



Christopher M. Lyons
Senior Counsel
San Diego Gas & Electric Company
8330 Century Park Court, CP32D
San Diego, CA 92123
Tel: 858-654-1559
Fax: 619-699-5027
clyons@sdge.com

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VIA EMAIL

Caroline Thomas Jacobs
Director
Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: San Diego Gas & Electric Company's Response to Comments on its Request for a 2020 Safety Certification

Dear Director Jacobs:

On June 16, 2020, San Diego Gas & Electric Company ("SDG&E") submitted to the Wildfire Safety Division ("WSD") its Request for a 2020 Safety Certification pursuant to Public Utilities Code Section 8389 ("SDG&E Safety Certification Request"). WSD issued a guidance letter regarding the 2020 Safety Certification Process ("Guidance Letter") on June 25, 2020. On July 8-9, 2020, stakeholders – including Bear Valley Electric Service, Inc. ("Bear Valley"), The Public Advocates Office of the California Public Utilities Commission ("Cal PA"), The Utility Reform Network ("TURN"), and The Protect Our Communities Foundation ("POC") – submitted comments to the WSD on the SDG&E Safety Certification Request. Pursuant to the Guidance Letter, SDG&E hereby responds to the stakeholder comments.

No stakeholder has presented any valid basis for denying or delaying approval of the SDG&E Safety Certification Request. Indeed, POC is the only stakeholder that advocates denying SDG&E's request, and its wide-ranging complaints are either irrelevant or misguided. Nevertheless, as discussed below, WSD should not entertain stakeholder comments which seek to inappropriately delay approval of the SDG&E Safety Certification Request until SDG&E has resolved any Class A deficiency from Resolutions WSD-002 and WSD-005. Such comments are premised upon faulty interpretations of Public Utilities Code Section 8389. Nor should WSD be distracted by TURN's criticisms and complaints regarding WSD's approval of 2020 executive compensation structures.

I. WSD Should Not Hold Up Issuance of Safety Certifications Until Resolution of Class A WMP Deficiencies

Public Utilities Code Section 8389 does not authorize WSD to conditionally approve an electrical corporation’s WMP, nor does it authorize WSD to condition approval of a Safety Certification request upon compliance with the conditions WSD attached to WMP approvals. As noted in SDG&E’s May 27, 2020 Comments on Draft Resolutions WSD-002 and WSD-005, Public Utilities Code Section 8389 permits WSD to “approve or deny each wildfire mitigation plan...” WSD may also require “modifications of the plan” (*i.e.*, conditions), but such modifications must be required “[b]efore approval.”¹ WSD has stepped outside these statutory bounds by requiring modifications of the plan *after* approval. WSD should have made any conditions associated with the 2020 WMPs, as well its resolution of those conditions, part of its review and approval of 2021 WMPs.

Bear Valley’s statutory construction arguments miss the mark.² According to Bear Valley, unless Section 8389(e) is interpreted to allow approval, conditional approval, or denial, the sentence permitting WSD to require pre-approval conditions would be rendered meaningless. But Bear Valley thereby misses the fact that Section 8389(e) can easily be interpreted to give effect to the statutory framework as a whole, harmonizing the parts, and not rendering any part meaningless. To reach such an interpretation merely involves recognition that WSD can take three actions under the statute: approval, denial, or requiring modifications to the plan before approval. Adding a new option, as WSD has done, whereby WSD can require post-approval conditions, does not give the statute its plain meaning. Instead that new option effectively rewrites the statute.

SDG&E appreciates that WSD’s guidance letter clarified that “Commission ratification of the Wildfire Safety Division’s approval of an electrical corporation’s 2020 Wildfire Mitigation Plan, subject to the conditions specified in Appendix A of the ratifying resolution, constitutes documentation of an approved WMP pursuant to Pub. Util. Code § 8389(e)(1).”³ Nevertheless, this clarification, coupled with WSD’s conditional approval of the 2020 WMPs, creates ambiguity as to whether utility resolution of WSD’s conditions is a prerequisite for a valid Safety Certification. Cal PA and TURN exploit this ambiguity, contending that SDG&E must resolve any Class A deficiency prior to WSD approval of the Safety Certification Request.⁴ But since conditional approval is outside the bounds of Section 8389(e), and since there is also no statutory provision that permits the action Cal PA and TURN urge, WSD should reject their argument, and it should cleanly and unambiguously approve SDG&E’s Safety Certification Request.

