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VIA ELECTRONIC FILING

Docket # Compliance Guidelines

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

SDG&E Draft 2023 Compliance Guidelines Comments

Dear Director Thomas Jacobs:

San Diego Gas & Electric (“SDG&E”) hereby provides comments addressing the Draft Compliance Guidelines (“Draft Guidelines”) issued by the Office of Energy Infrastructure Safety (“Energy Safety”) on June 20, 2023. SDG&E generally supports the adoption of the 2023 Draft Guidelines. But to ensure clarity and consistency of application and promote an effective and consistent compliance process, SDG&E recommends the following modifications and recommendations for clarification to the Draft Guidelines.

I. The Compliance Guidelines Should be Modified to Apply Prospectively

The Draft Guidelines indicate that for both the Annual Report on Compliance (ARC) and substantial vegetation management audits, the guidelines will apply retroactively to 2021 and subsequent WMP plan years.¹ To eliminate any *ex post facto* concerns and promote due process, Energy Safety should revise the Draft Guidelines to clarify that the Guidelines will apply going forward, commencing in 2023.

As Energy Safety states, the Draft “Guidelines set forth substantive and procedural requirements for electrical corporations both during and after the annual compliance period.” SDG&E supports Energy Safety’s goal of providing additional clarity regarding the WMP compliance process, however, retroactive application of the guidelines would hold the electrical corporations to compliance standards unknown to them at the time of action—in the case of 2021, more than two years ago. SDG&E’s 2021 WMP is complete and the Compliance assessment is already well underway. Further, the independent evaluator report is complete, and SDG&E’s 2021 Annual Report on Compliance has already been submitted.

¹ Draft Guidelines, pp. 14-15.

Making the Draft Guidelines retroactive would alter the expectations and standards the electrical corporations have been operating under for the past two years, which could improperly alter the standards applied to date. Further, retroactive application of the Guidelines would be inconsistent with Energy Safety's own stated goal of establishing requirements for compliance "during" the compliance period. As the compliance period for 2021 and 2022 has already passed, it would be inappropriate to now hold the electrical corporations to a compliance standard for only the "after" retroactive basis only.

Due process principles also compel that the electrical corporations be held to the standards known to them at the time of action and it would be unreasonable to alter applicable standards after an action has been taken. Additionally, retroactive application of the guidelines would also be particularly problematic in light of the potential for fines or penalties in the event of a finding of noncompliance. For these reasons, SDG&E requests that Energy Safety revise the Draft Guidelines to clarify that they apply prospectively from 2023.

II. Independent Evaluator Annual Report on Compliance

A. Independent Evaluator Contractual Information

The Draft Guidelines require the electrical corporations provide contractual information for all qualified independent evaluators within five business days of publication of the list of qualified vendors. This requirement for all qualified independent evaluators is unnecessary and overly burdensome to Energy Safety, as the electrical corporations may have known conflicts of interest with certain vendors or some of the qualified independent evaluators may choose not to bid on the work issued by some of the electrical corporations. While there is value to understanding conflicts of interest for independent evaluators, providing this information on vendors who may never be considered for performing the work for the electrical corporation has no benefit to Energy Safety and could confuse the process.

Further, the timing of this requirement is misplaced. Within the first few days after publication of the list of qualified vendors, the electrical corporations will be working to put together bid packages required for the upcoming independent evaluator contract. This requirement may delay the start of the bid process for the upcoming work, creating more pressure on an already compressed schedule.

SDG&E proposes that this requirement be modified such that the electrical corporation provide this contractual information only for those qualified independent evaluators that have been selected for bidding by the electrical corporation and have elected to submit their bid to the electrical corporation. The information should be provided after the bids have been received, and before a contract is awarded by the electrical corporation.

B. The Independent Evaluator Process Should Continue to Preserve Confidentiality Concerns

SDG&E disagrees with the proposed requirement that, “Electrical corporations are prohibited from viewing the independent evaluators’ reports or related work products prior to Energy Safety publishing the reports.” This requirement represents a change from the existing process that allows a final, brief review of the Independent Evaluator Reports to protect against disclosure of confidential information. This process has proved effective to date without any compromise to the independent evaluator process.

