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715 P Street, 20th Floor
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Docket # Compliance Guidelines

SUBJECT: Southern California Edison Company - Draft 2023 Compliance Guidelines Comments

Dear Deputy Director Semcer:

Southern California Edison Company (SCE) appreciates the opportunity to provide opening comments to Energy Safety's 2023 Draft Compliance Guidelines (Draft Guidelines) that were released for public review and comment on June 20, 2023. SCE generally supports the Draft Guidelines; SCE's comments focus on specific recommendations for clarification within the Definitions and Annual Reports on Compliance sections.

COMMENTS

SECTION 2.0 - DEFINITIONS

SCE appreciates Energy Safety's inclusion of the "DEFINITIONS" section in the Draft Guidelines, and for improved clarification, recommends the following revisions:

Commitment: Energy Safety has included definitions for "Initiative" and "Objective", which taken together appear to cover the same area as "Commitment". The term "Commitment" therefore appears to be redundant and a potential source of confusion. SCE recommends that the term "Commitment" be removed from the Definitions and from the Draft Guidelines.

Initiative: For clarity, SCE recommends that the term "Initiative" be explicitly tied to the WMP activities for which electrical corporations provide the status in their quarterly reports under California Public Utilities Code Section 8389. SCE recommends the following revision:

Initiative – ~~Measure of WMP activity proposed or in process~~ designed to reduce the consequences and/or probability of wildfire or PSPS. ~~Initiatives include defined targets and progress is subject to quarterly reporting under California Public Utilities Code Section 8389.~~

Objective: To distinguish from "Initiatives", SCE recommends that the definition for "Objective" be streamlined and clarified. SCE recommends the following revision:

Objective – ~~Specific, measurable, achievable, realistic, and timely outcomes for the Broad goals reflecting an Electrical Corporation's overall WMP strategy consistent with California Public Utilities Code Section 8386(a). Objectives may be supported by specific Initiatives and can span multiple years. , or mitigation initiatives and activities that a utility can implement to satisfy the primary goals and subgoals of the WMP program.~~

Target: SCE recommends that this definition be modified to include both qualitative and quantitative goals, consistent with WMP initiatives/activities:

Target – A forward-looking, ~~quantifiable~~ measurable amount of work associated with an Initiative to which an electrical corporation commits to in its WMP.”

SECTION 3.0 - NOTICES OF VIOLATION OR DEFECT

SCE requests the following clarifications and revisions to Section 3.0:

- Section 3.2 contains an incorrect cross-reference. In the first sentence of Section 3.2, the Draft Guidelines state that electrical corporations may request an informal conference for the purpose of disputing any issues raised in an NOV or NOD no later than five business days “before the response deadline identified in (a) above.”¹ However, there is no subsection (a) identified above Section 3.2 of the Draft Guidelines. SCE requests that the cross-reference be clarified or removed.
- SCE requests that Energy Safety revise subpart “(b)(3)” of Section 3.3 of the Draft Guidelines.² SCE personnel names are confidential, personally identifiable information and this information is not necessary to ensure corrective action was completed. SCE recommends the following revision:

“(b)(3) Work orders or other records documenting the action taken, and the date that action was taken, ~~and the persons responsible for taking such action to correct the violation or defect.~~”

- Consistent with Government Code Section 15475.4(b), SCE requests that Energy Safety add the following reference as subpart “(c)” to Section 3.3 of the Draft Guidelines: “(c) Within 30 days of being served the notice of defect or violation, the electrical corporation may request a hearing to take public comment or present additional information.”³

SECTION 4.0 - ELECTRICAL CORPORATION ANNUAL REPORT ON COMPLIANCE

A. Compliance Assessment Should Remain Focused on Initiatives Rather than “Objectives” or “Commitments”

The Draft Guidelines introduce new requirements for utilities to provide detailed assessments of their progress toward completing the three-year objectives identified in their WMPs.⁴ The Draft Guidelines also require Energy Safety to evaluate whether the electrical corporation has met the stated goals and objectives of its plan.⁵

Consistent with previous compliance reviews and AB 1054 legislation, WMP compliance assessment should focus on whether electrical corporations substantially completed their activities/initiatives. This is consistent with Energy Safety’s 2021 and 2022 independent evaluator (IE) Request for Qualifications

¹ Draft Guidelines, p. 6.

² Draft Guidelines, p. 7.

³ Draft Guidelines, pp. 6-7.

⁴ Draft Guidelines, pp. 8-9, Section 4.0, ¶¶ 1(a)-(c).

⁵ Draft Guidelines, p. 16, Section 7.1.