¹ SDG&E also raised these concerns in the SDG&E Safety Certification Request.

² Bear Valley Comments, pp. 2-6.

³ Guidance Letter, p. 2.

⁴ Cal PA Comments, pp. 3-5; TURN Comments, pp. 2-3.

II. WSD Took the Appropriate Action on SDG&E's Executive Compensation Program

In accordance with Public Utilities Code Sections 8389(e)(4) and (e)(6), WSD approved SDG&E's 2020 executive compensation program for purposes of SDG&E's qualification for a 2020 Safety Certification.⁵ WSD indicated that SDG&E's program "minimally and conditionally satisfies the requirements of" Sections 8389(e)(4) and (e)(6), and that it will "initiate a stakeholder process to further develop its executive compensation review criteria for use in 2021 executive compensation evaluations."⁶ Among other findings, WSD noted that in the future, it will seek better alignment between "utility executive compensation metrics to those used in WMPs." Given that WSD substantially overhauled the requirements for WMPs in late 2019, prior to submission of 2020 WMPs, and given that this was the first year in which those requirements were in place and reviewed,⁷ SDG&E submits that WSD reasonably decided that any such alignment could only happen in the context of the 2021 executive compensation program structure.

TURN's complaints regarding WSD's determinations are misguided. First, TURN claims that it demonstrated that SDG&E's January 27, 2020 executive compensation submission "failed to satisfy the Section 8389(e) requirements." That is a legal argument, not a fact, and SDG&E disagrees with TURN's argument. Worse yet, in discussing WSD's statements regarding alignment with WMP metrics, TURN erroneously claims that "[i]n so finding, the WSD made the correct determination that the utilities' programs failed to meet the requirements of Section 8389(e)." Nowhere did WSD determine that the SDG&E's "programs failed to meet the requirements of Section 8389(e)." To the contrary WSD found that SDG&E's program "minimally and conditionally satisfies the requirements of Pub. Util. Code §8389(e) and §8389(e)(6)." Thus, TURN has simply misread WSD's letter.

III. WSD Should Disregard POC's Comments

POC repeats a series of arguments it has made without success in various comments or protests it has previously submitted on a variety of issues. Most of these arguments do not relate to whether SDG&E satisfied the criteria of Section 8389 in its Safety Certification Request. With respect to the SDG&E Safety Certification Request, POC's arguments are unavailing. For instance, POC faults SDG&E for failing to demonstrate good standing with its most recent safety culture assessment even though it knows full well (as does WSD, which imposed alternative requirements) that the Commission has not yet initiated a safety culture assessment for SDG&E. Further,

⁵ See WSD's June 30, 2020 Action Approving SDG&E's 2020 Executive Compensation Program.

⁶ *Id.*

⁷ As WSD noted, it "refined 2020 submission requirements to emphasize *progress metrics* that track impacts on drivers of ignition probability, and *outcome metrics* that measure leading and lagging indicators of wildfire risk and consequences of wildfire mitigation work." *Id.*, p. 4.

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SDG&E did not fail to provide the required information regarding electric and gas safety; they were included in Attachment 2 to the SDG&E Safety Certification Request. SDG&E also adequately responded to WSD's request for information regarding CPUC and court actions. "Most egregiously," according to POC, SDG&E stated that it has not provided any responses to any WSD requests for remedies as a result of compliance findings from evaluation of the 2019 and 2020 WMPs. But as SDG&E indicated, no such requests have been issued. That is because such requests would be issued in connection with the WMP compliance phase pursuant to Section 8386.3(c), which has not yet been completed.

IV. Conclusion

SDG&E respectfully requests that WSD expeditiously approve its Safety Certification Request.

Respectfully submitted,

/s/ Christopher M. Lyons

Attorney for
San Diego Gas & Electric Company

cc: Service List for R.18-10-007