



Michael A. Backstrom
Vice President
Regulatory Affairs

October 17, 2022

E-Filed to Docket No. 2023-EC

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

SUBJECT: Southern California Edison Company’s Reply Comments on the Office of Energy Infrastructure Safety’s Draft 2023 Executive Compensation Structure Submission Guidelines

Dear Director Thomas Jacobs,

Pursuant to the September 15, 2022 Notice from the Office of Energy Infrastructure Safety (“Energy Safety”) releasing the Draft 2023 Executive Compensation Structure Submission Guidelines (“Draft 2023 Guidelines”) for public comment, Southern California Edison Company (“SCE”) provided opening comments on October 5, 2022 (“SCE Oct. 5 Comments”) and hereby submits its reply to comments submitted by San Diego Gas & Electric Company (“SDG&E”), Pacific Gas and Electric Company (“PG&E”), and the Public Advocates Office at the California Public Utilities Commission (“Cal Advocates”) on October 5, 2022 (respectively, “SDG&E Oct. 5 Comments,” “PG&E Oct. 5 Comments,” and “Cal Advocates Oct. 5 Comments”).

ENERGY SAFETY SHOULD CONSIDER CLARIFYING ITS PROPOSED TESTS FOR PUB. UTIL. CODE 8389(e)(6)(A)

The Draft 2023 Guidelines propose to establish certain numeric thresholds for determining whether the compensation structure established for new or amended contracts satisfies the requirements of Pub. Util. Code 8389(e)(6)(A). Specifically, the Draft 2023 Guidelines would 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 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 “minimalization or elimination” of indirect or ancillary compensation.¹

¹ Draft 2023 Guidelines, pp. A-36, A-37.

If Energy Safety feels it appropriate to adopt numeric thresholds for these purposes, SCE encourages Energy Safety to adopt the numeric thresholds as “safe harbors” and not as the exclusive bases to demonstrate compliance with Pub. Util. Code 8389(e)(6)(A). As the SCE Oct. 5 Comments explained about the greater than 50% level² and the SDG&E Oct. 5 Comments explained about the greater than 50%, greater than 25%, and less than 12.5% levels,³ the statute does not provide any basis for the Draft 2023 Guidelines’ position that those specific numeric thresholds are necessary in order to comply with Pub. Util. Code 8389(e)(6)(A). SCE acknowledges that adopting these levels as a safe harbor (such that if these levels are satisfied, the corresponding requirements of Pub. Util. Code 8389(e)(6)(A) will be considered met) would be helpful in order to provide greater clarity and certainty.

However, if Pub. Util. Code 8389(e)(6)(A) applies to an executive officer’s compensation structure and that structure does not satisfy the numerical thresholds proposed by the Draft 2023 Guidelines, Energy Safety should still approve the compensation structure if it is “based on the... principles”⁴ of Pub. Util. Code 8389(e)(6)(A), including “the compensation principles identified in” Pub. Util. Code 8389(e)(4).⁵ The statute’s principles-based approach to compliance reflects the importance of giving electrical corporations flexibility to design compensation arrangements to attract and retain qualified executives to lead the electrical corporation’s safety and financial stability efforts. For example, in the event of an unexpected loss of an executive officer due to death or departure, where the best-qualified successor is only interested in filling the position on an interim, short-term basis, the electrical corporation may need to negotiate a special fixed-term employment contract that commits to a compensation structure that is very different from the compensation for other, ongoing executive officers. As long as the compensation structure is qualitatively based on the principles identified in Pub. Util. Code 8389(e), then Energy Safety should approve the compensation structure as complying with Pub. Util. Code 8389(e), regardless of whether the structure meets each of the separate numeric thresholds proposed by Energy Safety.

ENERGY SAFETY SHOULD NOT REQUIRE EXECUTIVE COMPENSATION PLAN SUBMISSIONS TO INCLUDE DOLLAR COMPENSATION FIGURES

The Draft 2023 Guidelines require that electrical corporations provide applicable executive compensation information as percentages. This approach is consistent with the law. Pub. Util. Code 8389(e) repeatedly refers to the “portion”⁶ of executive compensation and the compensation “structure.”⁷ A percentage is a “portion” and percentages that add up to one-hundred percent are a “structure.”

Cal Advocates has requested that Energy Safety require electrical corporations to also disclose specific compensation amounts or figures in dollars.⁸ If that is what the law intended, it

² SCE Oct. 5 Comments, pp. 2-3.

³ SDG&E Oct. 5 Comments, pp. 2-4.

⁴ Pub. Util. Code 8389(e)(6)(A).

⁵ Pub. Util. Code 8389(e)(6)(A)(ii).

⁶ Pub. Util. Code 8389(e)(6)(A)(i)(I) and Pub. Util. Code 8389(e)(6)(A)(iii).

⁷ Pub. Util. Code 8389(e)(4), Pub. Util. Code 8389(e)(6)(A), Pub. Util. Code 8389(e)(6)(A)(i)(II), Pub. Util. Code 8389(e)(6)(A)(iii), and Pub. Util. Code 8389(e)(6)(B).

⁸ Cal Advocates Oct. 5 Comments, pp. 4-5.

would have been written that way. But it was not. Pub. Util. Code 8389(e) does not mention the disclosure of specific compensation “amounts” or “figures.”

