TURN
THE UTILITY REFORM NETWORK
Lower bills. Livable planet.

Northern California
785 Market Street, Suite 1400
San Francisco, CA 94103
415 929–8876 • www.turn.org

TRANSMITTED VIA EMAIL

January 29, 2021

Caroline Thomas Jacobs
Director, Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94702
Email: wildfiresafetydivision@cpuc.ca.gov

Re: Executive Compensation

Dear Director Thomas Jacobs:

The Utility Reform Network (TURN) respectfully submits these comments on the executive compensation plans submitted by Southern California Edison (SCE), Pacific Gas and Electric (PG&E) and San Diego Gas and Electric (SDG&E) on January 15 pursuant to the direction in the Wildfire Safety Division's (WSD's) Director's December 22, 2020 letter. As filed, the executive compensation plans are insufficient, do not meet the requirements of statute, and must be rejected. As explained below, TURN recommends that the WSD suspend its review and initiate the stakeholder process to develop executive compensation requirements it committed to when approving the utilities' 2020 plans. There is no reason why the promised stakeholder process cannot be conducted now, as there is no immediate deadline for approving the plans. Once requirements are established, the utilities should resubmit their requests with an opportunity for stakeholder comments after sufficient time for discovery and review.

1. Introduction

Assembly Bill (AB) 1054 provides the investor-owned utilities (IOUs) with the opportunity for significant benefits if they have a valid safety certificate, namely: (1) a reduced burden of proof for the review of wildfire claims costs under Public Utilities Code §451.1(c) and (2) a limit on the amount of wildfire claim costs that need to be re-paid to the Wildfire Insurance Fund in the event of imprudence, pursuant to § 3292(h)(2). A key prerequisite for the safety certificate is approval of a utility's executive compensation plan. AB 1054, designed to provide solutions to the crisis of utility-ignited wildfires in California, outlines specific and highly prescriptive requirements for executive compensation plans and reflects the intent of the Legislature to restrict the leeway that California utilities previously enjoyed in designing executive compensation plans. These requirements, outlined in Cal. Pub. Util. Code § 8389(e), include incentive compensation based on metrics that are measurable and enforceable[1] and limited guaranteed compensation, with the primary portion of compensation "based on the achievement of objective performance metrics."[2] Implementation of these principles is, intentionally, a complex and detailed process.[3]

In 2020, the WSD provided stakeholders nine days to review the SCE and SDG&E executive compensation plans. Notwithstanding the abbreviated period provided for review of the utility plans, TURN highlighted significant deficiencies with the SCE and SDG&E plans and their failure to comply with statutory requirements. When "minimally and conditionally" approving the SCE and SDG&E executive compensation plans, WSD acknowledged the merit in TURN's comments and assured stakeholders of the WSD's intent to develop more comprehensive guidance for executive compensation plans and to "initiate a stakeholder process to further develop its executive compensation review criteria for use in 2021 executive compensation evaluations."[4] Meanwhile, the Commission reviewed and "minimally and conditionally" approved the PG&E 2020 executive compensation plan over TURN's objections in its Decision approving PG&E's Plan of Reorganization (D.20-05-053), closing that proceeding confident that additional guidance for executive compensation was forthcoming (D.20-10-018).

Despite the assurances that there would be an opportunity to further develop executive compensation requirements before the 2021 review cycle, the WSD has not initiated a stakeholder process. Instead, in December 2020, the WSD requested the executive compensation plans from the utilities, again giving stakeholders insufficient time for review, let alone discovery.

The 2021 executive compensation requests from SCE, SDG&E and PG&E display many of the same problems TURN highlighted in its 2020 comments. TURN's review and analysis of the 2021 executive compensation plans is, however, limited, not just by the IOUs' incomplete requests, but also by the insufficient process for review. TURN recommends that the WSD suspend its review of the executive compensation plans pending more complete filings. In the meantime, WSD should implement the promised stakeholder process for the development of executive compensation plan requirements. After the utilities provide updated plans with the required detail, TURN requests that parties have time to complete, at a minimum, two rounds of discovery before providing comments.

[1] Cal. Pub. Util. §8389(e)(4)
[2] Cal. Pub. Util. §8389(e)(6)(A)(i).
[3] TURN's 2020 Comments on the SCE and SDG&E Executive Compensation plans included a detailed discussion of the requirements of AB 1054. Those comments are attached here for ease of reference.
[4] WSD SCE Letter, p. 1, WSD SDG&E Letter, p. 1.

2. The WSD and Commission Approved the 2020 Executive Compensation Plans over TURN's Objections.

   a. Despite Finding Merit in TURN's Objections, WSD Minimally and Conditionally Approved the SCE and SDG&E 2020 Executive Compensation Plans.

On January 17, 2020, the WSD Director sent a letter to SCE, SDG&E and PG&E directing each utility to seek approval of its executive compensation plan. SCE and SDG&E were directed to submit their executive compensation plans on January 27, 2020. Interested stakeholders were only given until February 5, 2020 -- nine days -- to review, analyze and provide comments on the proposed plans. Unsurprisingly, the division received a limited number of comments on the executive compensation requests. Constrained by the limited timeframe, TURN nevertheless expended considerable time and effort providing comments on the proposed executive compensation plans.

TURN highlighted in detail its concerns with the process identified in the Director's Letter.[5] TURN's comments also addressed the requirements laid out in AB 1054 for both the executive compensation plans and the safety certificate.[6] TURN's 2020 comments on the SCE and SDG&E executive compensation plans are attached to this letter and TURN incorporates its discussions regarding the requirements of AB 1054 by reference.

TURN raised a number of concerns with the SCE executive compensation, including, but not limited to:

- The SCE compensation committee's undue discretion in awarding incentives;[7]
- The subjective and input-based metrics identified for incentive compensation;[8] and
- SCE's reliance on the Long-Term Incentive to properly incentivizing risk mitigation.[9]

TURN similarly found that SDG&E's proposed executive compensation did not meet the requirements for executive compensation. TURN argued that SDG&E's proposed metrics for determining incentive compensation:

- Were not measurable and enforceable;[10]
- Put insufficient weight on safety results;[11] and
- Were not objective.[12]

[5] TURN February 5, 2020 Letter Re. Executive Compensation, p. 2 (hereinafter TURN Letter).
[6] TURN Letter, pp. 3-5.
[7] TURN Letter, pp. 7-9.
[8] TURN Letter, pp. 9-10.
[9] TURN Letter, pp. 11-12.
[10] TURN Letter, p. 14.
[11] TURN Letter, pp. 14-15.
[12] TURN Letter, p. 15.

Nearly five months later, WSD minimally and conditionally approved both the SCE and SDG&E executive compensation plans, despite finding merit in the failings highlighted by TURN:

> Criticisms by CEJA and TURN of the utility submittal offered an overarching critique that metrics used in the executive compensation program insufficiently weigh safety outcomes in the awards calculation. Further, metrics used are not 'measurable and enforceable' as required by law. The WSD finds that these comments have merit.[13]

However, rather than rejecting the proposed executive compensation plans or requiring changes to the proposed plans, WSD articulated the difficulty of designing an executive compensation plan. WSD stated that "[d]eveloping a robust executive compensation structure necessitates a more thorough public process than is currently achievable given the time constraints for approving the 2020 executive compensation programs."[14]

b. The Commission "Minimally and Conditionally" Approved the PG&E Executive Compensation Plan Punting on the Question of Proper Metrics

PG&E's executive compensation plan was reviewed in the Commission proceeding reviewing its plan of reorganization, I.19-09-016. TURN, again, expended significant time and effort to outline its concerns with PG&E's proposed executive compensation proposal demonstrating its non-compliance with statutory requirements.

