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**BY ENERGY SAFETY E-FILING**

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Re: **Pacific Gas and Electric Company’s Comments on the Office of Energy  
Infrastructure Safety’s Draft Compliance Guidelines**  
*Docket: Electrical: Compliance Enforcement / Compliance Guidelines*

Dear Director Thomas Jacobs:

Pacific Gas and Electric Company (PG&E) respectfully submits the following comments on the Draft Compliance Guidelines (Draft Guidelines) issued by the Office of Energy Infrastructure Safety (Energy Safety) on June 20, 2023.

**I. SECTION 2.0 - DEFINITIONS**

**A. Clarifying the Definition of the Term “Commitment”**

We request that the definition for the term “Commitment” in Section 2.0 of the Draft Guidelines be clarified to avoid confusion.<sup>1</sup> The definition of “commitment” does not align with the way the term is used throughout the rest of the document, in the 2023 WMP Process Guidelines,<sup>2</sup> or by the utilities in their Wildfire Mitigation Plans (WMPs).<sup>3</sup> In the Draft Guidelines, the term is defined broadly as any “action that the electrical corporation states [in the WMP] it will or plans to accomplish within the compliance period.”<sup>4</sup> However, since this term is referencing commitments made in the WMP, the definition should be clarified to correspond with the way the term is used by the utilities in their WMPs, as follows:

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<sup>1</sup> Draft Guidelines at 3.

<sup>2</sup> Energy Safety 2023-2025 WMP Process and Evaluation Guidelines (Dec. 6, 2022) at 10 (“The electrical corporation uses quantitative targets to set commitments for specific initiatives in its WMP.”)

<sup>3</sup> PG&E 2023-2025 WMP (Apr. 6, 2023) at 8-9 (section entitled “Meet and Exceed our Commitments”).

<sup>4</sup> Draft Guidelines at 3.

“Commitment” – Within the WMP, ~~an action~~ a formally-defined target or objective that the electrical corporation states it will or plans to accomplish within the compliance period. The commitment may be quantitative or qualitative in nature.

This clarification is particularly important in light of: (1) Section 5.0, which sets out the compliance guidelines for the Independent Evaluator process;<sup>5</sup> and (2) Section 7.1, which describes the evaluation criteria for determining compliance with a WMP.<sup>6</sup> By providing a precise definition of “commitment,” the scope of both of these evaluations is clear, and the term does not require further revision in multiple places throughout the Draft Guidelines. Without clarification, there will be confusion as to what is being evaluated in these proceedings and potentially disparate results across utilities and from year to year.

## II. SECTION 3.0 - NOTICES OF VIOLATION OR DEFECT

### A. The Risk Categories for Violations and Defects Should Be Defined

Table 1 of Section 3.1 identifies three distinct risk categories for notices of violation (NOV) or notices of defect (NOD), with the corresponding timeline to correct the category of violation or defect.<sup>7</sup> However, the Draft Guidelines fail to provide definitions for the any of these three risk categories (Severe, Moderate, and Minor), and it is unclear what would make a violation or defect fall into a particular category.<sup>8</sup> For example, the categories and timelines of the violations resemble the Priority Levels used in General Order 95, Rule 18B(1)(a), but they are not identical. Without clarity on this issue, there will not be uniformity in how NOV's or NOD's are issued or resolved. Therefore, we request that definitions be provided for each risk category. Clear and uniform risk categories and correction timelines will improve public safety and reliability.

### B. Clarifying the Deadline to Request Informal Conferences

There is a typographical error in the first paragraph of Section 3.2, which states that an informal conference may be requested “no later than five (5) business days before the response deadline identified in (a) above.”<sup>9</sup> However, since there is no subsection (a) located above the text, it is

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<sup>5</sup> Draft Guidelines at 11 (“Within three (3) business days following the execution of a contract with an approved independent evaluator, the electrical corporation must provide its contracted independent evaluator with a complete listing of all commitments within its most recently approved WMP.” (emphasis added)).

<sup>6</sup> Draft Guidelines at 16 (“Energy Safety’s ARC evaluates whether the electrical corporation complied with its WMP. Energy Safety assesses an electrical corporation’s compliance with discrete WMP commitments for each initiative and wholistically evaluates the electrical corporation’s execution of the WMP.” (emphasis added); “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.” (emphasis added)).

