

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Wildfire Safety Division
California Public Utilities Commission

**SMALL BUSINESS UTILITY ADVOCATES' COMMENTS ON THE DRAFT
WILDFIRE MITIGATION PLAN COMPLIANCE PROCESS**

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Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Via e-mail: wildfiresafetydivision@cpuc.ca.gov and R.18-10-007 service list

Re: Comments on the Draft WMP Compliance Process Proposal

Wildfire Safety Division,

Small Business Utility Advocates (SBUA) submits the following comments on the *Draft Wildfire Mitigation Plan Compliance Process* (Draft) and on the presentations made during the Workshop on the Wildfire Mitigation Plan Compliance Process (Workshop), held on September 29, 2020. The Wildfire Safety Division (Division) expedited the comment period, setting October 2, 2020 as the deadline to submit comments.

I. COMMENTS ON THE DRAFT

a. The proposed compliance assessment timeline needs revision.

As proposed, compliance periods will begin when a WMP is approved by the Division and end when the next WMP is approved. Utilities will submit their annual compliance reports within 90 days after a compliance period ends and independent evaluators (IE) will “submit reports on WMP compliance findings by July 1st of each year.” The Division will use these reports to determine if a utility substantially complied with its WMP during the prior compliance period.¹

The deadline for IEs to submit their reports should be tied to the deadline for the utilities’ reports. Compliance periods are likely to vary year to year since they will begin whenever a WMP is approved and this can vary greatly as the 2020 WMP process demonstrated. In fact, Bear Valley Electric Service’s 2020 WMP has yet to receive final approval. A July deadline for an IE’s report would not make sense for the 2019 WMP since the compliance period has not ended. Therefore, IEs should submit within 30 days after the utilities’ reports are filed or should submit them concurrently with the utilities. The additional 30 days would allow IEs to address issues they see with the utilities’ reports, but concurrent filing of reports will expedite the Division’s compliance review and provide utilities with more time to remedy the action.

b. The Division needs to clarify various terms related to non-compliance consequences and whether consequences will apply to remedied defects.

According to the Draft, utilities that are not in “substantial compliance” with WMPs may receive a Notice of Defect, Notice of Noncompliance, or an enforcement action from the Safety and

¹ Draft, p. 4.

Enforcement Division (SED). Defects are categorized as severe, moderate, or minor, which determines the timeline for the corrective action.²

The term “substantial compliance” is too subjective and does not provide guidance to utilities and stakeholders about how the Division will determine if a utility is meeting compliance. SBUA recommends that the Division provide a definition of substantial compliance to mean the utilities did all that was reasonably required but failed or faulted in only minor or inconsequential aspects of the WMPs. SBUA further recommends that the Division increase penalties (i) if the utility previously received a notice for the same conduct or (ii) if the utility’s conduct suggests it failed to comply with its WMP due to reckless conduct. Although the Division may feel hesitation to adopt such a standard believing that it will recommend corrective action too often, a recommendation does not mean that SED will automatically assess penalties or impose other restrictions on a utility. Moreover, pursuant to Public Utilities Code sections 701, 2107, and 2108, SED can assess penalties for any violations due to the broad regulatory and enforcement powers conveyed to the Commission, so this approach would be reasonable.³

Second, the Draft indicates that the Division may issue a Notice of Defect or “escalate the defect to a Notice of Noncompliance to order correction from the utility.”⁴ This calls into question what the value of a Notice of Defect is. Whenever the Division identifies a defect, it should provide notice *and* order corrective action. Only one type of notice is needed. For more egregious violations, the Division should issue a notice and an enforcement action through SED.

The Division should also clarify the timelines associated for the categories of corrective actions. For severe violations, “immediate resolution” is expected, but this is ambiguous. Depending on the defect, complete resolution may not be possible for a few or several weeks. Therefore, SBUA proposes the following: within seven days of receiving a notice of a severe defect, the utility will have to provide a written response to the Division indicating that the utility has begun to address the severe defect and provide an estimated completion date within thirty days of the notice or explain why the estimated completion date has to extend beyond thirty days of the notification.

Further, given that assessments will not occur until after a compliance period ends and a new WMP has been adopted, the Division should clarify if there will be consequences for non-compliance that a utility remedies on its own. For example, if a utility fails to substantially comply with its 2020 WMP’s vegetation management plan but in 2021 the utility is complying with the vegetation management plan, will there be any consequences for the prior noncompliance? The Division should clarify this.

II. COMMENTS ON ISSUES DISCUSSED DURING THE WORKSHOP

During the Workshop, Division staff discussed the Draft’s proposed compliance process and representatives from the following organizations discussed some of their viewpoints on the Draft: Mussey Grade Road Alliance (MGRA), The Utility Reform Network (TURN), Protect

² Draft, p. 5.

³ During the Workshop, POC raised a similar point and expressed its view that penalties are required for violations.

⁴ Draft, p. 5.

Our Communities (POC), and Pacific Gas & Electric Company (PG&E). SBUA provides the following comments on the issues raised by non-staff presenters.

SBUA agrees with MGRA that the Division needs to clarify whether it will rely on self-reporting to determine that a utility is not complying with its WMP or if the Division will proactively pick and survey areas to determine compliance. Relying purely on self-reporting is not favorable, particularly if penalties/other corrective actions will be recommended for every violation, because a utility will be disincentivized from reporting violations – particularly minor ones that can be corrected before another party becomes aware. SBUA recommends that the Division rely on a mixture of self-reporting and proactive random surveying.

TURN and POC commented on the value and drawbacks of utilizing an outcomes-based approach. TURN believes an outcomes-based approach would provide utilities with flexibility while POC believes more comprehensive goals are needed because outcomes-based approaches limit evaluation, particularly in the Public Safety Power Shutoff (PSPS) context. An outcomes-based approach is favorable for the WMPs except for PSPS where comprehensive goals are needed. Outcomes-based does not work for PSPS because the impacts individual activities/programs have on the mitigation of PSPS events are not measured. If a PSPS event is avoided, the programs will receive a positive evaluation even if other more cost-efficient methods exist. SBUA has previously advocated for and continues to support performance metrics.⁵ This approach is more in-line with ignition-risk analysis that the Division required the utilities to provide in their First Quarterly Reports.

SBUA agrees with PG&E that the Division needs to clarify the categories of defect severity because each utility uses different terminology in its individual risk profile. SBUA has previously raised this point about how the utilities' use of similar but different terminology pertaining to the risk level of an area causes confusion.⁶ The Division should require the utilities to begin utilizing standard terminology as specified by the Division. To make this possible, clear definitions of the severity categories (severe, moderate, minor) are needed.

III. CONCLUSION

SBUA appreciates the opportunity to comment on the Draft.

Sincerely,

/s/ 

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⁵ See e.g. R.18-10-007, *Opening Comments of Small Business Utility Advocates on the Proposed Decision on the Electrical Corporations' Wildfire Mitigation Plans* (May 28, 2019).

⁶ See e.g. R.18-10-007, *Small Business Utility Advocates' Comments on Phase 2* (Aug. 21, 2019).