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TRANSMITTED VIA E-MAIL

February 5, 2020

Caroline Thomas Jacobs
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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:

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[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.

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[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

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[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'

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[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

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[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

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[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

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[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:

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[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/____
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