<sup>7</sup> *Id.* at 5-6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 6 (emphasis added).

unclear what deadlines this sentence is referencing. Based on our review of the Draft Guidelines, it appears that this sentence is referring to the 30-calendar day deadline in Section 3.3 below, but we would appreciate confirmation on this point as Table 1 above contains the response timelines for different categories of defects and violations.<sup>10</sup>

### **C. Permitting the Submission of Supplemental Materials Prior to Conferences**

The Draft Guidelines require that all “[m]aterials the electrical corporation plans to present or cover in the conference” be submitted at the time an informal conference is requested, which must be done at least five business days prior to the deadline to respond to the NOV or NOD.<sup>11</sup> However, in order to provide due process rights at the hearing, and because there may be delays from when a conference is requested to when it is held, we suggest this section be revised to provide an opportunity to submit supplemental materials, if needed:

(4) Materials the electrical corporation plans to present or cover in the conference, including copies of such materials. The electrical corporation may provide supplemental materials to be presented at the informal conference no later than five business days prior to the conference’s scheduled date.

This revision would preserve the intent of this section while permitting the utilities to provide any newly discovered information that may not have been available at the time the request for an informal conference was made.

## **III. SECTION 5.0 - INDEPENDENT EVALUATOR ANNUAL REPORT ON COMPLIANCE**

### **A. Providing Sufficient Time to Conduct a Competitive Bidding Process**

The Draft Guidelines require Energy Safety to annually publish a list of independent evaluators by March 1.<sup>12</sup> While this language mirrors the last permissible day for this action to occur—as set out in Public Utilities Code Section 8386.3(c)(2)(A)—we would strongly urge Energy Safety to consider publishing this list one month earlier, on February 1.<sup>13</sup> Given the extremely broad scope of work with which the independent evaluator is tasked, and the July 1 statutory deadline by which the report must be issued, a March 1 publication date does not provide sufficient time to conduct a competitive bidding process, potentially onboard a new independent evaluator, and

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<sup>10</sup> Draft Guidelines at 6 (“Within 30 calendar days, for each violation or defect identified, provide a written response to Energy Safety....”).

<sup>11</sup> Draft Guidelines at 6.

<sup>12</sup> Draft Guidelines at 11 (“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.”).

<sup>13</sup> “Before March 1, 2021, and before each March 1 thereafter, the Wildfire Safety Division, in consultation with the Office of the State Fire Marshal, shall make available a list of qualified independent evaluators with experience in assessing the safe operation of electrical infrastructure.” Pub. Util. Code § 8386.3(c)(2)(A).

complete the independent evaluator’s assessment.<sup>14</sup> Since the primary consideration is providing an ample amount of time for the independent evaluator to conduct its analysis, the utilities have had to forgo the competitive bidding process to fit this work within this compressed statutory schedule. However, allowing sufficient time for competitive bidding would improve the independent evaluator process, reduce costs, and save money for the ratepayers. Since the independent evaluator reports must be issued by July 1 of each year, and there is nothing preventing the list of independent evaluators from being published earlier, the best solution to this problem would be to publish the list in February.

If it is not possible for the list of independent evaluators to be published earlier than March 1, another potential solution to this issue would be to allow the utilities to sign multi-year contracts with an approved independent evaluator that would last the duration of each three-year WMP cycle. This would allow for a single competitive bidding process every three years, rather than annually, and reduce the administrative burden on both Energy Safety and the utilities.

## **B. Allowing for Review of Independent Evaluator Reports to Prevent Inadvertent Disclosure of Confidential Information**

The Draft Guidelines propose to prohibit utilities from viewing independent evaluators’ reports prior to publication.<sup>15</sup> However, a limited pre-publication review is valuable because it can prevent the inadvertent public disclosure of confidential information, including critical energy infrastructure information, as it did last year with our 2021 Independent Evaluator Annual Report on Compliance. We recommend this section be revised to permit a narrow pre-publication review of the reports, as follows:

“Electrical corporations ~~are~~ will be provided a three-business day window to review their independent evaluator’s report for the inadvertent inclusion of confidential material prior to publication. However, aside from this window, electrical corporations will be prohibited from viewing the independent evaluators’ reports or related work products prior to Energy Safety publishing the reports.”

This limited review is beneficial to all parties and has proven effective in the past. The utilities are required to gather—and the independent evaluators required to analyze—a substantial amount of information in a short period of time; therefore, it is reasonable to expect inadvertent errors. Allowing this type of expedited review is an efficient way to help remediate this issue.

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<sup>14</sup> “The independent evaluator shall issue a report on July 1 of each year in which a report required by paragraph (1) is filed.” Pub. Util. Code § 8386.3(c)(2)(B)(i).

<sup>15</sup> Draft Guidelines at 13 (“Electrical corporations are prohibited from viewing the independent evaluators’ reports or related work products prior to Energy Safety publishing the reports.”).

