April 12, 2023 **<u>Via Electronic Filing</u>**

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Subject: Public Advocates Office Comments on 2023 Executive Compensation

Docket: #2023-EC

Dear Director Thomas Jacobs,

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits the following comments on Electric Utilities' Executive Compensation Plans for 2023 submitted to the Office of Energy Infrastructure Safety (Energy Safety) for approval. We urge Energy Safety to adopt the recommendations discussed herein.

Sincerely,

/s/ ***Gautam Dutta***

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I. INTRODUCTION

On November 28, 2022, Energy Safety published the 2023 Executive Compensation Structure Submission Guidelines (ECSSG).[1] In response, on March 14, 2023, Pacific Gas and Electric (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison (SCE), and Bear Valley Electric Services (BVES) submitted to Energy Safety their respective 2023 Executive Compensation Structures for approval. Cal Advocates submits the following comments, which primarily focus on the criteria used by the electrical corporations (utilities) to define Executive Officers and certain metrics relating to PG&E's executive compensation plan.

II. COMMENTS

A. Energy Safety should re-engage stakeholders on the criteria used to define an Executive Officer.

Energy Safety evaluates utilities' compliance with Public Utilities Code section 8389(e)(4)[2] by assessing their respective executive compensation structures, using the definition of "executive officer" found in Public Utilities Code section 451.5(c):[3] "any person who performs policy making functions and is employed by the public utility subject to the approval of the board of directors, [which] includes the president, secretary, treasurer, and any vice president in charge of a principal business unit, division, or function of the public utility." Energy Safety further adds that divisions or units responsible for electrical operations, gas operations or wildfire related functions are considered principal business units, divisions, or functions of the public utility.

However, the utilities are inconsistent both in terms of the executive officers included within their executive compensation reports to Energy Safety, and in terms of the information redacted in the public facing versions of these reports. Further guidance on these points from Energy Safety would help to minimize these inconsistencies and serve the interests of the ratepayers in promoting transparency in public utility compensation.

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[1] Electrical corporations submit requests for approval of 2023 executive compensation structures as a part of the electrical corporation's requirements for receipt of a Safety Certification pursuant to Public Utilities Code section 8389(e)(4).

[2] Public Utilities Code section 8389(e)(4) provides: "The electrical corporation has established an executive incentive compensation structure approved by the division and structured to promote safety as a priority and to ensure public safety and utility financial stability with performance metrics, including incentive compensation based on meeting performance metrics that are measurable and enforceable, for all executive officers, as defined in Section 451.5. This may include tying 100 percent of incentive compensation to safety performance and denying all incentive compensation in the event the electrical corporation causes a catastrophic wildfire that results in one or more fatalities."

[3] Public Utilities Code section 451.5(c) provides: "For purposes of this section, "executive officer" means any person who performs policy making functions and is employed by the public utility subject to the approval of the board of directors, and includes the president, secretary, treasurer, and any vice president in charge of a principal business unit, division, or function of the public utility."

1. The Utilities make inconsistent redactions in public facing versions of their executive compensation filings.

The utilities are inconsistent in how and where they claim confidentiality and apply redaction to the public versions of their respective executive compensation reports to Energy Safety. Redactions are inconsistent not only between the utilities, but between the Energy Safety executive compensation filings and filings fulfilling similar reporting requirements at other regulatory bodies.

For example, in Section 1 of Energy Safety's 2023 ECCSG, Energy Safety requests that utilities provide for each executive officer the following information: the executive title and function; the executive name (if the executive is classified as an Officer of the Company per the Company's website); the target percentage of Short-Term Incentives (STIP); and Long-Term Incentives (LTIP) as a proportion of Total Incentive Compensation (TIC) for 2023.[4] Similarly Table 1.2 requests the target base salary as a percent of Total Direct Compensation (TDC), target STIP as a percent of TDC, and target LTIP as a percent of TDC for each executive officer as previously directed in Table 1.1.[5]

