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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 reply comments regarding the Draft 2023 Executive Compensation Guidelines (Draft Guidelines) provided by the Office of Energy Infrastructure Safety (Energy Safety) on September 15, 2022. SDG&E generally supports the positions of Southern California Edison Company (SCE) and Pacific Gas & Electric Company (PG&E) as stated in their opening comments submitted October 5, 2022, particularly the shared position that Supplemental Executive Retirement Plans (SERPs) should not be subject to regulation under Assembly Bill (AB) 1054, and that Energy Safety should clarify the timing of the 2023 executive compensation approval process, while keeping in mind that many aspects of SDG&E's 2023 executive compensation will likely be finalized by the beginning of April.<sup>1</sup>

SDG&E's reply comments focus on particular areas raised by the Public Advocates Office at the California Public Utilities Commission (Cal Advocates)<sup>2</sup> and SCE, namely:

- Energy Safety has properly declined to include the dollar amounts of executive compensation in its review of the compensation *structures* of the electrical corporations and should continue to do so for 2023.

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<sup>1</sup> *SCE Comments on Draft 2023 Executive Compensation Structure Submission Guidelines* (SCE Comments), Office of Energy Safety Docket No. 2023-EC (October 5, 2022); *PG&E Comments on Draft 2023 Executive Compensation Structure Guidelines* (PG&E Comments), Office of Energy Safety Docket No. 2023-EC (October 5, 2022).

<sup>2</sup> *Public Advocates Office Comments on Draft 2023 Executive Compensation Structure Submission Guidelines* (Cal Advocates Comments), Office of Energy Safety Docket No. 2023-EC (October 5, 2022).

- The final schedule for submission, discovery, comments, and approval of the 2023 executive compensation submissions should remain reasonably consistent with the timeframe for approval of the 2022 submissions. To ensure timely review and approval of the 2023 executive compensation structure, Energy Safety should provide for one round of data requests and address discovery disputes and associated extensions on a case-by-case basis.

### **I. Energy Safety Should Continue to Refrain From Including Actual Dollar Amounts of Compensation in the Executive Compensation Submissions**

AB 1054 tasks Energy Safety with reviewing the *structure* of the electrical corporations' executive compensation programs to ensure that they “promote safety as a priority,” “ensure public safety and utility financial stability with performance metrics ... that are measurable and enforceable,” and—for new and amended contracts—are based on the “principles” outlined in Public Utilities (Pub. Util.) Code Section 8389(e)(6).<sup>3</sup> Assuming the executive compensation structure meets these requirements, Energy Safety is obligated to approve it for purposes of the safety certification.<sup>4</sup> Notably absent from the statute is any mention of the word “amount” of compensation. Additionally, neither Energy Safety nor any stakeholders to the annual executive compensation submission process are tasked with ascertaining or determining “whether a utility’s incentive compensation plan is reasonable.”<sup>5</sup> Based on its obligation to review the “structure” and “principles” of the electrical corporations’ executive compensation, Energy Safety has correctly refrained from requiring the inclusion of dollar amounts in the annual submissions. It should continue to do so.

Cal Advocates erroneously argues that disclosure of the dollar compensation figures “reveals whether a particular incentive scheme is likely to be effective.”<sup>6</sup> But providing the percentages of compensation—as Energy Safety already requires—is a far more effective way to provide that kind of insight while comports with the statute. Taking Cal Advocates example, when the utilities report a \$5,000 incentive, the significance of that payment is made very clear when displayed as a percentage of income (for an individual making \$100,000 = 5%; for an individual making \$1 million = 0.5%).<sup>7</sup> In fact, it is the percentages that provide the insight Cal Advocates seems to seek.

Further, given the insight already afforded to stakeholders through the executive compensation review process, there is no justification for the additional privacy intrusion sought

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<sup>3</sup> Pub. Util. Code §8389(e)(4); Pub. Util. Code §8389(e)(6).

<sup>4</sup> Pub. Util. Code §8389(e)(6)(B) (“The division *shall* approve the compensation structure of an electrical corporation if it determines that the *structure* meets the *principles* set forth in subparagraph (A) and paragraph (4)) (emphasis added).

<sup>5</sup> Cal Advocates Comments at 4. Notably, the executives who receive compensation under SDG&E’s submitted executive compensation plan are paid for out of shareholder—not ratepayer—funds, further rendering the reasonableness of their pay outside the scope of review. (Pub. Util. Code §706(b)).

<sup>6</sup> Cal Advocates Comments at 4.