#### IV. SECTION 6.0 - AUDITS

##### A. Energy Safety Cannot Hold Utilities to a Retroactively Created Standard

While most of the newly created standards in the Draft Guidelines specify that they will apply to the 2023 or subsequent WMPs, the compliance guidelines for the Substantial Vegetation Management Audit specifically state that they will be retroactively applied to the 2021 WMP.<sup>16</sup> This is contrary to the basic principles of due process, given that the work being evaluated was performed under a different regulatory standard that was in effect during the 2021 year. Specifically, work performed as part of the 2021 WMP should be evaluated under the compliance standard in effect at that time: Resolution M-4860.<sup>17</sup> If Energy Safety wanted to apply the standards outlined in the Draft Guidelines to the 2021 Substantial Vegetation Management Audit, the time to enact those new guidelines would have been prior to the end of 2021. Energy Safety should not retroactively adopt compliance “goalposts” almost a year and a half after the 2021 compliance period ended. This section should be revised so that it becomes effective with the 2023 WMP plan year, which is currently ongoing:

The requirements, standards, and protocols outlined in this section are applicable to the ~~2021~~ 2023 WMP plan year and subsequent WMPs.

##### B. Clarification of the Definition of Substantial Compliance as it Relates to the Substantial Vegetation Management Audit

Section 6.1 sets out three separate criteria by which a utility will be determined to be in “substantial compliance with the substantial portion of vegetation management requirements.”<sup>18</sup> While we appreciate Energy Safety’s desire to retain flexibility in determining whether the “substantial compliance” threshold has been met, the definition as currently proposed does not provide the utilities needed clarity.

Specifically, the first criterion, that the utility’s deficiencies have “[n]ot hindered the electrical corporation’s ability to achieve the objectives of its vegetation management programs” is problematic because the definition of “objective” in the Draft Guidelines (and the WMP) does not align with the functioning of an annual audit. The Draft Guidelines define an objective using the same language as the 2023-2025 WMP Technical Guidelines: “[s]pecific, measurable, achievable, realistic, and timely outcomes for the overall WMP strategy, or mitigation initiatives and activities that a utility can implement to satisfy the primary goals and subgoals of the WMP program.”<sup>19</sup> This corresponds with the utilities’ multi-year objectives that are set out in Table 7-

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<sup>16</sup> *Id.* at 14 (“The requirements, standards, and protocols outlined in this section [6.1] are applicable to the 2021 WMP plan year and subsequent WMPs.”).

<sup>17</sup> <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M428/K722/428722129.PDF>.

<sup>18</sup> Draft Guidelines at 14-15.

<sup>19</sup> *Id.* at 4; Energy Safety 2023-2025 WMP Technical Guidelines, Appendix A (Dec. 6, 2022) at A-13.

3-1 of the 2023-2025 WMPs.<sup>20</sup> However, the majority of these WMP objectives involve long-term outcomes that are to be accomplished within three or ten years and are not capable of being completed within one year.<sup>21</sup> Thus, there is no effective way for Energy Safety to measure on an annual basis a utility’s “ability to achieve the objectives of its vegetation management programs.” We recommend that this criterion be removed entirely since it is incompatible with an annual audit.

Additionally, the third criterion proposed for defining “substantial compliance” is overly vague. The Draft Guidelines state that a utility must have “[c]ompleted the large majority of the vegetation management requirements in its approved WMP.”<sup>22</sup> The phrase “large majority” is ambiguous and provides no clarity as to the threshold that must be met to obtain substantial compliance. Additionally, the term “requirements” is undefined in the Draft Guidelines or in the WMP, and it is unclear what is meant by this term. Therefore, we recommend the Draft Guidelines be revised to provide a precise, numerical definition of what constitutes substantial compliance:

3) Completed ~~the large majority~~ at least 75% of the vegetation management ~~requirements~~ annual targets in its approved WMP.

## V. SECTION 7.0 - ENERGY SAFETY ANNUAL REPORTS ON COMPLIANCE

### A. Energy Safety Cannot Hold Utilities to a Retroactively Created Standard

The guidelines for the Energy Safety Annual Report on Compliance also retroactively apply a new compliance standard on work that was completed two years previously under a different compliance standard.<sup>23</sup> Compliance with the wildfire mitigation work performed in the 2021 year is governed by the compliance standards in effect at that time, M-4860. This section should be revised so that it takes effect for the 2023 WMP plan year:

The requirements, standards, and protocols outlined in this section are applicable to the ~~2021~~ 2023 WMP plan year and subsequent WMPs.