- In PG&E's 2023 Executive Compensation Structure Submission, PG&E lists and names only five executives and seals under confidentiality the STIPs and LTIPs as percentages of TIC, and the base salaries, STIPs and LTIPs as percentages of TDC.[6] Currently PG&E lists 53 Officers on its webpage ranging in positions of Executive Vice Presidents (EVPs), Senior Vice Presidents (SVPs), and Vice Presidents (VPs).[7]
- In SCE's 2023 Executive Compensation Structure Submission, SCE lists six executives and only provides the name for the President and Chief Executive Officer. Furthermore, for the five unnamed executives, SCE obscures the exact title of the executive by providing that the executive is either an "SCE Executive or Senior Vice President."[8] However, SCE did not seal under confidentiality the STIPs and LTIPs as percentages of TIC and the base salaries, STIPs, and LTIPs as percentages of TDC. Currently SCE lists 33 individuals holding leadership positions at SCE on its webpage ranging in positions of President and Chief Executive Officer (CEO), EVP, SVPs, and VPs.[9]

[4] Energy Safety's 2023 ECSSG, p. 3.

[5] Energy Safety's 2023 ECSSG, p. 4.

[6] PG&E's 2023 Executive Compensation Structure Submission, pp. 2-4. (Table 1.1 and Table 1.2)

[7] https://www.pgecorp.com/corp/about-us/officers/company-officers.page (last visited April 10, 2023).

[8] SCE's 2023 Executive Compensation Structure Submission, pp. 2-3. (Table 1.1 and Table 1.2)

[9] https://www.sce.com/about-us/who-we-are/leadership (last visited April 10, 2023).

- In SDG&E's 2023 Executive Compensation Structure Submission, SDG&E lists six redacted rows under the "Executive Title/Function and Name (where applicable)" column while providing the STIPs and LTIPs as percentages of TIC and the base salaries, STIPs, and LTIPs as percentages of TDC.[10] Currently SDG&E lists 20 individuals serving on its Management Team's webpage ranging in positions of Chief Officers (COs), SVPs, and VPs.[11]

As shown in Table 1, the utilities also differ in terms of what information they provide publicly. Not only are there inconsistencies across the publicly available filings, but there are also inconsistencies between what the utilities release publicly in response to reporting requirements at other agencies and what is included in the Energy Safety filings.

Table 1 – Comparison of Information made Publicly Available by Utilities

Utility	Names of Executive Officers	Titles of Executive Officers	STIP/LTIP/Base Salary percentages
PG&E	Yes	Yes	No
SCE	Partially	Partially	Yes
SDG&E	No	No	Yes
BVES	Yes	Yes	Yes

PG&E, SCE, and SDG&E publish yearly Proxy Statements to the Securities and Exchange Commission (SEC) that in certain instances do link a dollar amount to an executive's name.[12] These SEC filings also include information on the percentage breakdown of executive pay for named executives that can, in some instances, be mapped to executives whose names are redacted from the Energy Safety filings. Further, the utilities file General Order 77-M reports with the Commission which contain substantively similar information about executive compensation, and also seem to contain inconsistencies between named executives and those redacted in Energy Safety's filings.

The ratepayers, who pay a substantial portion of utility executive salaries, have a right to know how their funds are being spent. Energy Safety should clarify that names and titles of executive officers and the percentage breakdown of annual executive compensation should be included in public versions of the executive compensation filings. Further, Energy Safety should make it clear to the utilities that any information made publicly available in filings at other regulatory agencies should be publicly disclosed in Energy Safety's annual filings.

[10] SDG&E's 2023 Executive Compensation Structure Submission, pp. 2-3. (Table 1.1 and Table 1.2)

[11] https://www.sdge.com/more-information/our-company/about-us/management-team (last visited April 10, 2023).

[12] Edison International 2023 Proxy Statement, pp. 49-61; PG&E 2023 Proxy Statement, pp. 53-74.

2. The Interpretation of "policy making" per Public Utilities Code section 451.5 is inconsistent between utilities.

The utilities are also inconsistent in their interpretations of which officers fall within the definition of "executive officers" in Public Utilities Code Section 451.5(c). In Section 2 of Energy Safety's 2023 ECCSG, Energy Safety allows utilities to provide a rationale on why certain top-level officials do not fit within this definition of "executive officers."[13] Utilities are directed by Energy Safety to complete Table 2.1 by providing positions of the highest three tiers of the executives or officers of the electrical corporation that do not fit within the definition of "executive officers" and correspondingly provide a simple explanation regarding why the executives holding these positions are not considered "executive officers" as defined in Public Utilities Code section 451.5(c).[14]

