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VIA ELECTRONIC FILING

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

**RE: SDG&E Reply Comments to Comments on 2023 Executive Compensation
Docket # 2023-EC**

Dear Director Thomas Jacobs:

San Diego Gas & Electric (“SDG&E”) hereby provides reply comments on the Electric Utilities’ Executive Compensation Plans for 2023. SDG&E’s comments respond to the general comments of the Public Advocates Office of the California Public Utilities Commission (Cal Advocates) requesting that the Office of Energy Infrastructure Safety (Energy Safety) revise areas of future executive compensation submissions (Cal Advocates Comments). SDG&E notes that Cal Advocates does not recommend that Energy Safety revise or reject SDG&E’s 2023 Executive Compensation submission. SDG&E’s 2023 Executive Compensation Submission meets the requirements of Public Utilities Code Section 8389 and should be approved without modification.

For the reasons stated below, Energy Safety should not incorporate Cal Advocates recommendations in future reviews of the utilities executive compensation structures under Assembly Bill (AB) 1054. In summary:

- Energy Safety should not impose a definition of policy maker inconsistent with the existing definitions applied by the Securities and Exchange Commission (SEC) and the California Public Utilities Commission (CPUC).
- Energy Safety should continue to protect the privacy of personal financial and salary information, as SDG&E’s publicly available Executive Compensation submissions allow all stakeholders to assess compliance with Public Utilities Code Section 8389.

I. Energy Safety Should Remain Consistent with Other Regulators and Applicable Laws with Respect to Determining Policy Makers

The Legislature passed AB 1054 to achieve two primary goals: 1) to address the risk of wildfires caused by electrical infrastructure throughout the state, and 2) to allow the electrical corporations the access to needed capital to fund ongoing operations—including enhancements to wildfire safety measures—and to make new investments to promote safety, reliability, and clean energy mandates for California ratepayers.¹ In regulating executive compensation, it is always important to remember the balance struck by the Legislature in promoting wildfire (and other) safety as well as recruiting and retaining executive leadership to enable and foster the necessary investments in safety and reliability for utility customers. AB 1054 recognized the correlation between safety and the financial performance of an electrical corporation, that a well-run utility will strive for success in both areas, and that the two are generally invariably linked. If the executive compensation review process deters competent, qualified executive leadership from the California utility sphere, that defeats one of the goals of AB 1054 and the safety certification process.

AB 1054 established a mechanism to evaluate the structure of executive compensation for the highest tiers of electrical corporation executive officers in charge of establishing the policy of the utilities. Public Utilities Code Section 8389(e) specified that its executive compensation provisions apply to “executive officers, as defined in Section 451.1” of the 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 language largely mirrors that of Rule 3b-7 of the Securities and Exchange Act of 1934,² which provides that “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.” Notably, neither the Public Utilities Code nor the SEC Rule specify that all vice presidents, or even senior vice presidents, are executive officers.

The CPUC recognized the similarities between the Public Utilities Code definition of executive officer and the SEC Rule, finding that the definition of “executive officer” in Pub. Util. Code 451.5 “is similar to the definition provided in Rule 3b-7.”³ Both definitions require a person to perform a “policy making function” and both provide that such policy-

¹ Assembly Bill (AB) 1054, Stats. 2019-2020, Ch. 79 (Cal. 2019), Section 1.

² 17 C.F.R. § 240.3b-7.

³ D.21-08-036, p. 417, fn. 1353. While the Commission was discussing the prohibition of ratepayer funding of executive compensation under SB 901 under Pub. Util. Code § 706, it is only logical that the same analysis of Pub. Util. Code §451.5 would apply to this approach.

makers include the company's "president" and "any vice president... in charge of a principal business unit, division, or function." The Commission further reasoned that both Public Utilities Code Section 451.5 and Rule 3b-7 limit the scope of executive officers to senior-level management, responsible for policy decisions of the company, and directly answerable to SCE's Board of Directors."⁴ Thus, not all officers and executives fit the role of "executive officer" for these purposes, and "there is a reasonable basis for drawing a distinction between treatment of compensation for Rule 3b-7 officers and other executives."⁵ Keeping with this approach, SDG&E has employed a definition of executive officer entirely consistent with applicable regulations, defining policy makers as "senior level management, responsible for policy decisions of the company, and directly answerable to the Board of Directors because their hiring and firing are determined by the Board."⁶

Cal Advocates seeks to expand the existing definition of executive officer to "any position with decision making *influence* and discretionary authority when devising and implementing policy."⁷ But this approach would be inconsistent with existing interpretations of the law and should not be adopted by Energy Safety. While certain positions within the company may involve "substantial influence and involvement with regard to" company matters, they are not necessarily policy makers because they do "not have final, policy making authority over that program."⁸ It is the subset of policy decision makers to which Public Utilities Code Section 451.5 and Rule 3b-7 apply. Regardless of title, executives who are not policy makers are correctly exempted from the annual executive compensation review process.⁹

Cal Advocates' complaint that the electrical corporations' submissions are inconsistent in their application of policy making is similarly misplaced, because it seeks to standardize roles and responsibilities across distinct organizations with very distinct leadership and board structures. Ultimately the determination of who fills a policy making role is a fact-specific and company-specific determination based on the decision-making structure and cannot be directly tied to title. The SEC defers to the discretion of the Board of Directors when designating executive officers of the company, and Energy Safety should continue to do the same.

