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Via Electronic Filing

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Subject: Public Advocates Office Comments on Draft 2023 Executive Compensation Structure Submission Guidelines

Docket: 2023-EC

Dear Director Thomas Jacobs,

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) respectfully submits the following comments on the Draft 2023 Executive Compensation Structure Submission Guidelines. Please contact Henry Burton (Henry.Burton@cpuc.ca.gov) with any questions relating to these comments.

We urge the Office of Energy Infrastructure Safety to adopt the recommendations discussed herein.

Sincerely,

/s/ Carolyn Chen

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I. INTRODUCTION

The Public Advocates Office at the California Public Utilities Commission¹ (Cal Advocates) submits these comments on the Office of Energy Infrastructure Safety’s (Energy Safety) *Draft 2023 Executive Compensation Structure Submission Guidelines*, issued September 15, 2022 (Draft 2023 EC Guidelines).² Specifically, Cal Advocates provides comment on the discovery process³ and reporting actual compensation amounts.⁴

II. DISCUSSION & RECOMMENDATIONS

A. Guidelines on Data Requests by Stakeholders (Section 6)

1. The final 2023 EC Guidelines should clarify the rules for responses to requests to compel or limit stakeholder data requests (Section 6.4.4).

Cal Advocates appreciates the Draft 2023 EC Guidelines’ inclusion of a process for stakeholders to resolve discovery disputes. The Draft 2023 EC Guidelines enable stakeholders to submit requests to compel or limit responses to discovery and provide a three-day deadline for responses.⁵ By doing this, the 2023 EC Guidelines facilitate timely resolution of such disputes so stakeholders can have as much time as possible to provide meaningful comments on EC submissions. However, Energy Safety should clarify certain issues in order to strengthen the process.

Energy Safety should clarify whether respondents have three calendar days or three business days to respond.⁶ Cal Advocates recommends that responses be due within three *business* days so as not to impose onerous work burdens on weekends or holidays. This will facilitate a fair process with more robust participation by all stakeholders.

Moreover, the Draft 2023 EC Guidelines state that a “response to a request to compel or

¹ Hereafter, we refer to the California Public Utilities Commission as “the CPUC” in these comments.

² *Draft 2023 Executive Compensation Structure Submission Guidelines*, issued September 15, 2022 (Draft 2023 EC Guidelines), p. 1.

³ See Draft 2023 EC Guidelines, section 6.

⁴ See Draft 2023 EC Guidelines, Attachment 1: Required Information Template, section 1.

⁵ See Draft 2023 EC Guidelines, section 6.4.

⁶ See Draft 2023 EC Guidelines, section 6.4.4 (“A response to a request to compel or limit a data request must be submitted within 3 days of the date that the request was submitted to Energy Safety.”).

limit a data request *must* be submitted within 3 days of the date that the request was submitted” (emphasis added).⁷ This may mean that a response is mandatory, or simply that if a party chooses to submit a response it must do so within the timeframe indicated. Energy Safety should clarify that language. Additionally, in line with motion practice under the California Rules of Court, Cal Advocates recommends that Energy Safety state that failure to respond to a request to compel or limit discovery may be deemed as consent to the granting of the request.⁸ Cal Advocates recommends the following language:

Any response to a request to compel or limit a data request is due within 3 business days of the date the request was submitted to Energy Safety. If the object of a request submits no response, then the request will be deemed granted.

Establishing a process for hearing and resolving discovery disputes is a positive step. With the clarifications above, Energy Safety can establish a fair, transparent, and reasonable process for all stakeholders.

2. Energy Safety should set a timetable for resolving requests to compel or limit discovery (Section 6.4.5).

The Draft 2023 EC Guidelines lay out a process for expeditiously resolving discovery disputes, with short timeframes for requests and responses. However, this process also depends upon Energy Safety issuing its final determination within a similarly expeditious timeframe. Currently, the Draft 2023 EC Guidelines do not include a timeline for Energy Safety to adjudicate requests to compel or limit data requests.⁹

Energy Safety should set a goal of resolving each discovery dispute within three business days from the due date for responses. Energy Safety should revise the 2023 EC Guidelines to state that it will make all reasonable efforts to issue a final determination on requests to compel

⁷ See Draft 2023 EC Guidelines, section 6.4.4 (“A response to a request to compel or limit a data request must be submitted within 3 days of the date that the request was submitted to Energy Safety.”).

⁸ See 2022 California Rules of Court, Rule 8.54(c) (“A failure to oppose a motion may be deemed a consent to the granting of the motion.”), available at https://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_54.

⁹ See Draft 2023 EC Guidelines, section 6.4.5: “Energy Safety will take requests to compel or limit a data request under consideration and will issue a determination on a request to compel or limit a data request *after the request and response(s) have been submitted.*” (Emphasis added)

or limit data requests within three business days. In the event that this is not feasible, Energy Safety should issue a status update to the service list (by the third business day) that indicates when it expects to issue a determination.

Additionally, Energy Safety should state that it may issue questions to both the requestor and the respondent, if necessary. If the request and responses do not provide adequate factual evidence to adjudicate the dispute, Energy Safety should issue questions to both parties within three business days.

These modifications will ensure expeditious resolution of discovery disputes, thereby enabling all stakeholders to make informed and substantive comments on the executive compensation submissions.