In addition, California courts have held that an employee’s salary, incentive pay, and other compensation is personal financial information within the zone of privacy protected by Article I, Section 1 of the California Constitution.⁹ The right of privacy may be abridged to accommodate a compelling public interest, but only to the extent absolutely necessary.¹⁰ SCE does not believe that Cal Advocates has provided evidence of a compelling public interest to require such information. The example Cal Advocates provides in its comments¹¹ actually shows that disclosing percentages provides sufficient information about a compensation structure. The example compares an incentive that comprises 5% of compensation to an incentive that comprises 0.5% of compensation; dollar amounts do not need to be provided to understand that the former provides much more motivation to meet the goal than the latter. In addition, Energy Safety’s approval of SCE’s executive compensation structures for 2021 and 2022 reflects that the disclosure of specific compensation “amounts” or “figures” is not needed for the determination of whether an executive compensation “structure” satisfies Pub. Util. Code 8389(e).

Cal Advocates’ argument that dollar compensation figures should be disclosed because such information is otherwise publicly disclosed¹² is factually incorrect. First, in SCE’s case, only compensation information for SCE’s Chief Executive Officer is provided in filings with the Securities and Exchange Commission (“SEC”).¹³ Second, SCE does not disclose amounts of planned compensation for individual executive officers to the SEC, California Public Utilities Commission, or any other regulator. Planned compensation is subject to change and those changes often implicate privacy concerns. SCE’s disclosure of amounts of compensation is limited to actual amounts paid in the past.

Given the privacy protections afforded by the California Constitution, since compliance with Pub. Util. Code 8389(e)(6)(A) can be determined without the disclosure of specific executive compensation dollar figures, and since such executive compensation dollar figures are (in many cases) not otherwise publicly disclosed, Energy Safety should not require disclosure of specific executive compensation dollar figures.

ENERGY SAFETY SHOULD NOT REQUIRE REPORTING OF THE REASONS FOR ANY APPLICATION OF A PERFORMANCE MODIFIER WHEN THE MODIFICATION IS NOT RELATED TO THE PURPOSES OF PUB. UTIL. CODE 8389(e)(6)(A)

The Draft 2023 Guidelines would require electrical corporations to report any application

⁹ See *City of Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259, 268

¹⁰ See *Ibid.*

¹¹ Cal Advocates Oct. 5 Comments, pp. 4-5.

¹² Cal Advocates Oct. 5 Comments, p. 5.

¹³ See <https://www.edison.com/content/dam/eix/documents/investors/sec-filings-financials/2022-eix-proxy-statement.pdf>. See also <https://www.edison.com/content/dam/eix/documents/investors/sec-filings-financials/2021-eix-proxy-statement.pdf>. Disclosure for certain other SCE executive officers was required by SEC rules for prior proxy statements.

of an individual performance modifier, including the name and position of any affected executive officer and the “Factors in/Reason for Adjustment.” SCE does not object to submitting quantitative information about any applicable adjustment. Further, SCE does not object to noting the reason for an adjustment when that reason is based on a specific financial metric or wildfire safety considerations. However, as SDG&E notes,¹⁴ individual performance adjustments are often made for other reasons that implicate employee privacy considerations. Adjustments are also made for confidential projects that should not yet be disclosed. An electrical corporation should not be required to disclose the reason for an adjustment when that adjustment is driven by matters that are outside of Energy Safety’s jurisdiction.

CAL ADVOCATES’ RECOMMENDATIONS FOR CHANGES TO THE DISCOVERY PROCESS ARE EXCESSIVELY PRESCRIPTIVE AND IMPRACTICAL FOR THIS DISCRETE PROCEEDING

Cal Advocates submitted several recommendations concerning the process set forth in the Draft 2023 Guidelines for resolving data request disputes. Cal Advocates’ recommendations include, among other things, that (1) Energy Safety state that a failure to respond to a request be deemed consent to such data request; (2) Energy Safety set a goal of resolving data request disputes within three business days from the due date for responses; and (3) Energy Safety set a schedule providing for a minimum of 30 business days for stakeholders to submit comments on executive compensation submissions and specify that the comment period for such submissions will be automatically extended in the event of discovery delays.¹⁵ Cal Advocates’ recommendations are excessively prescriptive for this discrete proceeding. If adopted, Cal Advocates’ recommendations would establish piecemeal Energy Safety procedures governing data request disputes solely concerning executive compensation structures, which is unnecessary for Energy Safety to establish a clear and timely process for stakeholders to resolve such disputes.

As Energy Safety considers how to proceed, SCE urges Energy Safety to also keep in mind the timing considerations raised by SCE¹⁶ and PG&E¹⁷ in the October 5 comments.

CONCLUSION

SCE appreciates the opportunity to submit these reply comments on the Draft 2023 Guidelines. If you have any questions, or require additional information, please contact me at michael.backstrom@sce.com.

Sincerely,

//s//

Michael A. Backstrom
Vice President
Regulatory Affairs
Southern California Edison

¹⁴ SDG&E Oct. 5 Comments, p. 10.

¹⁵ Cal Advocates Oct. 5 Comments, pp. 1-4.

¹⁶ SCE Oct. 5 Comments, pp. 5-6.

¹⁷ PG&E Oct. 5 Comments, pp. 2-3.