(RFQ), which provide a scope of work for the qualified independent evaluators. For example, the 2022 IE RFQ states:

“To satisfy the requirement of [California Public Utilities Code Section] 8386.3(c)(2)(B)(i), each electrical corporation shall engage an IE listed to review and assess the electrical corporation’s compliance with its WMP. The IE shall: 1. Obtain from electrical corporations a categorized list (as detailed in Table 2 below) of all WMP **initiatives** and accompanying goals and **targets** that are in scope for the IE review.”⁶

Consistent with California Public Utilities Code Section 8386.3(c)(2)(B)(i), SCE’s quarterly reporting has focused on the status of its WMP initiatives, not “objectives” or “commitments.”⁷ SCE suggests that the IE review should continue to focus on a review of WMP initiatives, consistent with prior IE scopes of work and SCE’s quarterly reports.

Further, California Public Utilities Code Section 8386.3(c)(2)(B)(i) references “activities” in the context of IE review, not “objectives”: “As a part of the independent evaluator’s report, the independent evaluator shall determine whether the electrical corporation failed to fund any **activities** included in its plan.” (emphasis added). Thus, electrical corporations should not be required to present the status of objectives in annual reports on compliance. At a minimum, this should not form the basis of the WMP compliance assessment.

In any event, considering these objectives were created to guide SCE’s wildfire mitigation efforts and improvements over the course of the 2023-2025 WMP period, the majority of the objectives within the three-year category have a two-year or three-year timeframe for expected completion. Accordingly, in the annual compliance reviews – particularly those in the first two years of the three-year WMP cycle – utilities will likely have to indicate progress made against a multi-year objective, instead of simply documenting the completion of the objective. This description of progress should be considered sufficient until the year in which each objective is scheduled for completion.

Objectives are established using the best available information at the time of the WMP submission. Objectives consider risk, authorized funding, resource availability, weather and climate conditions, standards and regulations, technology and material availability, strategic goals, and other factors. Some of these factors are outside of electrical corporations’ control. If a utility’s assumptions around the future state of these factors is materially different than what transpires over the WMP cycle, an objective may become untenable, insufficient, or require modification to appropriately account for those changes. Indeed, given the longer-term nature of objectives, it would not be surprising if several objectives need to be modified or reconsidered as shorter-term developments lead to a re-assessment of longer-term goals. To the extent there is no avenue for utilities to modify their objectives to reflect these potential factors in subsequent WMP updates or reporting, utilities should be able to describe how factors have impacted achievement of an objective in their annual reports on compliance, and Energy Safety should also consider these potential impacts in its annual compliance reviews.

⁶ See Office of Energy Infrastructure Safety Request for Qualifications Independent Evaluator List (Dec. 23, 2022), p. 6.

⁷ Pub. Util. Code § 8386.3(c)(2)(B)(i) also provides that as “part of the independent evaluator’s report, the independent evaluator shall determine whether the electrical corporation failed to fund any **activities** included in its plan.” (emphasis added).

SECTION 5.0 - INDEPENDENT EVALUATOR ANNUAL REPORT ON COMPLIANCE

A. The Term “Commitment” Should Be Replaced with Established Terminology

The Draft Guidelines broadly and vaguely define a “commitment” as “an action that the electrical corporation states it will or plans to accomplish within the compliance period.”⁸ The Draft Guidelines would require a utility to “provide its contracted independent evaluator with a complete listing of all commitments within its most recently approved WMP” within three business days following the execution of a contract with an approved IE.⁹

To avoid confusion and inconsistencies with other regulatory filings, and per the discussion above regarding the “DEFINITIONS” section of the Draft Guidelines, SCE proposes that the definitions associated with the IE review align with language that (1) is already established in statute (such as “initiative” or “target”), (2) is used in the development of the electrical corporation’s WMP, and (3) aligns with Energy Safety’s 2021 and 2022 IE Request for Qualifications, which cites specifically to “initiatives” and “targets.”

To the extent that the Draft Guidelines intend to expand the scope of the IE review to include an additional evaluation of a utility’s “commitments,” SCE notes that the IE review is already conducted on a compressed timeline to meet the July 1 statutory deadline for submission of IE reports.¹⁰ Independent evaluators currently perform several tasks, including WMP initiative and activity compliance verifications, WMP initiative and activity funding verifications, and validation of WMP compliance QA/QC. In connection with the most recent IE review of SCE’s 2022 WMP, SCE received approximately 140 data request items and provided additional information as part of 14 interviews, all within a span of approximately 10 weeks. Expanding the scope of the comprehensive IE review on an already compressed timeframe would risk diluting the current review process and jeopardize completion within the time allotted by statute.