In Table 2.1 of PG&E's 2023 Executive Compensation Structure Submission,[15] PG&E provides the following exclusion rationale for six SVPs with roles ranging from electric operations, gas operations, and vegetation management: "This individual does not perform policy making functions."[16] PG&E provides the following definition of policy making: "authority to both formulate and implement policy decisions." [17]

- In SCE's 2023 Executive Compensation Structure Submission, SCE provides the following exclusion rationale for four SVPs with roles including corporate affairs, human resources, Chief Information Officer (CIO), and Asset Strategy and Planning: "This individual is not in charge of a principal business unit, division, or function of SCE and does not otherwise perform a policymaking function."[18] SCE provides its definition of "policy makers" as a person who "must regularly exercise final authority over material policy decisions."[19]

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[13] Energy Safety's 2023 ECSSG, p. 5.

[14] Energy Safety's 2023 ECSSG, p. 5.

[15] PG&E's 2023 Executive Compensation Structure Submission, p. 5.

[16] PG&E's 2023 Executive Compensation Structure Submission, p. 5: SVP & Chief Nuclear Officer, Generation; SVP, Electrical Engineering, Electric Engineering; SVP, Electric Operations, Electric Operations; SVP, Gas Engineering, Gas Engineering; SVP Gas Operations, Gas Operations; SVP, Vegetation Management & System Inspections, Operations.

[17] PG&E's 2023 Executive Compensation Structure Submission, p. 6, which provides: "For purposes of determining who is and is not included in the definition of "executive officer" in Public Utilities Code §451.5(c), PG&E generally defines "policy making" to connote authority to both formulate and implement policy decisions. In this context, "policy making" goes beyond discussing and influencing company strategy and policy, and instead generally also requires responsibility for policy decisions and, in many cases, direct accountability to the Utility's Board of Directors. The determination regarding whether an officer engages in "policy making" requires inquiry into an officer's specific duties and responsibilities and cannot be determined based on title alone."

[18] SCE's 2023 Executive Compensation Structure Submission, p. 4. (Table 2.1)

[19] SCE's 2023 Executive Compensation Structure Submission, p. 5, which provides: "There are two key aspects of policy making for purposes of the executive officer determination. First, only policy decisions

- In SDG&E's 2023 Executive Compensation Structure Submission, SDG&E provides the following exclusion rationale for four SVPs with roles ranging across customer service and external affairs, electric operations, CIO and Chief Digital Officer, and State Government Affairs and Chief Regulatory Officer: "SDG&E has excluded the SVP as this is not a policy making role, and the individual does not perform policy making functions."[20] SDG&E provides the following definition for policy making functions: "[functions] performed by senior-level management, responsible for policy decisions of the company, and directly answerable to the [utility's] Board of Directors because their hiring and firing are determined by the Board."[21]

In relation to "policy making," Public Utilities Code section 451.5(c) defines an "executive officer" as a person who "performs policy making functions."[22] Similarly in relation to "policy making," SEC Rule 3b-7 defines an "executive officer" as "any other officer who performs a policy making function."[23] Neither the Public Utilities Code section 451.5(c) nor SEC Rule 3b-7 distinctly define an executive officer as a person who must "both formulate and implement policy decisions," or "regularly exercise final authority over material policy definitions," or "responsible for policy decisions of the company." Cal Advocates recommends that Energy Safety clearly define the term "policy maker" in this venue as to prevent the inconsistent use by utilities to limit the number of executives presented in Executive Compensation Structure Submissions to Energy Safety.

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that could have a material impact on the company are considered for this purpose. Second, policy makers must regularly exercise final authority over material policy decisions. Officers who merely influence policy decisions are policy advisors, not policy makers. All of our officers at some point advise on material policy decisions. But only executive officers regularly exercise final authority to make material policy decisions."

[20] SDG&E's 2023 Executive Compensation Structure Submission, p. 4. (Table 2.1)

[21] SDG&E's 2023 Executive Compensation Structure Submission, p. 4. *See also* 17 C.F.R. §240.3b-7; D.21-08-036 at 418-419 ("Consistent with Securities and Exchange Commission (SEC) Rule 3b-7, and precedent of the California Public Utilities Commission interpreting the Rule, SDG&E defines policy making functions as performed by "senior-level management, responsible for policy decisions of the company, and directly answerable to the [utility's] Board of Directors because their hiring and firing are determined by the Board.")