### B. Energy Safety Fails to Define Substantial Compliance with a WMP

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<sup>20</sup> Energy Safety 2023-2025 WMP Technical Guidelines at 68-69; PG&E 2023-2025 WMP (Apr. 6, 2023) at 279-286.

<sup>21</sup> Energy Safety Issuance of Revision Notice for PG&E’s 2023-2025 WMP (Jun. 22, 2023) at 4-5 (explaining that some of PG&E’s objectives “are targeted for completion” within one year, “do not sufficiently demonstrate a long-term plan,” and must be revised).

<sup>22</sup> Draft Guidelines at 15.

<sup>23</sup> *Id.* (“The requirements, standards, and protocols outlined in this section [7.0] are applicable to the 2021 WMP plan year and subsequent WMPs.”).

Section 7.1 sets out six factors that Energy Safety proposes to consider when evaluating “whether the electrical corporation complied with its WMP.”<sup>24</sup> However, similar to the Substantial Vegetation Management Audit, the relevant standard is not whether a utility complied with its WMP, but whether the utility “fails to substantially comply with its plan,” as set out by statute.<sup>25</sup> Therefore, Section 7.1 does not provide the appropriate legal threshold, and should be revised to read:

Energy Safety’s ARC evaluates whether the electrical corporation substantially complied with its WMP. Energy Safety assesses an electrical corporation’s compliance with discrete WMP commitments for each initiative and wholistically evaluates the electrical corporation’s execution of the WMP.

**C. The First Evaluation Criterion Fails to Provide Any Threshold for What Constitutes Substantial Compliance**

The first evaluation criteria instructs Energy Safety to consider “[w]hether 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.”<sup>26</sup> While this criterion may be appropriate for determining total compliance with a WMP, it provides no guidance on when a utility is considered to “substantially comply with its plan,” as is required by the governing statute.<sup>27</sup> This statement should be revised to provide a precise, numerical definition of what constitutes substantial compliance:

Whether the electrical corporation ~~implemented~~ completed at least 75% of the aggregate annual wildfire mitigation ~~initiatives targets~~ in its approved WMP, looking specifically at whether the electrical corporation ~~funded and~~ performed the ~~commitments work~~ stated for each ~~initiative target~~.

**D. The Third Evaluation Criterion Simply Restates Criteria 1 and 2 and Provides No Additional Method of Evaluation**

The third evaluation criteria states that Energy Safety will consider “[w]hether the electrical corporation completed the initiatives essential to reducing wildfire risk and achieving its objectives.”<sup>28</sup> While this is an appropriate criterion when considered independently, it is redundant of the first two criteria. Specifically, the first portion of this statement, “whether the electrical corporation completed the initiatives essential to reducing wildfire risk,” is duplicative of the first criterion which looks at “[w]hether the electrical corporation implemented the

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<sup>24</sup> *Id.* at 16.

<sup>25</sup> Pub. Util. Code § 8386.1; *see also* Pub. Util Code § 8388.5(i)(2).

<sup>26</sup> Draft Guidelines at 16.

<sup>27</sup> Pub. Util. Code § 8386.1.

<sup>28</sup> Draft Guidelines at 16.

wildfire mitigation initiatives in its approved WMP.”<sup>29</sup> Similarly, the second portion of the statement, “whether the electrical corporation [is]...achieving its objectives,” is duplicative of the second criterion which considers “[w]hether the electrical corporation achieved its stated goals and objectives of its plan.”<sup>30</sup> Given that the third criterion is redundant and does not provide a distinct method for determining compliance, we recommend that it is removed to provide a more focused set of evaluation criteria.

**E. The Fourth Evaluation Criterion Improperly Considers Environmental Outcomes Rather than WMP Performance**

The third evaluation criteria states that Energy Safety will consider “[t]he 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.” We recommend that this evaluation criterion be removed because it appears to focus on environmental outcomes, described here as “the occurrence of events,” rather than the execution of the work described in the WMP, which is the appropriate basis for evaluation. Given the continuing effects of climate change and the unpredictability of environmental factors, utilities must be evaluated based on the annual performance of their wildfire mitigation work and not on “the occurrence of events” that may be outside of their control.

**VI. CONCLUSION**

We appreciate the opportunity to provide these comments and look forward to further discussions and engagement.

Should you have any questions or concerns, please do not hesitate to contact the undersigned at [vincent.tanguay@pge.com](mailto:vincent.tanguay@pge.com).

Very sincerely yours,

/s/ Vincent Tanguay

Vincent Tanguay

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*