



OFFICE OF ENERGY INFRASTRUCTURE SAFETY

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Caroline Thomas Jacobs, Director

August 12, 2021

Paul Marconi
President, Treasurer and Secretary
Bear Valley Electric Service, Inc.
P.O. Box 9028
San Dimas, CA 91773-9028

Subject: Office of Energy Infrastructure Safety Approval of Bear Valley Electric Service Company’s revised 2021 Executive Compensation Structure Pursuant to Public Utilities Code Sections 8389(e)(4) and (e)(6)

To Mr. Marconi:

This letter approves Bear Valley Electric Service Company’s (BVES’s) revised 2021 executive compensation structure. The Office of Energy Infrastructure Safety (Energy Safety) finds that BVES’s executive compensation structure minimally satisfies the requirements of Public Utilities Code sections 8389(e)(4) and (e)(6).

Background

Public Utilities Code section 8389(e)(4) requires an electrical corporation’s executive compensation structure be approved by the California Public Utilities Commission’s (CPUC) Wildfire Safety Division (WSD)¹ and “structured to promote safety as a priority and to ensure public safety and utility financial stability with performance metrics, including incentive compensation based on meeting performance metrics that are measurable and enforceable, for all executive officers, as defined in [Pub. Util. Code] Section 451.5.”

Pub. Util. Code section 8389(e)(6)(A) further requires an electrical corporation’s “compensation structure for any new or amended contracts for executive officers, as defined in [Pub. Util. Code] Section 451.5” to be based on the following principles:

- (i) (I) Strict limits on guaranteed cash compensation, with the primary portion of the executive officers’ compensation based on achievement of objective performance metrics.
- (II) No guaranteed monetary incentives in the compensation structure.
- (ii) It satisfies the principles identified in [Public Utilities Code section 8389(e)(4)].

¹ On July 1, 2021, the WSD transitioned to Energy Safety, a new department under the California Natural Resources Agency. In accordance with Public Utilities Code section 326, all functions of the WSD are transferred to Energy Safety.

- (iii) A long-term structure that provides a significant portion of compensation, which may take the form of grants of the electrical corporation's stock, based on the electrical corporation's long-term performance and value. This compensation shall be held or deferred for a period of at least three years.
- (iv) Minimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest in the electrical corporation.

In addition to the requirements set forth in Pub. Util. Code sections 8389(e)(4) and (e)(6), the December 22, 2020 WSD guidance letter required an electrical corporation seeking approval of its 2021 executive compensation structure to submit the following information:²

- An explanation of executive compensation components, including base pay, annual bonus/incentive information, and long-term incentive pay, including percentages of overall compensation for each component.
- A description of all metrics, including safety metrics, used to calculate incentive compensation, including an explanation of whether safety metrics are outcome or input based (e.g., number of ignitions versus number of miles of distribution lines inspected).
- A breakdown of the percentage of executive compensation based on safety metrics versus other metrics (e.g., financial performance).
- A description of how safety performance is calculated for incentive compensation.
- Examples of incentive compensation reduced or withheld in the last five years as a result of failure to meet safety metrics.

Lastly, CPUC Decision 20-05-053 required Pacific Gas and Electric Company to comply with the requirements of Assigned Commission Ruling (ACR) Executive Compensation Proposal 9.³ The guidance letter encouraged other electrical corporations, including BVES, to review and consider adopting the measures from ACR Executive Compensation Proposal 9 in the spirit of transparency and furthering the purpose of AB 1054.⁴ Energy Safety's review of BVES's executive compensation submission has taken this additional guidance into consideration.

The guidance letter directed electrical corporations seeking a Safety Certification for 2021 to submit a formal request for approval of its executive compensation structure by

² WSD Executive Compensation Submission Guidance Letter, page 2.

<https://energysafety.ca.gov/wp-content/uploads/docs/misc/wsd/wsd-executive-compensation-guidance-20201222.pdf>

³ Investigation 19-09-016, Assigned Commissioner Ruling and Proposals, February 18, 2020:

<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M327/K303/327303409.PDF>.

⁴ WSD Executive Compensation Submission Guidance Letter, page 3.

January 15, 2021. BVES submitted a request for approval of its 2021 executive compensation structure on January 15, 2021.

On January 29, 2021, the Public Advocates Office (Cal Advocates) submitted comments on BVES's and other electrical corporations' 2021 executive compensation plans.⁵ On February 5, 2021, BVES submitted a reply comment.

On April 14, 2021, the WSD issued an Action Statement denying BVES's January 15, 2021, executive compensation structure submission.⁶ The Action Statement included the following explanation for the denial:

The WSD has evaluated the submission and concluded that BVES's executive compensation structure does not meet the strict limits on guaranteed cash compensation. The Code establishes a clear requirement that the primary portion of the executive officers' compensation should be based on achievement of objective performance metrics. BVES's submittal outlines an executive compensation structure with a guaranteed base pay representing 66.7% of the total compensation structure. Therefore, the compensation based on objective performance metrics does not comprise the primary portion of the compensation package as required by the Code.