Under AB 1054, compensation must be based on metrics that are "measurable and enforceable" as well as "objective."[15] In order to comply with legislative intent, the "plans must describe the precise and objective metrics that will be used and how those metrics will be applied. A vague or subjective description of either the metric or its application would give rise to potential manipulation of metric results."[16] Further, the metrics must truly incentivize good behavior since "[m]etrics that are calibrated such that they are sure to be achieved and do not require any reaching for improvement are the equivalent of guaranteed incentive compensation and are circumscribed by AB 1054."[17]

TURN's chief concern with PG&E's executive compensation plan was the utility's inability to demonstrate that its plan had calibrated its metrics' milestones to properly incentivize

---

[13] WSD Action Approving SCE's 2020 Executive Compensation Program Pursuant to PU Code §§ 8389(e)(4) and 8389 (e)(6) Approval, June 30, 2020, p. 3 (hereinafter WSD SCE Letter), Similar language is also in the SDG&E Approval Letter, WSD Action Approving SDG&E's 2020 Executive Compensation Program Pursuant to PU Code §§ 8389(e)(4) and 8389 (e)(6) Approval, June 30, 2020, p. 3 (hereinafter WSD SDG&E Letter).
[14] WSD SCE Letter, p. 4, WSD SDG&E Letter, p. 4.
[15] TURN Opening Brief, I.19-09-016 (CPUC, Mar. 13, 2020), p. 63 (hereinafter TURN Opening Brief).
[16] *Id.*
[17] *Id.*, p. 64.

improved safety performance.[18] PG&E was unable to offer this information even after TURN propounded discovery on the issue.[19] Other issues identified by TURN included an overreliance on program targets rather than outcome metrics and unbounded board discretion to alter incentives.[20] TURN requested that the Commission reject the PG&E executive compensation plan and direct the utility to resubmit a properly supported plan.[21] TURN additionally proposed specific metrics for consideration and required criteria for executive compensation plans.[22]

Following the lead of the WSD, the Commission ultimately punted the responsibility for development of executive compensation requirements down the road:

> The criticisms of PG&E's executive compensation plan raised by TURN and other parties may have merit, but given the schedule of this proceeding, the detail and complexity of the issues, and the need to address executive compensation thoroughly and carefully, we simply cannot adequately review, analyze and resolve in this decision the issues that have been presented.[23]

The Commission concluded that "PG&E's executive compensation plan minimally and conditionally satisfied" the requirements of statute.[24]

3. Acknowledging the Complexity of Designing an Executive Compensation Program Consistent with Statutory Requirements, WSD Announced There Would be a Stakeholder Process

In its letter approving the SCE and SDG&E executive compensation plans despite its reservations, WSD pledged to "initiate a stakeholder process to further develop its executive compensation review criteria for use in 2021 executive compensation evaluations shortly after the issuance of this action."[25] Moreover, WSD asserted: "The WSD will provide additional guidance in the form of a Staff Proposal and a schedule for a [sic] public input and review of the Staff Proposal to guide SCE's [SDG&E's], and all other utilities', 2021 executive compensation structures. SCE [SDG&E] will be expected to conform future executive compensation structures to the metrics and structure ultimately adopted by the WSD through the stakeholder process."[26]

On July 15, 2020, the Commission issued a ruling in the PG&E Bankruptcy Case, I.19-09-016, and Safety Culture Investigation, I.15-08-019, asking whether the Commission should close one or both proceedings now that the bankruptcy was resolved. In comments filed August 4, 2020, TURN suggested that I.19-06-016 should stay open to potentially address PG&E's

[18] *Id*., p. 68.
[19] *Id*., p. 70.
[20] *Id*., p. 71, 74, 78.
[21] *Id*., p. 83.
[22] *Id*.
[23] D.20-05-053, p.90.
[24] *Id*., p. 91.
[25] WSD SCE Letter, p. 1, WSD SDG&E Letter, p. 1.
[26] WSD SCE Letter, p. 4, WSD SDG&E Letter, p. 4.

executive compensation plan for 2021, an issue left unresolved in D.20-05-053, particularly if WSD did not act quickly enough in the stakeholder process it had promised two weeks earlier.[27] In D.20-10-018, the Commission considered TURN's recommendation but, ultimately, closed I.19-09-016. The Commission explained, "[a]s TURN acknowledges, the Commission's Wildfire Safety Division is developing a process for addressing executive compensation issues going forward. There is no need to keep this proceeding open solely as a backstop for that process."[28]

To date, WSD has not since initiated a stakeholder process for the development of executive compensation criteria.

4. The WSD Should Immediately Initiate the Stakeholder Process to Develop Requirements for Executive Compensation it Committed to When Approving the Utilities' 2020 Plans.

The WSD has not initiated the promised stakeholder process for development of executive compensation plan requirements in the months since the WSD approved the SCE and SDG&E Executive Compensation plans and the Commission approved the PG&E Executive Compensation plan. Instead, on December 22 the WSD Director issued a letter requiring the IOUs to submit their executive compensation plans on January 15, 2021, giving stakeholders until January 29 to submit comments, insufficient time to propound discovery or engage in a thorough review of the proposed executive compensation plans.[29]

As an initial matter, there is no compelling reason that stakeholder review is required to occur on the accelerated time frame set out in the December 22 Letter. SCE and SDG&E's safety certificates are not set to expire until September 2021 and PG&E's will not expire until January 2022. Even if there was not sufficient time for stakeholder process and a more thorough review, under AB 1054 the existing safety certificate would remain valid until the WSD review was complete. The statute specifically states: "a safety certification shall remain valid until the division acts on the electrical corporation's pending request for safety certification."[30]

The WSD should initiate the promised stakeholder process to develop executive compensation requirements now. WSD should seek stakeholder feedback on the proper criteria for executive compensation plans. This process could reflect the approach used to develop the Safety Culture Assessment or the WMP Guidance. WSD should solicit stakeholder feedback, release a staff proposal and solicit feedback on that proposal. Additionally, a public workshop session could be useful to develop executive compensation requirements.

After these requirements are decided, TURN recommends that the WSD initiate a more thorough process for the review of the executive compensation requests, resubmitted to comply with the adopted requirements. TURN proposed such a process in its comments on the 2020

[27] Comments of TURN on Case Status, I.19-09-016 (CPUC Aug 4, 2020), pp. 1-3.
[28] D.20-10-018, pp. 4-5.
[29] WSD Guidance on Submission of Executive Compensation Approval Requests by Electrical Corporations Pursuant to Public Utilities Code 8389(e)(4) and 8389(e)(6), December 22, 2020, p. 4.
[30] Cal. Pub. Util. Code § 8389(f)(4).

SCE and SDG&E executive compensation plans (attached here). TURN recommended a process that would:

- Provide parties with more time for the review and consideration of the executive compensation plans.
- Outline a process for discovery, including the steps a party can take to resolve a discovery dispute.
- Establish a timeline for non-utility party comments that allows for at least two rounds of discovery and time for presentation of discovery disputes to a decisionmaker and a resolution of such disputes.
- Provide all substantive communications to all interested stakeholders at the same time.[31]

As with Wildfire Mitigation Plans (WMPs) and their guidance, any approval or rejection of the requested executive compensation plans should be provided via draft resolution made available for comment by all interested persons. The Commission should then adopt a final Resolution ratifying or modifying the Executive Director's decision and triggering the typical and known process for review and appeal of Commission decisions. Given that both the WMP and executive compensation plans are the key requirements of the safety certificate, it follows that they should have similar processes for review.[32] If the WSD declines to approve the executive compensation via Resolution, TURN requests that the Commission otherwise clarify the path for review of the WSD disposition of the executive compensation plans.

To the extent that WSD declines to develop the executive compensation requirements for the 2021 executive compensation plans, it should still provide stakeholders the opportunity for a more thorough review of the executive compensation requests rather than the abbreviated time frame provided.

5. The Commission Must Reject the Executive Compensation Plans as Submitted by the Utilities.

In light of the WSD's failure to follow through on its commitment to initiate a stakeholder process on executive compensation and the limited time it provided stakeholders to review the executive compensation filings, TURN provides only limited feedback on the SCE, SDG&E and PG&E executive compensation plan requests.