<sup>7</sup> See Cal Advocates Comments at 4.

by Cal Advocates. The “inalienable” right to privacy is established in Article 1, Section 1 of the California Constitution. The California Courts recognize the “inherent tension between the public’s right to know [information] and society’s interests in protecting private citizens ... from unwarranted invasions of privacy.”<sup>8</sup> Any invasion into individual privacy—as undeniably sought here—must be balanced against the public’s need for and interest in disclosure.<sup>9</sup> “Moreover, for the public interest to carry weight, it must be more than ‘hypothetical’ or ‘minimal.’ Where a requester has an alternative, less intrusive means of obtaining the information sought, the public interest in disclosure is minimal.”<sup>10</sup>

Disclosure of planned—not actual—compensation amounts at the level of detail sought by Cal Advocates both goes beyond the scope of the regulatory oversight envisioned in AB 1054 and also impermissibly infringes on the privacy rights of the executives involved. Contrary to Cal Advocates’ assertions,<sup>11</sup> inclusion of the dollar amounts of planned compensation would be a significant expansion of the salary information currently made public. SDG&E does not provide dollar figures of compensation for its executives, broken down by type, in any public filing. The General Order 77-M filing discloses compensation for the *prior* year on a confidential basis. Thus, the General Order 77-M filing affords Cal Advocates an insight into the total amount of actual executive compensation (and, to the extent relevant, the reasonableness thereof), and on a non-speculative basis. Further disclosure of planned, and therefore hypothetical, salary information, broken down by type would thus be an unwarranted invasion of privacy not in the public interest.

Because, consistent with AB 1054, the current reporting format provides Energy Safety and stakeholders reasonable insight into the structure and priorities of the electrical corporations’ executive compensation plans, and further disclosure of dollar amounts of compensation would impermissibly violate privacy interests, Energy Safety should continue its existing practice of assessing the structure of executive compensation using the percentages described in the Draft Guidelines.

## **II. Energy Safety Should Ensure That the Timeline for Evaluation and Approval of the Executive Compensation Submissions Remains Consistent with the Electrical Corporations’ Business Practices**

As explained in PG&E’s comments, Energy Safety is well-aware that “designing an executive compensation program is a lengthy and complex annual process”<sup>12</sup> involving many aspects of the business, independent outside guidance, and months of work. Because of this, SDG&E also requests that Energy Safety continue to bear in mind that sudden changes made late in the process can be highly disruptive, and any significant changes to the Draft Guidelines should

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<sup>8</sup> *Los Angeles Unified School Dist. v. Superior Court*, 228 Cal.App.4<sup>th</sup> 222, 241 (2014).

<sup>9</sup> *See. e.g., International Federation of Professional and Technical Engineers, Local 21 AFL-CIO v. Superior Court*, 42 Cal.4<sup>th</sup> 319, 329-330 (2007).

<sup>10</sup> *Los Angeles Unified School Dist. v. Superior Court*, 228 Cal.App.4<sup>th</sup> 222, 242 (2014).

<sup>11</sup> Cal Advocates Comments at 5.

<sup>12</sup> PG&E Comments at 3-4.

thus be presented for inclusion in the following year's guidance.<sup>13</sup> SDG&E requests that Energy Safety finalize a timeline for submission and approval of the 2023 executive compensation submissions that follows that of 2022—with submissions due mid-March of 2023, a comment period commencing 30 days later, and a decision sometime in the early summer.<sup>14</sup> Given the level of detail already contained in the executive compensation submissions, SDG&E does not see the necessity of two rounds of data requests, nor do Cal Advocates' suggestions that discovery issues automatically extend the comment period seem necessary.<sup>15</sup> To the extent a serious discovery issue arise, Energy Safety is equipped to handle any necessary extensions on a case-by-case basis.

Unless Energy Safety identifies a severe deficiency that violates the provisions of AB 1054, Energy Safety should approve the 2023 executive compensation structure as submitted. To the extent Energy Safety seeks additional updates or refinements to the submitted executive compensation structure, those should be addressed in workshops or guidance directed at 2024. Like SCE, SDG&E's compensation process is structured such that, by mid-summer, it is too late to make significant changes to an approved compensation plan.<sup>16</sup> Given the number of interests involved, SDG&E requests that changes to executive compensation should be made on a forward-looking basis with the benefit of early guidance from Energy Safety.

### III. Conclusion

SDG&E respectfully 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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San Diego Gas & Electric Company

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<sup>13</sup> See, PG&E Comments at 4.

<sup>14</sup> See 2022 Executive Compensation Structure Submission Guidelines at 9. See also, SCE Comments at 5-6.

<sup>15</sup> Cal Advocates Comments at 3-4.

<sup>16</sup> SCE Comments at 6.