B. The Date for Publication of the Independent Evaluator List Should Be Advanced

The Draft Guidelines provide that “Energy Safety must annually publish a list of independent evaluators with experience assessing the safe operation of electrical infrastructure before March 1.”¹¹ Given the relatively short timeframe under which independent evaluator reviews take place, SCE suggests that the compliance guidelines advance the date when Energy Safety publishes the list of approved independent evaluators from “before March 1” to February 1. The additional month would greatly improve the IE review process. For example, publishing the list of qualified IEs would afford electrical corporations additional time to issue requests for pricing to the IE firms, properly consider options, negotiate and finalize necessary contracts, initiate the evaluation, and orient the IE to the WMP initiatives. Advancing the time when the list of qualified IEs is published would also provide independent evaluators with increased time to become familiar with the WMP, perform discovery, and draft and finalize the IE report.

⁸ Draft Guidelines, p. 3.

⁹ Draft Guidelines, p. 12.

¹⁰ See Pub. Util. Code § 8386.3(B)(i).

¹¹ Draft Guidelines, p. 11.

C. Confidential Contract Terms Should Not Be Required to Be Disclosed

The Draft Guidelines provide that utilities must disclose certain information “for all contracts with any of the enlisted independent evaluators.”¹² SCE requests that “compensation rates” and “total contract value” be removed from the list of information required to be disclosed. Pricing information and contract values negotiated with a vendor are proprietary and commercially sensitive information. It is also not clear why such information is relevant. Alternatively, Energy Safety may request that the independent evaluators, rather than utilities, provide such information.

D. Utilities Should Have an Opportunity to Perform a Confidentiality Assessment of the Independent Evaluators’ Reports Prior to Publication

The Draft Guidelines provide that “[e]lectrical corporations are prohibited from viewing the independent evaluators’ reports or related work products prior to Energy Safety publishing the reports.”¹³ SCE requests the opportunity to perform an assessment of the IE draft report to identify any confidentiality concerns prior to the final report being published. This would provide the electrical corporations a critical opportunity to ensure that the published reports do not contain information designated by the utility as confidential, given the potential sensitivity of the information.

SECTION 7.0 - ENERGY SAFETY ANNUAL REPORTS ON COMPLIANCE

A. New Criteria in the Draft Guidelines Should Only Apply Prospectively

The Draft Guidelines state that the “requirements, standards, and protocols outlined” in Section 7.0 concerning Energy Safety’s Annual Reports on Compliance “are applicable to the 2021 WMP plan year and subsequent WMPs.”¹⁴ To the extent that the Draft Guidelines contain new evaluation criteria for annual reports on compliance such as requirements relating to reporting on 3-year or 10-year objectives, retroactive application of the Draft Guidelines to the 2021 WMP would violate due process rights because electrical corporations did not have notice of the Draft Guidelines or an opportunity to comment on them before submitting the 2021 WMP.

Under fundamental principles of due process, parties are entitled to fair notice of conduct that may subject them to penalties or sanctions.¹⁵ SCE submitted its 2021 WMP over two years ago, and the 2021 WMP compliance evaluation process is well underway. Furthermore, SCE and other utilities have already submitted their self-reports in connection with the 2021 annual report on compliance, and an independent evaluator review of the 2021 WMP has already concluded. Although the Draft Guidelines purport to apply to past conduct dating back to the 2021 WMP, new criteria such as reporting on multi-year objectives should only apply prospectively in order to afford regulated entities proper notice of the compliance evaluation criteria prior to subjecting utilities to any new compliance requirements.

¹² Draft Guidelines, p. 12.

¹³ Draft Guidelines, p. 13.

¹⁴ Draft Guidelines, p. 15.

¹⁵ See, e.g., *Landgraf v. USI Film Products*, 511 U.S. 244, 266 (1994).

B. Section 7.1 Should Reflect the “Substantial Compliance” Standard

Section 7.1 of the Draft Guidelines contains a list of criteria that Energy Safety states it considers when determining “whether the electrical corporation complied with its WMP.”¹⁶ Energy Safety discusses evaluation criteria in connection with a review of “compliance” with a WMP, though prior annual reports on compliance have evaluated whether an electrical corporation “substantially complied” with its WMP.¹⁷ SCE requests that Section 7.1 of the Draft Guidelines be modified to make clear that the evaluation criteria will be used to assess whether an electrical corporation “substantially complied” with its WMP.

C. The Section 7.1 Evaluation Criteria Should Be Revised and Streamlined

Section 7.1 of the Draft Guidelines provides the following list of six criteria that Energy Safety proposes to consider as part of its annual report on compliance:

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.¹⁸

1. Criterion Number Four Should Be Removed

The fourth criterion in the list provides that Energy Safety’s compliance assessment will 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.”¹⁹ To the extent that this criterion refers to the use of outcome metrics to assess an electrical corporation’s compliance with its WMP, it should be removed.