None of the large IOUs provide information sufficient for the WSD to determine that the executive compensation plans proposed are consistent with the statutory requirements. In fact, the utilities all state that some of the key components of the plans are not yet available, further calling into question the timing of WSD's request for the utilities to submit their executive compensation plans.[33]

---

[31] TURN Letter, p.17.
[32] TURN Letter, p. 17.
[33] As TURN addressed above, there is no compelling reason for the accelerated time frame set out in WSD's December 22 Letter. SCE and SDG&E's safety certificates are not set to expire until September

- PG&E acknowledges that certain details of its executive compensation plan are outstanding with approval by the Board of Directors "not expected until February 2021."[34]
- SCE states that "on or about March 1, SCE will supplement its submission to the WSD by providing the final 2021 goals and metrics."[35]
- SDG&E only provides a look at historical numbers stating that "The results for the 2020 Executive Compensation Plan have not yet been finalized."[36]

TURN is concerned that PG&E, SDG&E and SCE have not provided any detail on the proposed milestones to trigger the payment of incentive compensation. Without additional information on the milestones, neither TURN nor the WSD can determine that the compensation plan will properly incentivize safety.

Similar to last year's submissions, the executive compensation plans leave significant discretion to the company, either the board or a compensation committee, to determine the final incentive amounts. For example, at PG&E, "[t]here will be an individual modifier for each executive that can result in adjustment of the executive's payout depending on how the executive performs in the executive's individual job."[37] SCE's "[individual performance modifier] is a modifier for exempt employees, including Executive Officers, and reflects their individual performance,"[38] and "[t]he SDG&E Board of Directors has discretion in determining [the Executive Individual Safety Performance] portion of an officers [Incentive Compensation Plan] based upon the Board's assessment of an individual officer's demonstration of commitment to safety excellence."[39] None of the companies provide information on the guidance for, or limits of this discretion. Without additional information, the WSD cannot conclude that the executive compensation plans are consistent with statutory requirements.

PG&E continues to base a portion of its Long Term Incentives on program targets rather than outcome metrics.[40] Specifically, the 35% of Long Term Incentives based on "public safety" are not outcome-based.[41] Instead, the incentives are based on the miles of system hardening and

---

2021 and PG&E's will not expire until January 2022. Even if there was not sufficient time for a more thorough review, under AB 1054, the existing safety certificate would remain valid until the WSD review was complete.

[34] PG&E Executive Compensation Approval Request Pursuant to Pub. Util. Code §§ 8389(e)(4 and (e)(6), Jan. 15, 2021, pp. 1-2 (hereinafter PG&E Request).

[35] 2021 Executive Compensation Submission of SCE Pursuant to AB 1054, Jan. 15, 2021, p. 5 (hereinafter SCE Request).

[36] SDG&E Documentation of Compliance with Executive Compensation provisions of Pub. Util. Code § 8389(e) and WSD Guidance, Jan. 15, 2021, p. 8 (hereinafter SDG&E Request).

[37] PG&E Request, p. 8.

[38] SCE Request, p. 5

[39] SDG&E Request, Appendix 1, p. 6. The Executive Individual Safety Performance comprises 10% of SDG&E's Incentive Compensation Plan.

[40] PG&E Request, p. 10.

[41] *Id*.

enhanced vegetation management the utility completes.[42] This is particularly unacceptable given the October 2020 finding by PG&E's court-appointed Federal Monitor that the utility was prioritizing achieving milestones rather than prioritizing its highest risk work.[43] SCE admits that some of its metrics, in particular wildfire related metrics, are based on program targets rather than outcome,[44] and SDG&E states that its "safety goals include a combination of both input-based (*e.g.*, leading indicators) and output-based (*e.g.*, lagging indicators)."[45]

SCE and SDG&E tie long term incentives to the performance of their stock:

- "All of [SCE's] long-term incentives (LTI) are awarded as equity instruments reflecting or valued by reference to, EIX Common stock."[46]
- SDG&E's "long-term incentive awards are granted under the Sempra Energy Long Term Incentive Plan, in the form of performance-based restricted stock units."[47]

Company stock prices are not directly linked to safety performance, and good financial performance does not necessarily mean that the utility has prioritized safety.[48] As TURN pointed out in its 2020 comments, the Commission has already "concluded that LTI does not align executives interests with ratepayer interest," and denied SCE's request for recovery of LTI costs from ratepayers since 2009.[49] Despite the Commission precedent, and absent alternative direction from WSD, SCE and SDG&E would pay significant incentives using a tool that fails to adequately prioritize public safety.

The 2021 Executive Compensation requests reflect the same failures as the 2020 requests. The WSD should suspend their consideration of the requests pending the outcome of a stakeholder process identifying executive compensation requirements. After utilities have submitted plans consistent with those requirements, stakeholders should have sufficient time to review the submissions.

---

[42] *Id*., pp.10-11.
[43] Information Request Regarding Monitor Team Field Inspections, Oct. 16, 2020, p. 2.
[44] SCE Request, p. 7.
[45] SDG&E Request, p. 7.
[46] SCE Request, p. 14.
[47] SDG&E Request, p. 2.
[48] TURN Letter, p. 14.
[49] See TURN Letter, p. 11; D.19-05-020, pp. 167-168; D.93-03-025, pp. 134-135; D.12-11-051, p. 452; D.15-11-021, p. 266.

6. Conclusion

The WSD should instead institute a full stakeholder process to develop the requirements for executive compensation plans. Once these requirements are identified, the utilities should be directed to refile their requests, with stakeholders provided the opportunity for discovery and thorough review. In the absence of both time and process, TURN requests that the Commission deny the executive compensation requests as insufficient for purposes of obtaining a safety certificate.

Sincerely,

_____/S/____
Katy Morsony, Staff Attorney

Tom Long, Legal Director

Attachment

TURN's 2020 Comments on the SCE and SDG&E

Executive Compensation Plans

Dated February 5, 2020

TURN
THE UTILITY REFORM NETWORK
Lower bills. Livable planet.

Northern California
785 Market Street, Suite 1400
San Francisco, CA 94103
415 929–8876 • www.turn.org

Southern California
1620 Fifth Avenue, Suite 810
San Diego, CA 92101
619 398–3680 • www.turn.org

TRANSMITTED VIA E-MAIL

February 5, 2020

Caroline Thomas Jacobs
Director, Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94702
Email: wildfiresafetydivision@cpuc.ca.gov

Re: Executive Compensation

Dear Director Thomas Jacobs:

The Utility Reform Network (TURN) respectfully submits these comments on the executive compensation plans submitted by Southern California Edison (SCE) and San Diego Gas and Electric (SDG&E) pursuant to the request made in the January 17, 2020 letter from the Wildfire Safety Division (WSD) (WSD Director Letter). These comments are limited by the February 5 deadline for comments and attendant resource constraints. As explained below, TURN recommends that the WSD reject the utility plans and make changes to its review process.

1. Introduction

Assembly Bill (AB) 1054 provides the investor owned utilities with the opportunity to benefit from a reduced burden of proof for the review of wildfire related costs provided the utility has a valid safety certificate. A key prerequisite for the safety certificate is approval of a utility's executive compensation plan by the Executive Director of the WSD. AB 1054, designed to provide solutions to the crisis of utility-ignited wildfires in California, outlines specific and highly prescriptive requirements for executive compensation plans and reflects the intent of the Legislature to significantly modify the status quo of executive compensation at California utilities.

The SCE and SDG&E executive compensation plans do not comply with the requirements of AB 1054 and should be rejected by the WSD. In addition to demonstrating the failure of the filed plans to comply with statutory requirements, these comments identify changes required to the WSD review of executive compensation to ensure a process that is transparent, participatory and accountable.