[22] Public Utilities Code section 451.5(c): For purposes of this section, "executive officer" means any person who performs policy making functions and is employed by the public utility subject to the approval of the board of directors, and includes the president, secretary, treasurer, and any vice president in charge of a principal business unit, division, or function of the public utility.

[23] SEC Rule 3b-7's definition of "executive officer" provides: "The term *executive officer,* when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant." (italics in original). 17 C.F.R. §240.3b-7.

Cal Advocates would consider a "policy making" position to be any position with decision making influence and discretionary authority when devising and implementing policy. Cal Advocates recommends that Energy Safety adopt a definition for "policy making" that is explicitly intended to capture all high-level executives, SVPs, and VPs whose roles have a direct nexus to electric safety and wildfire safety.[24] There is a clear public interest in ensuring that all utility executives who have a role in promoting and ensuring the provision of safe and reliable electric service to customers are captured within the definition of policy-making in use here.

However, Energy Safety should engage the utilities and stakeholders in development of a consensus definition of policy making per Public Utilities Code section 451.5(c) to eliminate inconsistencies between the executives included in each utility's executive compensation filings.

B. Energy Safety should require PG&E to revise certain metrics that may hinder safety performance.

1. Wildfire Risk Reduction metric

PG&E defines the STIP metric "Wildfire Risk Reduction" as the "measure[] [of] the count of Fire Ignitions in PG&E's High Fire Threat Districts (HFTDs) and High Fire Risk Areas (HFRAs) that are reportable to the CPUC per Decision 14-02-015 and meet one of the three criteria: (i) Ignitions that result in fires > 5,000 acres, (ii) Ignitions that result in fires that damage or destroy > 500 structures, or (iii) Ignitions that result in fires that cause a third-party fatality."[25]

PG&E assigns the metric "Wildfire Risk Reduction" a weight of 15% with a minimum value of 2 reportable fire ignitions in PG&E's HFTDs and HDRAs, target value of 1 reportable fire ignitions in PG&E's HFTDs and HDRAs, and maximum value of 0 denoting no reportable fire ignitions in PG&E's HFTD. and HDRAs.[26] According to this metric, PG&E executives would be entitled to incentive compensation even after a fire ignition that may burn more than 5,000 acres, destroy 500 structures, or result in a third-party fatality. Cal Advocates recommends that Energy Safety require PG&E to revise the minimum, target, and maximum values to zeros.

2. Electric Corrective Maintenance in HFRAs metric

PG&E uses the LTIP metric "Electric Corrective Maintenance in HFRAs", which focuses on "reducing the backlog of tags" within HFTDs and HFRAs.[27] The "Electric Corrective Maintenance in HFRA" metric has a weight of 20%, has a minimum value of 40%, target value of 48%, and maximum value of 56%.[28] This metric is intended to address the requirement in Energy Safety's 2022 WMP Final Decision that PG&E take immediate action to clear the

[24] Chief Nuclear Officer, Electrical Engineering, Electric Operations, Gas Engineering, Gas Operations, Vegetation Management, etc.

[25] PG&E's 2023 Executive Compensation Structure Submission, pp. 27-28.

[26] PG&E's 2023 Executive Compensation Structure Submission, p. 19.

[27] PG&E's 2023 Executive Compensation Structure Submission, pp. 54-55.

[28] PG&E's 2023 Executive Compensation Structure Submission, p. 54.

backlog of outstanding maintenance tags.[29] However, the metric explicitly excludes tags created in 2023 or later.[30]

Thus, while this metric incentivizes clearing the backlog, it but could also incentivize the prioritization of less critical backlog tags over newly generated tags with a higher safety priority. PG&E should include the risk reduction of both backlog and newly generated tags in calculating this metric, and executive compensation filings in future years should be calculated based on the full backlog of overdue tags including those generated in 2023 or later.

III. CONCLUSION

Cal Advocates respectfully urges Energy Safety to adopt the recommendations discussed herein. For any questions relating to these comments, please contact Matthew Karle (Matthew.Karle@cpuc.ca.gov) or Talal Harahsheh (Talal.Harahsheh@cpuc.ca.gov).

Respectfully submitted,

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[29] Final Decision on Pacific Gas and Electric Company's 2022 Wildfire Mitigation Plan Update, pp. 90-96.

[30] PG&E's 2023 Executive Compensation Structure Submission, pp. 54-55.