)(4), (e)(6) (emphasis added).

[32] Draft Guidelines at 16; *see also id.* at 4.

condition" at the time of its bankruptcy, consistent with the Legislature's direction in AB 1054 regarding PG&E's reorganization.[33]

AB 1054 imposed several requirements on the Commission in assessing and approving PG&E's reorganization plan and emergence from Chapter 11 in order to permit PG&E to participate in the Wildfire Fund.[34] Through that process, the Legislature tasked the Commission with approving "the reorganization plan and other documents resolving the insolvency proceeding, including the electrical corporation's resulting governance structure as being acceptable in light of [PG&E's] safety history, criminal probation, recent financial condition, and other factors deemed relevant by the Commission."[35] It was thus through the Commission's statutory oversight of PG&E's Chapter 11 reorganization that the requirements of ACR 9 were developed. Many of those requirements, including a presumption that a material portion of executive officer incentive compensation shall be withheld in the event PG&E's infrastructure is determined to be the source of a catastrophic wildfire, far exceed AB 1054's requirements for executive compensation. Instead, they specifically seek to impose additional requirements on PG&E in light of past performance.

The various California electrical corporations are all uniquely situated. The relative maturity of the various wildfire mitigation programs and the electrical corporations' safety outcomes continue to differ and evolve. For over a decade, SDG&E has been recognized as a leader in safety and wildfire mitigation. Energy Safety should continue to recognize the salient differences in approaches and outcomes. Imposing (or encouraging) uniformity for uniformity's sake fails to continuously incentivize safety improvements and is inconsistent with the intent of AB 1054.

It is AB 1054 that establishes the criteria that electrical corporations must meet to be eligible for a safety certification. As evidenced by the Draft Guidelines, AB 1054 already creates a comprehensive and transparent method to promote safety and properly align executive incentive structures. And as is clear from the 60 pages of guidance, Energy Safety has effectively leveraged the tools of AB 1054 to create a method of understanding the utilities' executive compensation structures and ensuring they adequately "promote safety as a priority and . . . ensure public safety and utility financial stability."[36] Any further expansion of the requirements to reflect those of ACR 9 would be both unnecessary and contrary to AB 1054.

While SDG&E encourages Energy Safety to remove the recommendations that the electrical corporations incorporate the requirements of ACR 9 into their submissions, SDG&E continually seeks to enhance the means by which its executive compensation structure incentivizes safety. This is evidenced both in its annual submissions addressing

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[33] D.20-05-053 at 13.

[34] *See id.* at 2-3; Pub. Util. Code § 3292(b).

[35] Pub. Util. Code § 3292(b)(1)(C).

executive compensation as well as its recent retention of a compensation consultant to advice the Board Safety Committee on safety aspects of executive compensation.

VII. Conclusion

SDG&E requests that Energy Safety take these recommendations into account in its Final Guidelines for 2023 Executive Compensation Structure Submissions.

Respectfully submitted,

/s/ Laura Fulton
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