Consistent with its previous comments on the use of outcome metrics, SCE continues to have fundamental concerns that outcome-based metrics—designed to measure the effectiveness of a given

¹⁶ Draft Guidelines, p. 16.

¹⁷ See Resolution WSD-012 – Attachment 1 (October 2020) (“The WSD will review these submissions and make a determination of whether each electrical corporation *substantially complied* with its WMP during the prior compliance period”) (emphasis added); Pub. Util. Code § 8386.1 (“The commission shall assess penalties on an electrical corporation that fails to *substantially comply* with its plan”) (emphasis added).

¹⁸ Draft Guidelines, p. 16.

¹⁹ Draft Guidelines, p. 16.

WMP—may be used retrospectively to evaluate compliance with an approved WMP.²⁰ Through an extensive process including collaboration with Energy Safety and input from multiple stakeholders, SCE has developed comprehensive WMPs which have ultimately been approved by Energy Safety and ratified by the Commission in prior years. However, the question of whether SCE subsequently complies with its WMP is distinct from the question of how “occurrence of events that correlate to wildfire risk” may inform future WMP development and evaluation.

The WMP process is based on the notion that electrical corporations must develop a WMP, obtain approval of the WMP as an appropriate means to proactively reduce wildfire risk based on known information at the time, and then to implement that WMP. Adding an evaluation of outcome metrics effectively creates a hindsight standard and undermines the value and meaning of the WMP as an agreed-upon plan and basis for wildfire mitigation.

Outcome metrics should not be used as a vehicle to view in hindsight initiatives that have already been vetted and approved, and upon which SCE and other utilities rely to understand their compliance obligations. Although certain metrics in one year may be helpful in assessing WMP effectiveness and informing WMP mitigation programs for subsequent years, they are not indicative as to whether or not a utility executed the tasks in, and complied with, its approved WMP. In particular, such metrics are dependent on a number of exogenous factors such as weather conditions and fuel moisture, which are outside of a utility’s control, and which can make shorter-term comparisons of outcome metrics challenging.

Once Energy Safety has approved a WMP after having considered input from stakeholders and the WMP has been ratified by the Commission, the compliance assessment should focus on whether the utility has substantially implemented the approved plan initiatives and not consider outcomes—many of which may be beyond a utility’s control—to judge a utility’s compliance.

2. Criteria Numbers One Through Three Should Be Streamlined

Criteria one, two, and three should be streamlined to avoid confusion and eliminate redundancies. For example, both criteria two and three appear to consider whether an electrical corporation achieved WMP “objectives.” Additionally, both criteria one and three appear to consider whether an electrical corporation completed initiatives in its WMP without distinguishing between how the two criteria differ.

Consistent with California Public Utilities Code § 8386.3(c), the compliance standard should remain focused on verifying whether utilities substantially implemented the initiatives that they identified in their approved WMPs. This concept is captured by language in evaluation criterion number one, which considers “whether the electrical corporation implemented the wildfire mitigation initiatives in its approved WMP.” SCE suggests eliminating language relating to vague “goals” (criterion #2) or multi-year “objectives” (criteria #2-3), which as noted above, are not suitable for annual compliance review.

²⁰ See, e.g., December 5, 2022 Joint Comments of Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company on Draft Resolution SPD-7; November 28, 2022 SCE Opening Comments on Draft Annual Report on Compliance for Southern California Edison’s 2020 Wildfire Mitigation Plan; November 22, 2021 SCE Comments on Draft Resolution M-4860 and Related Attachments.

3. Criterion Number Six Should Be Modified

SCE seeks modifications to criterion six, which appears to consider any number of “issues related to execution, management, or documentation in the implementation” of a WMP. This language is unclear because of its breadth and vagueness. While utilities, Energy Safety, the Commission, and other stakeholders would benefit from a clear and predictable compliance standard, criterion six risks introducing undue subjectivity into the compliance assessment by casting a broad net across any number of issues. To the extent that Energy Safety intended to refer to whether certain issues hindered Energy Safety’s ability to complete the compliance assessment process, SCE recommends the following revision:

In the course of assessing the electrical corporation’s substantial compliance with its WMP, whether the electrical corporation exhibited issues related to its execution, management, or documentation in the implementation of its WMP that impacted Energy Safety's ability to complete the assessment process. This analysis may expand beyond the scope of any single WMP initiative.

CONCLUSION

SCE appreciates the opportunity to provide opening comments to Energy Safety’s 2023 Draft Compliance Guidelines. If you have questions, or require additional information, please contact Liz Leano at Elizabeth.Leano@sce.com.

Sincerely,
//s//
Gary Chen
Director, Safety & Infrastructure