2. The Process Provided for the Review of the Executive Compensation Plans Is Insufficient to Provide Transparency, Participation and Accountability

AB 1054 confers responsibility for both review of the executive compensation plans and development of the process for review to the WSD. Given the benefits conferred to the utility as a result of its safety certificate, the WSD review of utility executive compensation, and other elements of the safety certificate, should provide a transparent process that provides an opportunity for meaningful participation and accountability. An inadequate process leaves the WSD susceptible to charges of failing to have full information from various perspectives and inappropriate coziness with the investor owned utilities. TURN recommends procedural modifications in Section 6 below to improve the WSD process for reviewing utility submissions.

The WSD Director Letter submitted to the utilities describes this year's review of the plans. Interested stakeholders were given only 9 days to review and provide comments on the executive compensation plans. The utilities will have an opportunity to respond to these comments and then "the Director…will review each electrical corporation's executive compensation structure for compliance with Pub. Util. Code § 8389 (e) and will issue a letter of approval or denial."

As an initial matter, there is no compelling reason that this process was required to occur on such an accelerated time frame. The initial safety certificates are not going to expire until July 2020, and even if the review of the new executive compensation plans is not complete, under AB 1054 the existing safety certificate would remain valid. The statute specifically states: "a safety certification shall remain valid until the division acts on the electrical corporation's pending request for safety certification."[1]

The process described in the letter submitted to the utilities is not transparent nor does it provide an opportunity for meaningful participation or accountability. The executive compensation plans were not submitted to the Commission in any ongoing proceeding, nor were they presented via advice letter. The process outlined in the letter provides no opportunity for discovery and, even if there were time available to engage in discovery, no process for resolving the inevitable discovery disputes. The WSD Director Letter does not address the form of the Director's decision rejecting or approving the plans, and whether, and, if so, how the decision will be appealable. Consistent with basic principles of administrative due process, TURN expects that the WSD Director will provide a detailed and reasoned explanation for its decision, but there is no indication whether WSD intends to do so. These procedural shortcomings have severely undermined the ability of stakeholders to provide meaningful comments on the plans and call into question whether the process will comport with fundamental requirements for administrative decision-making.

[1] Cal. Pub. Util. Code § 8389(f)(4

3. Assembly Bill 1054 Requires the Wildfire Safety Division to Approve Executive Compensation As A Prerequisite for A Safety Certificate

AB 1054 requires the WSD to issue electrical corporations safety certificates.[2] Among other things, a valid safety certificate entitles a utility to benefit from a more limited standard of review for wildfire related costs.[3] AB 1054 established a limited review process for the approval of the initial safety certificates which are valid for 12 months.[4] Before the certificate expires, the utility must request a new safety certificate, which should be issued by the WSD provided the utility meets the statutory requirements.[5] An existing safety certificate, however, will remain valid until the WSD issues a new certificate.[6]

In addition to an approved executive compensation plan,[7] approval of a safety certificate requires that the utility:

- Have an approved Wildfire Mitigation Plan;[8]
- Be "in good standing, which can be satisfied by [implementing the results of its] safety culture assessment;"[9]
- Establish a safety committee;[10]
- Provide board level reporting on safety to the CPUC; and[11]
- Implement the approved wildfire mitigation plan.[12]

The initial safety certificate did not require the WSD to assess executive compensation, so the instant process is the first time the WSD has considered whether the utility plans comply with AB 1054 requirements. Given the benefits conferred on the utilities with the safety certificate, review of executive compensation should be comprehensive and ensure compliance with both the letter and the spirit of AB 1054.

a. Requirements of Executive Compensation Plans Under AB 1054

The new AB 1054 requirements for executive compensation plans are set out in Public Utilities Code §§ 8389(e)(4) and 8389(e)(6)(A). TURN highlights the following requirements:

---

[2] Cal. Pub. Util. Code § 8389(e)
[3] Cal. Pub. Util. Code § 451.1(b)
[4] Cal. Pub. Util. Code § 8389(f)(1). The initial Safety Certificates for SCE and SDG&E were approved in July 2019.
[5] Cal. Pub. Util. Code § 8389(f)(2)
[6] Cal. Pub. Util. Code § 8389(f)(4)
[7] Cal. Pub. Util. Code § 8389(e)(4), (6)
[8] Cal. Pub. Util. Code § 8389(e)(1)
[9] Cal. Pub. Util. Code § 8389(e)(2)
[10] Cal. Pub. Util. Code § 8389(e)(3)
[11] Cal. Pub. Util. Code § 8389(e)(5)
[12] Cal. Pub. Util. Code § 8389(e)(7)

- The executive incentive compensation structure must be structured *to promote safety as a priority and to ensure public safety* (§ 8389(e)(4))
- Executive incentive compensation must be based on meeting performance metrics that are *measurable and enforceable* (§ 8389(e)(4))
- The compensation structure [for any new or amended contracts] for executive officers shall be based on principles that include: [13]
  - Strict limits on guaranteed cash compensation, with the *primary portion* of compensation based on achievement of *objective* performance metrics (§ 8389(e)(6)(A)(i)(I))
  - *No guaranteed monetary incentives* in the compensation structure (§ 8389(e)(6)(A)(i)(II))[14]

Certain key points are clear from these requirements. First, the fundamental purpose of the legislation is to ensure that executive incentive compensation is structured not just to prioritize safety but "to ensure public safety." A plan that is not designed to ensure public safety should not be approved.

Second, in two places, the legislature emphasizes basing compensation on performance metrics. The performance metrics must be "measurable and enforceable," and the primary portion of the overall compensation package must be based on achievement of "objective" performance metrics. As a threshold matter, the plans must describe the precise metrics that will be used and how those metrics will be applied. Once the metric is defined with precision, the utility must demonstrate that it is objective, measurable and enforceable. A vague description of either the metric or its application would prevent the WSD from determining that a proposed metric is measurable, objective and enforceable.

In addition, a plan must be rejected if it fails to explain the mechanism by which each metric is used to determine compensation. Reserving discretion to the board for how factors will be assessed in arriving at compensation levels is directly contrary to the AB 1054 requirement that incentives be measurable and undermines the regulator's ability to enforce non-compliance. If a plan does not state the exact way that a given level of objective performance will affect executive compensation, then the Division cannot fulfill its responsibilities under § 8389(e).

Third, TURN submits that the use of the phrase "primary portion" in statute requires that more than half of the total compensation must be based on achievement of the measurable, objective and enforceable performance metrics discussed in the previous two paragraphs. Merriam-Webster defines primary as "of first rank, importance, or value."[15] In order for safety to be given its proper treatment as the primary portion, it must have a greater impact on the overall compensation than all other portions combined. If less than half of compensation is dependent on achievement of metrics, then that portion can no longer be said to be primary.

---

[13] The language of the statute highlights the application of these requirements to any "new or amended contracts" with executive officers. SCE and SDG&E treat the requirements as applying to all executive officers. SCE explicitly states that "SCE does not have employment contracts." Overview of SCE Executive Compensation Structure, January 14, 2020, p. 3.
[14] Italics signal the emphasis added in the above excerpts from AB 1054.
[15] Merriam-Webster at https://www.merriam-webster.com/dictionary/primary

Fourth, the statute strongly disfavors "guaranteed" compensation awarded regardless of whether any metrics are achieved. In fact, with respect to incentive compensation, no guaranteed incentive pay is permitted. A plan that reserves discretion for the utility board to determine whether incentive compensation is warranted must be rejected as a threshold matter. If a Board is free to award incentive compensation even when metrics have not been achieved, then the Board is effectively providing guaranteed compensation, contrary to the statute. Similarly, metrics that are calibrated such that they are sure to be achieved and do not require any reaching for improvement are the equivalent of guaranteed incentive compensation and are circumscribed by AB 1054.

b. Requirements of Executive Compensation Plans Under the WSD Director's Letter

In addition to the requirements laid out in statute, the letter sent by the Executive Director of WSD identified specific points of information requested from each utility.[16] These include:

- "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;"[17]

- "A description [of] all metrics, including safety metrics, used to calculate incentive compensation, including an explanation of safety [sic] whether metrics are outcome or input based (e.g. number of ignitions versus number of miles of distribution lines inspected);"[18]