3. The final 2023 EC Guidelines should set a comment deadline that allows adequate time for discovery (Section 6.2).

The Draft 2023 EC Guidelines provide a default deadline of 10 business days for utilities to respond to stakeholder data requests.¹⁰ The Draft 2023 EC Guidelines do not include a schedule for submissions and comments, so it is not yet clear whether this discovery timeframe is reasonable.

Energy Safety should set a schedule that allows time for stakeholders to receive responses to two rounds of discovery. Responses to an initial data request are often incomplete or lacking in specificity. Equally often, responses to an initial data request raise new questions and concerns. Therefore, it is essential for stakeholders to have time to issue and receive responses to a second round of discovery.

Two rounds of discovery implies a minimum of 30 business days for stakeholders to submit comments, assuming that all discovery responses are timely.¹¹ Thus, setting a deadline of 10 business days for responses to data requests is reasonable provided that stakeholders have at

¹⁰ See Draft 2023 EC Guidelines, section 6.2.1 (“Electrical corporations must respond to all data requests within 10 business days of the request, unless a different response period is mutually agreed upon by the stakeholder making the data request and the electrical corporation.”).

¹¹ Stakeholders will need two to three business days to perform an initial review of the executive compensation submissions. Each round of discovery will require 12 business days: 1 day to prepare the data request, 10 days to wait for a response, and 1 day to review the responses. Finally, after receiving responses, stakeholders will need several business days to prepare comments.

least 30 business days to submit comments.

The Draft 2023 EC Guidelines also do not account for the potential impact of discovery delays. The Draft 2023 EC Guidelines permit utilities to request extensions for responding to data requests.¹² If such extensions are granted, it will take longer for stakeholders to gather the information needed to provide useful, substantive input on the executive compensation plans. Energy Safety should anticipate and plan for this fact.

Energy Safety should revise the Draft 2023 EC Guidelines to specify that if Energy Safety grants a utility an extension for responding to a data request, the deadline for stakeholder comments on that utility's submission will automatically be extended by an equal duration.¹³ This policy will ensure that stakeholders have time to complete two rounds of discovery and to prepare meaningful comments after receiving discovery responses.

B. Energy Safety should require executive compensation plan submissions to include dollar compensation figures.

Energy Safety should require that the utilities provide executive compensation figures in dollars, in addition to reporting the composition in percentages (as the Draft 2023 EC Guidelines currently require¹⁴). This requirement will make the incentive compensation plans more meaningful and comprehensible than providing only percentages. Without seeing dollar figures, it is impossible to ascertain whether a utility's incentive compensation plan is reasonable.

Knowing the dollar amount of compensation not only illuminates what is at stake in a utility's compensation plan, but also reveals whether a particular incentive scheme is likely to be effective. For instance, a \$5,000 annual incentive could be very significant to an individual who

¹² See Draft 2023 EC Guidelines, section 6.2.2(b) (“If an electrical corporation cannot reach an agreement with the stakeholder requesting the data for a longer response period, the electrical corporation must request an extension by sending an extension request to safetypolicy@energysafety.ca.gov”); section 6.2.2(e) (“Upon receipt of an extension request, Energy Safety will evaluate the request and issue a determination.”).

¹³ The extension of the comment deadline should apply to all stakeholders, not just the one that propounded the discovery at issue, because other stakeholders may be waiting to use the same information. Stakeholders frequently review and use responses to data requests that other stakeholders have propounded.

¹⁴ Draft 2023 EC Guidelines, Attachment 1: Required Information Template, section 1 (pp. A-3 to A-4) and section 4 (pp. A-24 to A-25).

is paid \$100,000 annually, but is unlikely to be an effective motivator for an individual who is paid \$1 million annually.

Energy Safety should require utilities to report dollar compensation figures for each title or position within the company. It is not essential to link this information to the name of each individual.

Utilities have previously opposed providing executive compensation figures in dollars on claims relating to privacy.¹⁵ However, these privacy claims are baseless because this information must already be submitted to regulators. Utilities are required to provide dollar compensation figures for executives as a part of their annual proxy filings with the Securities and Exchange Commission.¹⁶ In addition, large electric and gas utilities are already required to file annual reports detailing the compensation of all executive officers and “the names, titles and duties of all employees ... who received compensation including a base salary at the rate of \$125,000 or more per annum” in the previous year.¹⁷ Since utilities are already required to report the *actual* amounts of compensation their executive officers receive, there can be no harm to the utility or its executives by requiring information about planned compensation.¹⁸

To the extent that information about compensation amounts will already be made available publicly, Energy Safety should require the same treatment. If the information is currently *only* filed under seal, it is reasonable for Energy Safety to accept the same treatment.¹⁹

III. CONCLUSION

Cal Advocates respectfully requests that Energy Safety adopt the recommendations discussed herein.

¹⁵ Public workshop on executive compensation guidelines, hosted by Energy Safety, September 29, 2021.

¹⁶ For example, see pages 37-88 of PG&E’s 2021 Proxy Statement, available at <https://investor.pgecorp.com/financials/sec-filings/sec-filings-details/default.aspx?FilingId=14861731>.

¹⁷ California Public Utilities Commission, General Order 77-M, available at https://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/66148.htm.

¹⁸ Since *actual* dollar compensation amounts are available after the fact, there is no valid privacy objection to submitting *planned* compensation amounts with their annual executive compensation filings.

¹⁹ Per General Order 77-M, utilities with gross annual operating revenues of \$1 billion or more file a complete report to the CPUC under seal, as well as a redacted version for the public. Names of executive officers and employees subject to reporting requirements may be redacted in the public version.

Respectfully submitted,

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