⁴ D.21-08-036, p. 419.

⁵ *Id.*

⁶ SDG&E Executive Compensation submissions at 4.

⁷ Cal Advocates Comments at 6 (emphasis added).

⁸ *SEC v. Prince*, 942 F. Supp. 2d 108, 135 (D.D.C. 2013).

⁹ *SEC v. Prince*, 942 F. Supp. 2d 108, 135 (D.D.C. 2013).

It is important to note that SDG&E's 2023 submission already details the structure of the high-level executives with whose roles have a "direct nexus to safety and wildfire safety" that Cal Advocates seeks to include.¹⁰ These individuals include SDG&E's CEO, President, Chief Safety Officer, and Chief Risk Officer. Beyond the executive officers, there are dozens, if not hundreds of SDG&E employees who share a role in "promoting and ensuring the provision of safe and reliable service to customers," but AB 1054 in no way sought to extend the compensation review that far. Energy Safety should continue to recognize the existing definitions of executive officer and policy maker, and no further engagement on these issues is necessary.

II. Energy Safety Should Remain Mindful of Protecting Executive Officers' Personal Identifying Salary Information

Cal Advocates argues that "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."¹¹ Cal Advocates cites to the different confidential designations (names, titles, and salary percentages) used in electrical corporations' 2023 Executive Compensation submissions. But comprehensive public disclosures of this information would not add any additional meaning to the compensation submission or support the purpose of it. Further, Cal Advocates position that the names, titles, and pay structures of the executives should be included in the annual executive compensation submissions wrongly intrudes on privacy protections and rests on several misunderstandings of what is already publicly available regarding SDG&E's executive compensation.

The "inalienable" right to privacy is established in Article 1, Section 1 of the California Constitution. An employee's compensation is personal financial information within the zone of the privacy established by the Constitution and applicable statutes.¹² 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."¹³ Any invasion into individual privacy—as undeniably sought here—must be balanced against the public's need for and interest in disclosure.¹⁴ As further discussed below, because Public Utilities Code Section 8389(e) is not focused on individual aspects of compensation, there is no compelling public need for disclosure

¹⁰ Cal Advocates Comments at 6.

¹¹ Cal Advocates Comments at 3.

¹² 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.").

¹³ *Los Angeles Unified School Dist. v. Superior Court*, 228 Cal.App.4th 222, 241 (2014).

¹⁴ See, e.g., *International Federation of Professional and Technical Engineers, Local 21 AFL-CIO v. Superior Court*, 42 Cal.4th 319, 329-330 (2007).

of individual compensation packages.

Cal Advocates fails to identify any public need for disclosure of the names, titles, and compensation percentages of utility executives. Contrary to Cal Advocates' representations, the SDG&E executives named in its compensation submissions are paid by SDG&E shareholders, not the ratepayers.¹⁵ Additionally, SDG&E does not publish a yearly proxy statement linking its executives to a dollar amount of compensation.¹⁶ Other than SDG&E's General Order 77-M filing, which is submitted with similar confidentiality designations, Cal Advocates fails to identify any regulatory or other filing in which SDG&E discusses its executive compensation.

While Public Utilities Code Section 8389(e) creates a public interest in the overall *structure* of the electrical corporations' executive officer compensation, it in no way establishes a compelling public interest in public disclosure of the structure of each *individual's* pay. The intent of the submission is for Energy Safety and stakeholders to understand whether the executive compensation structure "promotes safety as a priority and [ensures] public safety and utility financial stability with performance metrics, including incentive compensation based on meeting performance metrics that are measurable and enforceable."¹⁷ Cal Advocates also fails to claim that it was hindered in making an assessment of SDG&E's executive compensation structure based on the information provided. SDG&E's salary percentages for all executive officers were available in the publicly filed version of the submission, as were SDG&E's various S-TIP and L-TIP metrics and measurements for 2023.

The compelling interests in and the inalienable right to privacy in this instance clearly outweigh any claimed interest in knowing the pay structure of each electrical corporation's individual officers. Because compliance with Public Utilities Code Section 8389(e) may be assessed via the information already provided by SDG&E, it is unjustified to require disclosure of the names, titles, and the salary percentages for individual officers on a non-confidential basis. Further public disclosure of names and titles of executive officers and the percentage breakdown of annual executive compensation would impermissibly violate privacy interests.

¹⁵ See Pub. Util. Code §706.

¹⁶ See Cal Advocates Comments at 3. Cal Advocates cites only to PG&E and Edison International's proxy statements yet includes SDG&E in error.

¹⁷ Pub. Util. Code §8389(e)(4).

Conclusion

For the reasons stated above, Energy Safety should decline to adopt Cal Advocates' general recommendations.

Respectfully submitted,

/s/ Laura M. Fulton

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San Diego Gas and Electric Company