- "A breakdown of the percentage of executive compensation based on safety metrics versus other metrics, e.g. financial performance."[19]

- A description of how safety performance is calculated for incentive compensation."[20]

- "Examples of incentive compensation reduced or withheld in the last 5 years as a result of failure to meet safety metrics."[21]

The information solicited in the WSD Director's Letter would provide specific data points that would illustrate how the utility compensation plan complies with the requirements of AB 1054. For example, the WSD Director's Letter requests "a breakdown of the percentage of executive

[16] WSD Director's Letter to Carla Peterman, January 17, 2020, pp. 2-3.
[17] WSD Director's Letter to Carla Peterman/Dan Skopec, January 17, 2010, p.2.
[18] WSD Director's Letter to Carla Peterman/Dan Skopec, January 17, 2010, p.2.
[19] WSD Director's Letter to Carla Peterman/Dan Skopec, January 17, 2010, p.2.
[20] WSD Director's Letter to Carla Peterman/Dan Skopec, January 17, 2010, p.2.
[21] WSD Director's Letter to Carla Peterman/Dan Skopec, January 17, 2010, p.3.

compensation based on safety metrics."[22] This would provide a direct reflection of whether safety performance is the driver for a primary portion of the executive compensation.

TURN recommends that the Executive Director reject the executive compensation plans presented by SCE and SDG&E. As an initial matter, the plans submitted by SCE and SDG&E provide insufficient information. The plans do not identify with precision the data points required to assess whether and how they operate within the limits of AB 1054. From the information provided, however, the Executive Compensation plans submitted by SCE and SDG&E do not comply with the requirements of AB 1054. The plans do not adequately prioritize safety and do not ensure public safety. Additionally, the metrics identified by the utilities are, to varying extents, not measurable or enforceable. Finally, some of the metrics are not objective, and leave too much discretion in the hands of the utility board. The failure to identify appropriate metrics is especially alarming given the work that the CPUC has done in recent years to develop appropriate performance metrics for the utilities.

4. The Commission Should Reject SCE's Proposed Executive Compensation Plan

a. SCE's Executive Compensation Structure Contains Insufficient Information to Allow for a Meaningful Assessment

SCE's Executive Compensation Structure submission fails to comply with both the statutory requirements of § 8389(e) and the specific requirements laid out in the WSD Director Letter.[23] As will be discussed in greater detail below, the submission is missing key information and many important details. Accordingly, the WSD cannot approve SCE's executive compensation structure as adequately ensuring safety for the purpose of issuing a safety certificate. SCE should be required to resubmit an Executive Compensation plan that complies with requirements of § 8389(e) and the WSD Director's Letter. SCE's revised executive compensation plan must include new objective and enforceable metrics and a specific target for each metric that is measurable. Additionally, SCE must reduce the amount of compensation provided as EIX stock as it is not clear that stock compensation encourages executives to prioritize safety.

i. The Plan Does Not Comply With The Requirements In The WSD Director's Letter

As addressed above, the WSD Director's Letter lists the mandates in § 8389(e)(6)(A) regarding executive compensation and provides a description of additional information the utility's plan must include. SCE's submission fails to comply with these requirements.[24] TURN also notes that it is not entirely surprising that SCE's submission is deficient, given that SCE's submission appears to have been prepared prior to the issuance of the WSD Director's letter.[25]

---

[22] WSD Director's Letter to Carla Peterman, January 17, 2020, pp. 2-3.
[23] WSD Director's Letter to Carla Peterman, January 17, 2020, pp. 2-3.
[24] The following list includes examples of SCE's submission's deficiencies and is not exhaustive.
[25] SCE's submission is dated January 14, 2020 and the letter from the WSD Director is dated January 17, 2020.

SCE did not comply with the specific requirements laid out in the WSD letter as identified below.

- The Plan does not comply with the requirement to include percentages of overall compensation for each compensation component (i.e. base pay, annual incentives, and long-term incentives).
- The Plan does not include a description of how to calculate each incentive compensation metric, nor does it explain whether metrics are outcome and input based.
- The Plan does not include a breakdown of the percentage of total executive compensation based on safety metrics versus other metrics.
- The Plan does not include a description of how safety performance is calculated for incentive compliance.
- The Plan does include examples of incentive compensation reduced or withheld in the last 5 years as a result of failure to meet safety metrics, but necessary details are missing including which executives received deductions (some, but not all of the examples, include this information) and how the deductions impacted total incentive compensation for the referenced year (ex. 10 point deduction for safety, total of 180 points awarded).[26]

ii. SCE's Plan Does Not Comply With The Requirements Of Public Utilities Code Section 8389(e)(4)

As discussed above in Section 3, § 8389(e)(4) requires a utility to have an executive incentive compensation structure that is:

> "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 explained further below, SCE's plan does not meet these requirements because the annual incentive metrics included in its plan are largely subjective, insufficiently tied to safety, and give too much discretion to the Compensation Committee.

b. SCE's Annual Incentive Goals Are Based on the Discretion of the Compensation Committee

SCE's Compensation Committee "is comprised of independent board members who have a variety of skills and experiences", and "is responsible for reviewing and determining the total compensation paid to Executive Officers."[27] On multiple occasions in SCE's submission, it

[26] It would useful for the WSD and stakeholders to see the financial impact of these safety related deductions in comparison to the executives' total compensation for the referenced year.
[27] Overview of SCE Executive Compensation Structure, January 14, 2020, p. 3.

notes how its Compensation Committee has discretion regarding the issuance of annual incentive awards.[28] While SCE references the Compensation Committee's discretion as an attribute, this perspective ignores the clear direction of § 8389(e), which requires performance metrics to be measurable and enforceable.

The goals and measures in the 2020 SCE Corporate Performance Scoring Matrix are not measurable, which conveys unnecessary discretion to the Compensation Committee and for each goal the Compensation Committee has discretion to make award within a wide range (0-200% of the target score). SCE's proposed "Representative Success Measures" for the Safety & Resiliency category almost exclusively include undefined goals such as "make significant progress", "improvements" and "reduce risk".[29] These "Representative Success Measures" are not enforceable because they do not include a baseline and a specific measurable goal.

Utilizing these vague and undefined measures leave the evaluation of an executive's performance largely to the discretion of the Compensation Committee in violation of § 8389(e). For example, the measure for Wildfire Resiliency in the 2020 Scoring Matrix states:

> "Reduce the risk of catastrophic wildfires associated with electric infrastructure consistent with the WMP."[30]

While reducing the risk of catastrophic wildfires is clearly a valid goal, SCE's submission does not include any specific targets for the metrics mentioned or a definition of what "reduce the risk" means, or how risk reduction will be measured in terms of evaluating a particular executive's annual incentive compensation. Accordingly, it appears to be entirely up to the Compensation Committee to determine if the risk of catastrophic wildfires was reduced. These general measures are clearly inconsistent with the requirements of § 8389(e), to ensure incentive compensation performance metrics are measurable and enforceable.

SCE also attempts to establish its Plan's compliance with AB 1054 by referencing its use of "foundational goals", which if not met, allow the Compensation Committee to "reduce or eliminate the entire annual incentive bonus" for certain executives.[31] However, success measures for the Foundational Goal included in the 2020 Scoring Matrix are so vague and open-ended, they provide little-to-no safety value. SCE states:

> " The goals will be achieved while living the Company's values, which include safety",
>
> And,
>
> "Safety and compliance are foundational and events such as fatalities or significant non-compliance issues can result in meaningful or full elimination of short-term incentive compensation."[32]

---

[28] Id. at pp. 3, 5, & 8.
[29] Id. at p. 6, see measures in the Safety and Resiliency Goal Category.
[30] Id. at p. 6.
[31] Id. at p. 5.
[32] Id. at p. 6.