Due to the compressed timeline of the independent evaluator engagement and the three business-day turnaround for all data requests it is difficult to complete a thorough review for confidential information submitted via data request. To date, Energy Safety has permitted—under their supervision—a brief period by which the electrical corporations may review the draft independent evaluator report for the sole purpose of identification of identifying and removing any confidential information. Energy Safety should continue the existing process and allowing a brief review by the electrical corporation to ensure confidential information is not publicly disclosed prior to disclosure of the final report.

Further, there may be occasions when the independent evaluator requests review of its own analysis or inspection reports by the electrical corporation to ensure items are being interpreted correctly. Given the importance of the independent evaluator’s understanding of the electrical corporation’s operations as well as the compressed three-month timeframe, it is important to foster the sharing of information to ensure the correctness of the final independent evaluator report. For these reasons, the requirement in the Draft Guidelines is overly restrictive and may hinder collaboration between the independent evaluator and electrical corporation leading to more corrections being required after publication.

C. Independent Evaluator Selection Timeframes

SDG&E understands that in consultation with the Office of the State Fire Marshall (OSFM), Energy Safety must annually publish a list of independent evaluators with experience assessing the safe operation of electrical infrastructure before March 1. The publication of this list drives the start time where the electrical corporation can begin to solicit bids and complete a contract with the independent evaluator.

It has been SDG&E’s experience to date that, especially with new vendors, this process can take six to eight weeks to complete. Completing the contract on May 1 results in a very compressed window for the independent evaluator to perform their work. SDG&E recommends that the qualified independent evaluator list be published as early in the year as possible. In the alternative, SDG&E recommends that the qualified independent evaluators remains constant for a period of multiple years to give the electrical corporations more time to prepare and execute contracts for this engagement.

D. Independent Evaluator Communications

While SDG&E appreciates Energy Safety's effort to establish communication procedures with the independent evaluator, to clarify roles and reduce duplicative communications, SDG&E proposes the following modifications to the following proposals in the Draft Guidelines:

- The electrical corporation must copy Energy Safety (compliance@energysafety.ca.gov) on all written communications between the electrical corporation and its contracted independent evaluator.²
 - SDG&E recommends this requirement be amended to the electrical corporation copying Energy Safety only for written communications between the electrical corporation and its contracted independent evaluator generated/initiated by the electrical corporation. For any communications generated/initiated by the independent evaluator, the IE should copy Energy Safety.
- The electrical corporation must invite Energy Safety (compliance@energysafety.ca.gov) to all meetings between the electrical corporation and the respective contracted independent evaluator.³
 - SDG&E recommends this requirement be amended to the electrical corporation inviting Energy Safety only for meetings between the electrical corporation and its contracted independent evaluator generated/initiated by the electrical corporation. For any meetings generated/initiated by the independent evaluator, the IE should invite Energy Safety.

III. Substantial Vegetation Management Audits

SDG&E recommends that Energy Safety establish a specified timeframe by which Energy Safety anticipates completing the Substantial Vegetation Management (SVM) audit of an electrical corporation and submit its initial audit report. As the SVM audit is an annual process, prolonged audit durations may lead to confusion as audit processes bleed over from year to year. Further, a defined audit timeline will allow the electrical corporations to address any identified issues without unnecessary report delays.

SDG&E recommends an audit completion timeframe within three months following the date an electrical corporation has notified Energy Safety that it has completed its Substantial Vegetation Management work. This recommendation is in alignment pursuant to Pub. Util. Code 8386.3(c)(5) which states Energy Safety, "*...shall promptly audit the work performed by, or on behalf of, the electrical corporation.*"

² Draft Guidelines, p. 12.

³ Draft Guidelines, p. 13.

