

**Docket# 2023-EC**

April 24, 2023

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 Comments in Reply to Cal Advocates' Comments on the 2023 Executive Compensation Structure Submissions

Dear Director Thomas Jacobs,

Pursuant to the Office of Energy Infrastructure Safety's (Energy Safety's) Final 2023 Executive Compensation Structure Submission Guidelines and the 2023 Executive Compensation Structure Submission and Review Schedule,<sup>1</sup> Southern California Edison Company (SCE) submitted its 2023 Executive Compensation Structure approval request on March 13, 2023 (Submission). The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submitted opening comments on utilities' executive compensation structures on or about April 12, 2023. SCE hereby submits its comments in reply to Cal Advocates' comments.

**ENERGY SAFETY SHOULD NOT REQUIRE PUBLIC DISCLOSURE OF PERSONAL IDENTIFYING INFORMATION**

Cal Advocates requests that Energy Safety "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."<sup>2</sup> Cal Advocates states that Energy Safety should require the public disclosure of this sensitive information because: some utilities "differ in terms of what information they provide publicly;" "there are also inconsistencies between what the utilities release publicly in response to reporting requirements at other agencies;" and "ratepayers, who pay a substantial portion of utility executive [officer] salaries, have a right to know how their funds are spent."<sup>3</sup> The second and third quotations in the preceding sentence are factually incorrect, at least with respect to SCE, and the first quotation does not provide a valid reason for Energy Safety to intrude upon privacy protections afforded by the California Constitution and require disclosure of the limited identifying information that SCE redacted from the public version of its Submission.

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<sup>1</sup> See Energy Safety's Final 2023 Executive Compensation Structure Submission Guidelines, available at <https://efiling.energysafety.ca.gov/eFiling/Getfile.aspx?fileid=53269&shareable=true> and the 2023 Executive Compensation Structure Submission and Review Schedule, available at <https://efiling.energysafety.ca.gov/eFiling/Getfile.aspx?fileid=53232&shareable=true>.

<sup>2</sup> Cal Advocates Comments, p. 3.

<sup>3</sup> *Id.*

## **A. Personal Financial Information Is Legally Protected from Public Disclosure**

On March 13, 2023, SCE submitted two versions of its Submission to Energy Safety: one version that was publicly filed on the Energy Safety 2023-EC docket, and one confidential version that was not publicly filed. The public version of SCE’s Submission discloses SCE’s executive compensation structure and related data. The only information that SCE redacted or omitted from the public version of the Submission were the names of certain officers (except in one table, SCE redacted the names of certain officers *and* data because the data in the table may be used to identify the officer to which the data applies).<sup>4</sup> Apart from these narrow pieces of sensitive identifying information, SCE’s entire executive compensation structure and related data are available in the public version of SCE’s Submission.

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. This information is also protected from public disclosure by statute.<sup>5</sup> The right of privacy may only be abridged to accommodate a compelling public interest, and only to the extent necessary to achieve that interest. See *City of Carmel-by-the-Sea v. Young*, 2 Cal.3d 259, 268 (1970). The disclosure of the names of certain SCE officers alongside their personal financial information does not serve any public interest, let alone a compelling one, because SCE’s compliance with Public Utilities Code § 8389(e) can be determined without such disclosure. Public Utilities Code § 8389(e)(4) provides, in relevant part, that the “Director of the Office of Energy Infrastructure Safety shall issue a safety certification to an electrical corporation if...[t]he 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...for all executive officers.” Public Utilities Code § 8389(e)(6) concerns whether an electrical corporation “has established a compensation structure for any new or amended contracts for executive officers” based on certain principles. These statutes focus on an evaluation of how an electrical corporation’s executive compensation is structured and do not require public disclosure of the identities of individual executive officers.

Although Cal Advocates requests that utilities not be permitted to redact the identities of certain executive officers, Cal Advocates does not state that it was hindered in making an informed public comment as to whether SCE’s executive compensation structure complies with Public Utilities Code § 8389(e) because the names of certain SCE officers were not publicly disclosed. Nor does Cal Advocates offer any reason why executive officers’ names are necessary to the determination of whether SCE’s 2023 executive compensation structure satisfies the requirements of Public Utilities Code § 8389(e), particularly when SCE already makes its executive compensation structure and related data publicly available.

## **B. SCE’s Redactions Are Consistent Across Its Public Filings; Ratepayers Do Not Fund Executive Officer Salaries**

Cal Advocates also states that there are “inconsistencies between what the utilities release publicly in response to reporting requirements at other agencies and what is included in the Energy Safety filings.”<sup>6</sup> Cal Advocates broadly suggests that utilities redacted information in their executive compensation submissions that utilities disclosed in some cases in two other public filings: (1) yearly Proxy statements with the Securities and Exchange Commission (SEC),

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<sup>4</sup> SCE redacted the names of certain executive officers in Tables 1.1, 1.2, 3a.3 (and page 12), 4a.1, 5.1, and 7a.1, and the names of certain officers and data in Table 6.2.