Again, SCE conveys an extraordinary amount of discretion to its Compensation Committee for determining whether these foundational safety measures have been met. For the second measure, it is up to the Committee to first determine if an event qualifies as a "significant compliance issue" and second, if it should result in "meaningful" (another undefined term) or "full elimination" of annual incentive compensation.

SCE should be required to submit a revised plan that includes measurable foundational goals that are not subject to the Compensation Committee's discretion both in determining if, a goal was met and if not, to what extent, a reduction in incentive compensation is warranted. An executive should be barred from receiving annual incentive compensation unless specifically identified minimum safety measures are met. Example minimum safety requirements should include:

- No worker or public fatalities;
- No serious injuries to workers or the public (defined as necessitating a 24 hour or more hospitalization (other than for observation purposes), &/or resulting in a loss of any member of the body, or any serious degree of permanent disfigurement) resulting from system failure, a non-compliance event, &/or a wildfire caused by electric equipment.[33]

c. Many of SCE's Annual Incentive Measures are Subjective and Input Based

Public Utilities Code §8389(e) specifically requires that incentive compensation be structured to promote safety, and that performance metrics be measurable and enforceable. In order to promote safety and be enforceable, measures must be objective and most should be outcome based. Metrics that are based on subjective assessments defeat the primary purpose of metrics, evaluating actual performance and measuring progress over time, because their results can be manipulated by the utilities. The vast majority of the measures included in SCE's 2020 Scoring Matrix are subjective with undefined targets. As discussed in the previous section, an incentive compensation structure that leaves it to the Compensation Committee to determine if there was "progress" or "improvements", does not comply with the directives in § 8389(e). Further, the fact that SCE's plan does not include any information on baseline conditions and the specific targets for each measure makes it impossible for the WSD and stakeholders to evaluate the adequacy of the plan.

Further, as addressed above in Section 4.a.i, SCE does not comply with the specific directive in the WSD Director's letter to explain whether safety metrics are outcome or input based. The Safety & Resiliency measures included in SCE's 2020 Scoring Matrix appear to be primarily input based. The following Safety & Resiliency measures are input based and alone do not actually measure safety *performance* in a given year. Furthermore, SCE provides

[33] TURN provides this as an example of a measurable foundational goal. TURN utilizes the definition of "serious injury" from the Approved Safety Performance Metrics adopted in D.19-04-020, Attachment 1, p. 5. TURN also notes that while the 2018 foundation goals are not all measurable, they are far more specific that the "Overarching Goals Framework" included in the 2020 SCE Corporate Performance Scoring Matrix. See SCE 2019 Proxy Statement, pp. 37-38.

insufficient detail about other measures in the 2020 Scoring Matrix to enable a determination of whether they are outcome or input based.

- Public Safety: Improvements in public safety programs will be measured through execution of vault lid restraints and vegetation line clearing programs
- Wildfire Resiliency: Improvements will be measured utilizing metrics related to covered conductor deployment, overhead inspection program, hazard tree removal, and weather station deployment
- Wildfire Resiliency: Process improvements related to Public Safely Power Shutoffs (PSPS) will also be targeted and measure through enhancements related to capabilities including weather modelling and customer outreach
- Cybersecurity: Improvements will be measured utilizing metrics such as further deployment of cyber tools …[34]

The above input based measures provide some value but must be coupled with outcome based metrics that actually measure if the utility is operating more safely. For example, none of the above Safety & Resiliency measures would be negatively impacted if a catastrophic wildfire were to occur, even if it caused numerous fatalities. Under SCE's 2020 Scoring Matrix, if a catastrophic wildfire occurs that causes numerous fatalities, the only way executive incentive compensation would be affected is if the Compensation Committee decides to reduce or eliminate incentives for violation of the "Overarching Goals Framework", which is left entirely to the discretion of the Compensation Committee. While input based measures such as "hazard tree removal" can encourage executives to focus on risk reduction they do not actually measure safety and must be balanced with outcome-based safety measures that hold executives accountable for the safety performance of the utility. The Safety and Resiliency goal category needs both pre-defined and objective input and outcome-based measures for every subcategory (Worker Safety, Public Safety, Wildfire Resiliency, and Cybersecurity).

d. SCE's Proposed Annual Incentive Metrics Are Unreasonable

SCE's failure to comply with the directives of AB 1054 and the requirements in the WSD Director's Letter for performance metrics, is inexcusable and should not be ignored. Not only does the SCE plan not comply with statutory and regulatory directives, it also fails to apply the Commission's important safety metric work to executive compensation. Over recent years, the Commission has been actively working with the utilities to improve the ability of their incentive compensation performance metrics to increase safety outcomes. Specifically, the WSD developed wildfire-related metrics that were provided to the utilities and parties on December 16, 2019, in the Wildfire Mitigation Plan (WMP) proceeding.[35] The Safety and Enforcement Division has also been working with the utilities and other stakeholders on safety performance

[34] Overview of SCE Executive Compensation Structure, January 14, 2020, p. 6.
[35] R.18-10-007, ALJ Ruling, December 16, 2019, Attachment 4, WMP Metrics.

metrics in the Safety Model Assessment proceeding (S-MAP) since 2017 (A.15-05-002 et al),[36] and the Commission adopted safety performance metrics in that proceeding in May of 2019.[37] Both the S-MAP Safety Performance Metrics and the WMP Metrics include many measurable and objective measures; including, number of ignitions, number of wires down, number of serious injuries, and fatalities.[38]

SCE's executive compensation plan would have benefitted from incorporating the WMP Metrics created by the WSD and provided to parties in the December 16, 2020 ruling and the S-MAP Safety Performance Metrics adopted in D.19-04-020 as these metrics reflect safety performance and many are measurable, objective, and enforceable.

e. SCE Erroneously Claims that its Long-Term Incentive Plan Provides A Strong Incentive for Risk Mitigation and Safety Improvements

SCE relies on its Long-Term Incentive Plan (LTI) to suggest that its executive compensation structure is performance based and prioritizes and focuses on safety outcomes.[39] SCE claims that 75% of its long-term equity mix is performance based because executives will realize value only if the market value of EIX Common Stock appreciates.[40] In regards to SCE's 2018 GRC application, the Commission "concluded that LTI does not align executives' interests with ratepayer interests."[41] The Commission also consistently denied SCE's request for rate recovery of long-term incentive costs since at least the 2009 GRC.[42]

Further, a companies' stock value is not directly linked to its safety performance. While major catastrophes, like a large wildfire, are likely to impact stock value, these events do not always have a long-term impact on stock price. Further, a utilities' compliance with risk mitigation work often has little or no impact on the stock price, sometimes for many years. For example, PG&E's stock rose in value from around $30 a share just after its first bankruptcy to $47 in 2010 after San Bruno, then to around $70 in June 2017. While the share price rose tremendously, and an LTI program based on stock value would have rewarded executives greatly, in reality, the utility was mismanaging its system and neglecting management, as evidenced by numerous recent findings by the Commission. Good financial performance, even with a long-term view, does not mean the utility has ensured or prioritized public safety. In fact, rewarding financial performance could potentially cause executives to prioritize profits over public safety. PG&E's President recently acknowledged that its executives could at times be in a position where trade-offs have to be made between safety and earnings.[43] Thus, SCE cannot rely on its long-term incentive plan to demonstrate that the primary portion of the executive officers'

---

[36] D.19-04-020, p. 12. "The November 30, 2017, ALJ Ruling provided SED's list of proposed metrics based on the TWG's discussions."
[37] D.19-04-020, pp. 61-62, OP # 1.
[38] D.19-04-020, Attachment 1, p. 1 & 6. & R.18-10-007, ALJ Ruling, December 16, 2019, Attachment 4, WMP Metrics, p. 10, 16 & 18.
[39] Overview of SCE Executive Compensation Structure, January 14, 2020, pp. 1-2.
[40] Overview of SCE Executive Compensation Structure, January 14, 2020, p. 7.
[41] D.19-05-020, pp. 167-168.
[42] D.09-03-025, pp. 134-135; D.12-11-051, p. 452; D.15-11-021, p. 266.
[43] I.15-08-019, RT p. 22, Lines 9 – 21. (PG&E/Stavropoulos).

compensation is based on achievements of objective performance metrics, as required by § 8389(e)(6)(A).