On May 24, 2021, BVES submitted a revised executive compensation plan.⁷

Discussion

BVES describes the four components of its revised executive compensation structure: 1) base pay, 2) Quarterly Term Incentive Plan (QTIP), 3) Short Term Incentive Pay (STIP), and 4) Long Term Incentive Pay (LTIP). The percentage of total compensation at the targeted level of performance for these four components are over 49% for base pay, over five percent for QTIP, 34% for STIP and over 11% for LTIP.

BVES's revised executive compensation structure meets by Public Utilities Code section 8389(e)(6)(A)(i)(I) since the primary portion of executive pay (QTIP, STIP and LTIP) is based on the achievement of performance metrics. While BVES's base salary portion of its revised executive compensation structure remains higher compared to the other utilities that submitted executive compensation structures to Energy Safety, it is no longer the majority of compensation awarded. BVES's revised executive compensation structure has increased the proportion of its total compensation that is performance-

⁵ Letter from the Public Advocates Office:

<https://energysafety.ca.gov/wp-content/uploads/docs/misc/wsd/public-advocates-office-comments-on-2021-executive-compensation-plans.pdf>

⁶ April 14, 2021 Action Statement: https://energysafety.ca.gov/wp-content/uploads/docs/misc/wsd/wsd-action-statement-denying-bves-exec-comp-structure_4-14-21.pdf

⁷ BVES revised plan letter:

<https://energysafety.ca.gov/wp-content/uploads/docs/misc/wsd/bear-valley-electric-service-inc.-overview-of-revised-executive-compensation-plan-in-compliance-with-public-utilities-code-section-8389e.pdf>

based as well as compensation directly based on safety performance in comparison to its January 15, 2021, executive compensation plan.

BVES's revised executive structure meets Public Utilities Code section 8389(e)(6)(A)(i)(II) since there is no guaranteed monetary compensation in the performance portion of the compensation package. The QTIP, STIP and LTIP awards can be reduced or eliminated if relevant performance metrics are not achieved.

The proposed executive compensation structure appears to satisfy the principles outlined in Public Utilities Code section 8389(e)(4) (as required by Public Utilities Code section 8389(e)(A)(ii)) and the requirements outlined in Public Utilities Code section 8389(e)(6)(A)(iii) and (iv). The QTIP is awarded on a quarterly basis and consists of two equally weighted safety metrics. The STIP is awarded on a yearly basis and includes multiple safety-related metrics, including four wildfire safety metrics targeting system hardening that constitute 34% of the total possible STIP compensation. Only 16% of the STIP compensation is based on the "earnings before interest, taxes, depreciation and amortization" (EBITDA) financial metric. LTIP is based on a single financial performance-based metric. LTIP is awarded annually but is payable three years after the award date.

Prior to July 2020, BVES was a division of Golden State Water Company (GSWC) and did not have executives with executive compensation packages; therefore, BVES cannot provide past examples of executive compensation being withheld for underperformance.

In comments, Cal Advocates recommended that the WSD "direct Bear Valley Electric Service, Inc. (Bear Valley) to evaluate its executive compensation plan so that Bear Valley includes more emphasis on safety outcomes, in compliance with Public Utilities Code Section 8389(e)(4)."

Energy Safety recognizes the concerns of Cal Advocates. BVES must continue developing its executive compensation structure to reflect the spirit of Public Utilities Code section 8389 and promote safety as a priority. Unlike other electrical corporations' executive compensation structures reviewed by Energy Safety, BVES does not use a graduated system of performance rewards. Energy Safety recommends BVES consider implementing a system utilizing minimum, target and maximum performance metrics using scaled compensation depending on actual performance.

Conclusion

Energy Safety finds that BVES has met the minimum requirements set forth in Public Utilities Code sections 8389(e)(4) and (e)(6) and the additional requirements set forth in the guidance letter.

The statutory requirements for the structure of an executive compensation program are detailed and complex, and BVES must do more work to align executive compensation

metrics to those used in the Wildfire Mitigation Plans. A more robust understanding of an executive compensation structure that promotes safety as a priority will be developed through a public process and incorporated into future guidelines. Energy Safety is initiating a process to develop the 2022 executive compensation guidelines and anticipates holding a public workshop related to that effort in the fall of 2021.

Sincerely,

A handwritten signature in cursive script that reads "Lucy Morgans".

Lucy Morgans
Acting Program Manager, Safety Policy Division
Office of Energy Infrastructure Safety