<sup>5</sup> See, e.g., Cal. Gov. Code § 7927.700 (protecting from disclosure personnel and other information, “the disclosure of which would constitute an unwarranted invasion of privacy.”).

<sup>6</sup> Cal Advocates Comments, p. 3.

and (2) reports in compliance with General Order 77-M.<sup>7</sup> Cal Advocates' generalizations regarding inconsistencies in disclosures across utilities' public filings is inaccurate with respect to SCE.

First, Cal Advocates cites a 2023 Edison International Proxy Statement as an example of publications "that in certain instances do link a dollar amount to an executive's name."<sup>8</sup> However, in SCE's case, only compensation information for SCE's President and Chief Executive Officer ("CEO") is provided in filings with the SEC, in accordance with SEC requirements. Consistent with the information disclosed in the 2023 Edison International Proxy Statement, SCE's public Submission to Energy Safety discloses compensation information for SCE's CEO. The identifying information for SCE's other executive officers that SCE redacted from its public Submission to Energy Safety is not required to be disclosed in filings with the SEC.

Second, Cal Advocates states that "utilities file General Order 77-M reports with the Commission which contain substantially similar information about executive compensation, and also seem to contain inconsistencies between named executives and those redacted in Energy Safety's filings."<sup>9</sup> Cal Advocates does not cite any specific examples of such inconsistencies. Perhaps that is because the redactions in SCE's public General Order 77-M reports are consistent with the redactions in the public Submission: both disclose compensation information for SCE's CEO and redact the identifying information for SCE's other executive officers.

Cal Advocates' argument about ratepayers funding executive officer salaries is also factually incorrect. Pub. Util. Code § 706 prohibits ratepayer funding of the compensation of SCE's executive officers.<sup>10</sup>

Given that compliance with Public Utilities Code § 8389(e) can be determined without the disclosure of executive officer identities, and in light of the compelling privacy protections afforded by the California Constitution, Energy Safety should not require disclosure of the identities of officers whose names are redacted from SCE's public Submission.

## **ENERGY SAFETY SHOULD NOT DEFINE POLICY MAKER**

Cal Advocates recommends that Energy Safety clearly define the term "policy maker" in an attempt "to prevent the inconsistent use by utilities to limit the number of executives presented in Executive Compensation Structure Submissions to Energy Safety."<sup>11</sup> Cal Advocates states that it "consider[s] a 'policy making' position to be any position with decision making influence and discretionary authority when devising and implementing policy" and 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."<sup>12</sup>

### **A. Energy Safety Should Continue to be Consistent with Other Regulators in Defining Executive Officers of the Utilities**

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<sup>7</sup> Cal Advocates Comments, p. 3.

<sup>8</sup> Cal Advocates Comments, p. 3 n.12 (citing Edison International 2023 Proxy Statement, pp. 49-61).

<sup>9</sup> Cal Advocates Comments, p. 3.

<sup>10</sup> D.21-08-036, p. 669: "All compensation, as defined by Section 706, for SCE executives who are Rule 3b-7 officers of SCE should be excluded from rates."

<sup>11</sup> Cal Advocates Comments, p. 5.

<sup>12</sup> Cal Advocates Comments, p. 6.

Pub. Util. Code § 8983(e) specifies that its executive compensation provisions apply to the compensation structure established by an “electrical corporation” for its “executive officers, as defined in Section 451.5” of the Pub. Util. Code. The definition in Pub. Util. Code 451.5 provides the term “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. This definition has the same basic requirements as Rule 3b-7 (Rule 3b-7) of the Securities Exchange Act of 1934 (the “Exchange Act”).<sup>13</sup> Rule 3b-7 states that an “executive officer” means “a 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.” As the California Public Utilities Commission (Commission) stated in its decision in SCE’s 2021 General Rate Case (GRC), the definition of “executive officer” in Pub. Util. Code 451.5 “is similar to the definition provided in Rule 3b-7.”<sup>14</sup> Both definitions require a person to perform a “policy making function” and both provide that such policy-makers include the company’s “president” and “any vice president... in charge of a principal business unit, division, or function.”

Energy Safety does not need to create new interpretations of Public Utilities Code § 451.5 and Rule 3b-7 and should instead rely on long-standing practices by companies and application of the “policy-making” terminology in the SEC context. Companies and their boards of directors have been making determinations under Rule 3b-7 regarding who serves in a policy making function for decades, consistent with existing law. SCE’s statements in its Submission regarding how it defines policy-making are consistent with existing law. For example, Rule 16a-1(f) of the Exchange Act states that “‘policy-making function’ is not intended to include policy-making functions that are not significant.”<sup>15</sup> In addition, in *SEC v. Prince*, the court concluded that “substantial influence and involvement with regard to [material functions such as] mergers and acquisitions issues” did not constitute a policy-making function because the individual “did not have final, policy making authority over that program.”<sup>16</sup>

SCE continues to identify its executive officers with a policy making function in accordance with existing law and SEC regulations as it has for decades. Creating new definitions would actually increase inconsistency and create confusion.