5. The Commission Should Reject SDG&E's Proposed Executive Compensation Plan

SDG&E requested WSD approval of its Executive Compensation Structure (EC Structure) and provided what it referred to as "documentation of compliance with Public Utilities Code § 8389(e)(4) and (e)(6)."[44] As explained below, SDG&E has not demonstrated that its EC Structure satisfies the requirements of Pub. Util. Code § 8389(e). As an initial matter, SDG&E did not provide all of the information requested by WSD to assist it in analyzing the sufficiency of SDG&E's Structure. This information is critical to evaluating the extent to which SDG&E's structure complies with the requirements of § 8389(e). Based on the information SDG&E did provide, WSD should reject SDG&E's EC Structure and require the utility to resubmit a plan consistent with the requirement of law.

a. SDG&E's Executive Compensation Structure Contains Insufficient Information to Allow for a Meaningful Assessment

SDG&E omits several types of information requested by the WSD. The missing information is critical to assessing SDG&E's EC Structure in light of the requirements of § 8389(e).

First, the WSD directed SDG&E to provide a description of the metrics "used to calculate incentive compensation." SDG&E provides some but not all of this information. SDG&E names each metric used to calculate variable pay as part of its Incentive Compensation Plan (ICP), including 18 metrics related to "Employee and Public Safety," 3 metrics related to "Customer Service and Stakeholders," 2 metrics related to SDG&E and Sempra Energy financial performance, and a final metric called "Individual Performance."[45] SDG&E also identifies two metrics based on financial performance that, along with a "service-based" component, comprise the Long-Term Incentive Plan (LTIP) included in its EC Structure.[46] But naming a metric is not the same as providing a description of what is being measured and how. SDG&E only provides a description of the 18 safety-related ICP metrics that comprise 59% of variable pay, but not the other 6 ICP metrics that contribute the remaining 41% of variable pay.[47] SDG&E also provides a description of the LTIP financial metrics.[48]

Also lacking from SDG&E's showing is the required explanation of whether each metric is input-based or outcome-based. SDG&E states generally that its safety metrics "include a combination of input-based and output-based measures."[49] SDG&E also cites to a 2019 study by

---

[44] Letter from Dan Skopec, Vice President, Regulatory Affairs, SDG&E, to Caroline Thomas Jacobs, WSD, Jan. 27, 2020 ("SDG&E Executive Compensation Structure").
[45] SDG&E EC Structure, p. 4.
[46] SDG&E EC Structure, p. 1.
[47] SDG&E EC Structure, Appendix 1 ("SDG&E 2020 ICP Performance Goal Definitions")(limited to the 18 safety-related metrics).
[48] SDG&E EC Structure, p. 1 (LTIP metrics).
[49] SDG&E EC Structure, p. 5.

the National Safety Council Center's Campbell Institute finding that "organizations are best served by a combination of leading and lagging indicators (outcomes)."[50]

Second, the WSD directed SDG&E to breakdown the executive compensation by component. Again, SDG&E only partially provides this information. SDG&E provides a breakdown of the percentage of the variable pay ICP portion of executive compensation based on safety metrics versus other metrics. Safety metrics make up 59% of ICP, customer/stakeholder metrics make up 6%, financial goals make up 30%, and individual performance is weighted at 5%.[51] SDG&E does not, however, include a breakdown illustrating the role of safety metrics in the overall compensation package.

As noted above, financial performance metrics are also part of LTIP, and LTIP provides between 36-53% of total executive compensation, depending on the officer class. SDG&E does not indicate the percentage of LTIP composed of the two financial performance metrics, leaving it impossible to determine the total percentage of executive compensation based on financial performance metrics. One would need to combine the ICP contribution, which is 30% of 19-20% (or 6%) of executive pay, with the LTIP contribution, which could be the majority of LTIP. For example, if the LTIP financial metrics provide 75% of LTIP compensation, with the remaining 25% "service-based," financial metrics would comprise between 33 and 46% of total executive compensation, a far larger percentage than safety metrics.

Third, the WSD directed SDG&E to explain how safety performance is calculated for the purposes of determining incentive compensation. SDG&E provides the weighting of each safety metric within the variable pay ICP but does not provide thresholds, targets, and maximums for the vast majority of the variable pay metrics it describes, nor does it describe how incentive compensation will be calculated (for instance, for performance within the permissible range but not at target).[52] Without this information, it is impossible to know how the metric will translate into a calculation of incentive compensation. For example, one of SDG&E's safety metrics is "Wildfire Safety Communications," which measures "the percentage of fire safety messages confirmed as received by customers" that notifies them of an impending Public Safety Power Shut-Off event before the circuit is de-energized.[53] SDG&E does not provide the performance target for this metric, the threshold to maximum performance range, or the percentage payout scaling within that range. This information is critical to understanding how safety performance translates into a calculation of incentive compensation. Without additional information the WSD cannot judge the reasonableness of SDG&E's request. For example, would it be enough to receive confirmation from 1% of customers sent the communication?

In response to the WSD direction, SDG&E provided examples of previously withheld compensation that include minimum, target, and maximum performance goals for the specified

[50] SDG&E EC Structure, p. 3.
[51] SDG&E EC Structure, p. 4.
[52] SDG&E EC Structure, p. 4. SDG&E provided what appears to be the target for only 1 of the 18 safety metrics in its ICP, the metric called "Zero Employee Electric Contacts," which by definition, requires that no employee "makes a direct electrical contact with any part of their body that results in a disfigurement, dismemberment, or extended hospitalization requiring substantial medical treatment." SDG&E EC Structure, Appendix A, p. 2. TURN presumes – but does not have actual knowledge – that the target for this metric is zero.
[53] SDG&E EC Structure, Appendix 1, p. 1.

metrics.[54] This important information should have been provided for each 2020 performance metric as part of the description of how safety performance is calculated for incentive compensation. Additionally, SDG&E should have provided the calculation used to determine the payout amount when performance is above or below target but within the eligible performance range.

b. SDG&E Has Not Demonstrated That Its Incentive Goals Are Measurable and Enforceable

SDG&E must demonstrate that its EC Structure is based on meeting performance metrics that are measurable and enforceable.[55] SDG&E's showing falls short of this requirement. First, without targets, SDG&E's metrics are not "enforceable." This problem plagues the vast majority of SDG&E's performance metrics for which SDG&E has provided no target. Second, one of SDG&E's safety metrics is "Executive Individual Safety Performance," which receives a 10% weighting in the variable pay ICP.[56] This is an entirely subjective metric, within the Board's discretion, and as such, can be neither measured nor enforced. Another 5% of the ICP is for "Individual Performance."[57] In the absence of any description of this metric by SDG&E, TURN presumes this is another subjective metric that can be neither measured nor enforced.

c. SDG&E's Executive Compensation Structure Does Not Sufficiently Promote Safety as a Priority and Ensure Public Safety

SDG&E must demonstrate that its EC Structure and performance metrics are structured to promote safety as a priority and ensure public safety.[58] SDG&E claims that its "executive compensation structure is intended to focus executives on SDG&E's key priorities, the most important of which is safety."[59] Even if one accepts the premise that this is what SDG&E intended, its EC Structure does not comply with the statutory requirements.