Additionally, facilitating a prompt audit process will allow continued cadence of the audits and alignment with the most recently approved WMP.

IV. Energy Safety Should Revise the Draft Guidelines to Avoid Vague Evaluation Criteria and Establish Quantitative Compliance Goals

While SDG&E appreciates Energy Safety's intent to clarify and establish the criteria by which it will evaluate electrical corporations' compliance with their respective WMPs, some of the proposed criteria are vague, ambiguous, and fail to comport with known principles of compliance. For the reasons below, the criteria should be modified to provide additional clarity and consistency with the intent of applicable statutory guidance.

Energy Safety's proposed compliance criteria include the following:

1. Whether the electrical corporation implemented the wildfire mitigation initiatives in its approved WMP, looking specifically at whether the electrical corporation funded and performed the commitments stated for each initiative.
2. Whether the electrical corporation achieved its stated goals and objectives of its plan.
3. Whether the electrical corporation completed the initiatives essential to reducing wildfire risk and achieving its objectives.
4. The performance of the electrical corporation's infrastructure relative to its wildfire risk, as measured by changes in the occurrence of events that correlate to wildfire risk.
5. Whether the electrical corporation made a good faith attempt to comply with its WMP.
6. Whether the electrical corporation exhibited issues related to its execution, management, or documentation in the implementation of its WMP. This analysis may expand beyond the scope of any single WMP initiative.⁴

SDG&E recommends that Energy Safety remove Criteria number 4 and 6, and streamline numbers 1-3 to avoid confusion.

A. Criteria Number 4 Should Be Removed

Energy Safety proposes to consider the "performance of the electrical corporation's infrastructure relative to its wildfire risk, as measured by changes in the occurrence of events that correlate to wildfire risk." To the extent that Energy Safety proposes to consider outcomes outside of the electrical corporations' control, rather than compliance with WMP objectives and initiatives, this criterion should be removed. SDG&E maintains that compliance should continue to be assessed based upon the electrical corporation's completion of identified metrics and initiatives within the WMP.

⁴ Draft Guidelines, p. 16.

The proposed “occurrence of events” that might “correlate to wildfire risk” will often have nothing to do with the completion of WMP initiatives. While, of course, SDG&E aims to reduce or eliminate the events that lead to utility related wildfires, if the company has completed its WMP initiatives, it would be unfair and unreasonable to later assess the company as non-compliant with its WMP if a wildfire risk event has occurred.

Using outcomes as a measurement of WMP compliance puts the electrical corporations in the position of being subject to events, considerations, and situations outside of their control. On many occasions, these events may also be outside the scope of the electrical corporations WMPs. Applying a hindsight standard to WMP compliance undermines the predictability of the WMP process and poses additional risk to the electrical corporations who require the predictability of an established compliance process based on known objectives and initiative targets.

Once Energy Safety has approved a complete WMP, the compliance process should focus on whether the electrical corporation has substantially implemented the approved plan initiatives, consistent with statute. Adding additional variables and outcome-based metrics is not only inconsistent with the existing statute but is also inconsistent with concepts of compliance. For these reasons, Energy Safety should remove criterion 4.

B. Criterion 6 Should Be Modified or Removed

Criterion 6 seems to be aimed at identifying overall management issues related to execution of WMP initiatives. As currently phrased, however, it is impossible to know, define, or understand how Energy Safety proposes to identify if an “electrical corporation exhibited issues related to its execution, management, or documentation in the implementation of its WMP.” Taken the wrong way, this criterion could be misunderstood to act as a “catch-all” to find instances of non-compliance, even though all WMP goals and initiatives have otherwise been met. Further, the criterion is redundant to others already listed within the Draft Guidelines.

Because both Energy Safety and the electrical corporations benefit from a more clear and predictable scope of compliance, SDG&E recommends that this criterion be removed.

V. Conclusion

SDG&E requests that Energy Safety take these recommendations into account in the Final Compliance Guidelines.

Respectfully submitted,

/s/ Laura M. Fulton

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