**B. The Determination of Who Serves in a Policy Making Function is Based on the Specific Governance and Management Structures of Each of the Utilities and Should be Made by the Utilities’ Boards of Directors**

On an annual or more frequent basis, SCE’s Board of Directors (SCE Board) evaluates and determines who performs policy making functions for SCE. The SCE Board designates these policy-makers as its executive officers under Rule 3b-7. The SCE Board applies the law and has determined that currently SCE has six officers who are in charge of *principal* business units/divisions/functions or otherwise *make* policy decisions for the company: President and CEO; Executive Vice President, Operations; Senior Vice President, Transmission & Distribution; Senior Vice President, Customer Service; Senior Vice President & Chief Financial Officer; and Senior Vice President & General Counsel. There are other SCE Vice Presidents who are not Senior Vice Presidents or Executive Vice Presidents which the SCE Board does not view as being in charge of a *principal* business unit, division, or function, or otherwise performing a

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<sup>13</sup> 17 C.F.R. § 240.3b-7.

<sup>14</sup> D.21-08-036, p. 417, fn. 1353.

<sup>15</sup> 17 CFR 240.16a-1(f).

<sup>16</sup> *SEC v. Prince*, 942 F. Supp. 2d 108, 135 (D.D.C. 2013).

policy-making function. All Vice Presidents report up to a Senior Vice President, Executive Vice President, or President/CEO. Even some Senior Vice Presidents are not treated as being in charge of a *principal* business unit, division or function, or otherwise performing a policy-making function, because they *advise* the President/CEO or Executive Vice President rather than *make* final policy decisions themselves on major issues and/or because the business unit, division or function they oversee is not a *principal* one for SCE.

In SCE's 2021 GRC, the Commission delved deeply into Rule 3b-7 and the determination of SCE's executive officers. According to the Commission, "there is a reasonable basis for drawing a distinction between treatment of compensation for Rule 3b-7 officers and other executives.... Rule 3b-7 officers are senior-level management, responsible for policy decisions of the company, and directly answerable to SCE's Board of Directors."<sup>17</sup> Although the Commission was discussing SB 901's prohibition on ratepayer funding of officer compensation (under Pub. Util. Code § 706), the same rationale and conclusion applies to AB 1054's regulation of the structure of executive officer compensation (under Pub. Util. Code § 8983)—the utility's Rule 3b-7 executive officers are its policy makers and there is a reasonable basis for regulating their compensation differently than the compensation of other executives.

Since the determination of who performs a policy-making function for a company depends so much on the facts and circumstances of each person's actual role within the company's decision-making structure and cannot be determined by a person's title (other than the president), the SEC presumes that a company's board of directors' judgment is correct when it designates the executive officers of that company.<sup>18</sup>

The Commission, like the SEC, deferred to the SCE Board's determination of who is a policy-maker and executive officer for SCE.<sup>19</sup> For consistency among regulators, and because the SCE Board is best-positioned to make this facts and circumstances determination, Energy Safety should continue to utilize the SCE Board's determination of who is a policy-maker and executive officer of SCE.

Finally, SCE's determination of policy makers already captures high-level executives with a direct nexus to electric safety and wildfire safety. For example, SCE's Vice President of Safety, Security and Business Resilience reports directly to the Executive Vice President of Operations, who has been identified as a policy making executive officer. Many executives, and in fact thousands of SCE employees, arguably have a direct nexus to electric safety and wildfire safety, but for purposes of the executive compensation review the line must be drawn at the appropriate level. SCE suggests the line should be drawn consistently with the Commission's and the SEC's guidance regarding the determination of the executive officers with policy making functions, as determined by the Utilities' boards of directors.

## **CONCLUSION**

As explained in our Submission and supplemented in this correspondence, SCE's 2023 executive compensation structure fully complies with the requirements of Public Utilities Code § 8389(e) and Energy Safety's guidance. We urge Energy Safety to promptly approve SCE's 2023 executive compensation structure approval request.

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<sup>17</sup> D.21-08-036, p. 419.

<sup>18</sup> 17 CFR 240.16a-1(f).

<sup>19</sup> *Id.*

SCE appreciates the opportunity to submit its reply to stakeholder comments. If you have any questions, or require additional information, please contact me at [michael.backstrom@sce.com](mailto:michael.backstrom@sce.com).

Sincerely,

//s//

Michael A. Backstrom  
Vice President Regulatory Affairs  
Southern California Edison