More than half of SDG&E's ICP safety-related metrics are input metrics, not outcome metrics, based on the descriptions SDG&E provides of these metrics. Eight of the 18 are outcome-based, 9 are input-based, and the final one, worth 10% of safety-related variable pay, is a subjective evaluation by the Board of the executive's "demonstrated commitment to safety excellence."[60] Input metrics may contribute to improved safety outcomes, but safety outcomes are not what is being measured. On the other hand, outcome metrics – such as the number of fatalities per year due to utility-ignited wildfires – directly measure performance that "ensures public safety" (or the opposite, depending on the performance). SDG&E's EC Structure relies too heavily on input measures to be designed to "ensure public safety." Based on the performance goal definitions provided by SDG&E, it appears that if a catastrophic wildfire event

---

[54] SDG&E EC Structure, p. 5.
[55] Pub. Util. Code § 8389(e)(4).
[56] SDG&E EC Structure, p. 4 and Appendix 1, p. 3.
[57] SDG&E EC Structure, p. 4.
[58] Pub. Util. Code § 8389(e)(4).
[59] SDG&E EC Structure, p. 1.
[60] SDG&E EC Structure, Appendix 1, p. 3.

with public fatalities were to occur, it would not have an adverse effect on most, if not all, of SDG&E's ICP metrics.[61]

Moreover, financial performance metrics play too large of a role in SDG&E's total executive compensation to support a conclusion that SDG&E's plan is structured to "promote safety as a priority." ICP only makes up 19-20% of executive compensation.[62] Safety metrics, providing 59% of ICP, are thus less than 12% of total executive compensation (calculated as 59% of 19-20%). SDG&E's financial-performance goals far outweigh SDG&E's safety-goals. As explained above, financial performance goals make up 30% of ICP (6% of total executive compensation) plus two of the three components of LTIP, which provides 36-53% of total executive compensation. Good financial performance, even with a long-term view, does not mean the utility has ensured the public safety (as explained above in TURN's analysis of SCE's EC Structure).

In SDG&E's last GRC (and many prior GRCs), the Commission concluded that ratepayers should not pay for financial performance metrics in SDG&E's ICP because such metrics primarily benefit the utility and its shareholders.[63] In rejecting SDG&E's theory that ratepayers should pay for these metrics because of incidental benefits associated with financial performance, such as lower interest rates, the Commission observed, "After all, achieving a target interest level for borrowing is not one of the metrics that triggers the award."[64] Similarly here, where the extent to which SDG&E's EC Structure prioritizes safety performance – and indeed "ensures public safety" -- with performance metrics is at issue, the WSD should reach a similar conclusion: If the utility truly intends to prioritize safety performance, this is the performance that should trigger the largest portion of performance-based compensation, not financial performance.

d. SDG&E Has Not Demonstrated that the Primary Portion of Executive Compensation is Based on the Achievement of Objective Performance Metrics

SDG&E must demonstrate that the primary portion of executive compensation is based on the achievement of objective performance metrics.[65] While this may be the case for SDG&E, SDG&E has not provided enough information for the WSD to ascertain this because it has not provided the percentage of LTIP that is "service-based" as opposed to "performance-based." Given the large role played by LTIP in total executive compensation (much larger than variable pay ICP), as well as the large role played by base pay (also larger than variable pay ICP), it is possible that the combination of base pay, the subjective IPC performance metrics, and LTIP service-based compensation would add up to more than 50% of total compensation for some officer classes. If this were the case, the primary portion of SDG&E's executive compensation would *not* be based on the achievement of objective performance metrics.

---

[61] SDG&E EC Structure, Appendix 1, pp. 1-3.
[62] SDG&E EC Structure, p. 2.
[63] D.19-09-051, p. 543.
[64] D.19-09-051, p. 543.
[65] Pub. Util. Code § 8389(e)(6).

e. SDG&E Has Not Demonstrated that There Are No Guaranteed Monetary Incentives in Its Executive Compensation Structure

SDG&E must demonstrate that there are no guaranteed monetary incentives in its executive compensation structure.[66] Based on SDG&E's showing, the WSD cannot reach this conclusion as a practical matter. The absence of performance thresholds and targets associated with SDG&E's ICP metrics makes it impossible to determine how easy the targets are to achieve. A target that is all but guaranteed to be met would not comply with the spirit of the requirement that there be no guaranteed monetary incentives in the EC Structure.

f. SDG&E's Plan Surprisingly Omits Most of the Safety-Performance Metrics Adopted by the Commission or Proposed by WSD Staff

Over recent years, the Commission has been actively working with the utilities to improve the ability of their incentive compensation performance metrics to increase safety outcomes. Specifically, the WSD developed wildfire-related metrics that were provided to the utilities and parties on December 16, 2019, in the Wildfire Mitigation Plan (WMP) proceeding.[67] The Safety and Enforcement Division has also been working with the utilities and other stakeholders on safety performance metrics in the Safety Model Assessment Proceeding (S-MAP) since 2017 (A.15-05-002 et al),[68] and the Commission adopted safety performance metrics in that proceeding in May of 2019.[69] Both the S-MAP Safety Performance Metrics and the WMP Metrics include many measurable and objective measures; including, number of ignitions, number of wires down, number of serious injuries, and fatalities.[70] It is unclear why SDG&E does not include in its EC Structure more of the WMP Metrics created by the WSD and provided to parties in the December 16, 2020 ruling and the S-MAP Safety Performance Metrics adopted in D.19-04-020. This is unfortunate in light of all of the work that has gone into developing meaningful and appropriate safety-performance metrics.

6. The Commission Should Reject Both the SCE And SDG&E Plans and Adopt a More Comprehensive Procedure for Reviewing their Resubmissions

TURN recommends that the WSD reject the SCE and SDG&E compensation plans as inconsistent with both AB 1054 and the requirements outlined by the WSD in its letter soliciting executive compensation plans.

Additionally, the WSD should adopt an improved process for the review of the executive compensation plans. An improved process would:

---

[66] Pub. Util. Code § 8389(e)(6).
[67] R.18-10-007, ALJ Ruling, December 16, 2019, Attachment 4, WMP Metrics.
[68] D.19-04-020, p. 12. "The November 30, 2017, ALJ Ruling provided SED's list of proposed metrics based on the TWG's discussions."
[69] D.19-04-020, pp. 61-62, OP # 1.
[70] D.19-04-020, Attachment 1, p. 1 & 6. & R.18-10-007, ALJ Ruling, December 16, 2019, Attachment 4, WMP Metrics, p. 10, 16 & 18.

- Provide parties with more time for the review and consideration of the executive compensation plans.
- Outline a process for discovery, including the steps a party can take to resolve a discovery dispute.
- The timeline for non-utility party comments should allow at least two rounds of discovery and time for presentation of discovery disputes to a decisionmaker and a resolution of such disputes.
- Provide all substantive communications to all interested stakeholders at the same time.
- Allow parties the opportunity to comment on any proposed resolution of the issues.

TURN recommends a process that is similar to the process adopted in WSD-001 for Wildfire Mitigation Plans. After submission of the plans to the WSD, parties should have the opportunity to pursue discovery relying on the discovery rules outlined in that Resolution. The period for party comments should depend on how much time the utilities are allowed for their responses to discovery requests. As with WSD-001, any approval or rejection of the requested plans would be provided via draft resolution made available for comment by all interested persons. The Commission should then adopt a final Resolution ratifying or modifying the Executive Director's decision and triggering the typical and known process for review and appeal of Commission decisions. Given that the WMP and executive compensation are the key requirements of the safety certificate, it follows that they should have similar processes for review.

Additionally, in order to provide transparency and ensure equal access to information, all substantive WSD communications with the utilities discussing the requirements of review should be copied to the WMP service list. This protects against the appearance of any coziness between the utilities and the WSD and gives all parties equal access to information.

This proposed process is less involved than a typical Commission proceeding, but provides the transparency, accountability, and opportunity for meaningful stakeholder participation that is lacking in the bare-bones process described in WSD's January 17, 2020 letter.

7. Conclusion

TURN urges the WSD to reject the executive compensation plans and require the utilities to resubmit their executive compensation plans with additional information and modifications, as appropriate. TURN looks forward to cooperating with the WSD to identify the best process for the review of these plans moving forward.

Sincerely,

_____/S/____
Katy Morsony, Staff Attorney

Thomas J. Long, Legal Director
Hayley Goodson, Staff Attorney
Elise Torres, Staff Attorney