

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

Order Instituting Rulemaking to
Implement Electric Utility Wildfire
Mitigation Plans Pursuant to Senate Bill
901 (2018).

Rulemaking 18-10-007
(Filed October 25, 2018)

**COMMENTS OF THE UTILITY REFORM NETWORK &
ON THE REQUESTS FOR SAFETY CERTIFICATION BY
SOUTHERN CALIFORNIA EDISON AND SAN DIEGO GAS AND ELECTRIC &**



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Pursuant to the June 25, 2020 Letter from Wildfire Safety Division (WSD) Director Caroline Thomas Jacobs (June 25, 2020 Letter), The Utility Reform Network (TURN) submits these comments on the requests for safety certifications submitted by Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E). SCE submitted its request on June 19, 2020 and SDG&E submitted its request on June 16, 2020. The June 25, 2020 Letter provides that comments shall be submitted within 14 days of a utility's submission or within 14 days of that Letter, whichever is later. Accordingly, these comments are timely submitted.

1. INTRODUCTION AND SUMMARY

The determination of whether a utility warrants a safety certification has significant consequences. Under Public Utilities Code Section 451.1(c),¹ a safety certification entitles a utility to a relaxed burden of proof in demonstrating the reasonableness of costs resulting from a wildfire. In addition, under Section 3292(h), whether or not a utility has a safety certification can affect how much it must reimburse the Wildfire Insurance Fund for wildfire claims costs. Thus, the safety certification decision has potentially multi-billion dollar financial consequences for both utilities and ratepayers. For this reason, ensuring that the safety certification is conferred only on utilities that meet high standards for safety is an important tool for meeting the State's goal of preventing catastrophic wildfires and other safety failures.

In these comments, TURN urges WSD to not approve the requests of SCE and SDG&E until they have demonstrated full compliance with the requirements for wildfire mitigation plans (WMP), which at a minimum requires that they have remedied Class A deficiencies and any other failures to comply with WMP requirements. In addition, however WSD disposes of the utilities' executive compensation requests for 2020, it should make clear that no further deviations from the requirements of Section 8389(e)(4) and (6) will be tolerated for 2021. Additionally, TURN recommends that, in light of the high numbers of contractor and employee deaths and serious injuries that SCE reports, WSD should seek additional information from SCE before determining whether it can be found to be "in good standing" from a safety perspective. TURN concludes by recommending that, as it did with the WMPs, WSD issue draft resolutions that are voted on the CPUC commissioners before they are considered final.

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

2. SAFETY CERTIFICATIONS SHOULD NOT BE APPROVED UNTIL THE UTILITIES HAVE SATISFIED THE CONDITIONS FOR APPROVAL OF THEIR WILDFIRE MITIGATION PLANS, ESPECIALLY THE CLASS A DEFICIENCIES

Section 8389(e)(1) requires an “approved” WMP. The Resolutions approving SCE’s and SDG&E’s 2020-2022 WMPs made clear that those approvals were conditioned on the satisfaction of “deficiencies,” which were categorized as Class A, Class B, or Class C, with Class A being the most serious.² WSD-02 described Class A deficiencies as follows:

Class A deficiencies are of the highest concern and require an electrical corporation to develop and submit to the WSD, within 45 days of Commission ratification of the WMP Resolutions, a remedial compliance plan (RCP) to resolve the identified deficiency. An RCP must present all missing information and/or articulate the electrical corporation’s plan, including proposed timeline, to bring the electrical corporation’s plan into compliance.³

This discussion makes clear that, until Class A deficiencies have been remedied, the utility’s WMP is not in compliance with applicable requirements and thus cannot be deemed an “approved” WMP under Section 8389(e)(1).

WSD-04 identifies the following Class A deficiencies for SCE:

- SCE-2 – Determining cause of near misses
- SCE-12 – SCE does not provide evidence of effectiveness of increased vegetation clearances
- SCE-13 – Lack of advancement in vegetation management and inspections

WSD-05 identifies the following Class A deficiency for SDG&E:

- Lack of risk reduction or other supporting data for increased time-of-trim clearances

Consistent with their classification as Class A deficiencies, these are serious problems that go to the heart of whether these utilities are entitled to safety certifications. SCE’s near miss deficiency and escalating number of near miss incidents raise serious questions relating to its capability to learn from

² WSD-02, p. 17. !

³ WSD-02, pp. 17-18 (emphasis added). !

such incidents. This is a critical element that must be met before the company can be found to warrant a certification as a safe utility. The vegetation management deficiencies for both utilities call into question whether they are appropriately targeting the limited vegetation management resources that must be properly utilized to minimize the risk of catastrophic wildfires in 2020.

WSD should not approve safety certifications for SCE and SDG&E unless it has found that they have satisfactorily remedied the Class A deficiencies and any other failures to comply with requirements for their 2020-2022 WMPs.

3. WSD'S JUNE 30, 2020 FINDINGS THAT THE EXECUTIVE COMPENSATION PROGRAMS OF SCE AND SDG&E MINIMALLY AND CONDITIONALLY SATISFY AB 1054 ARE NOT LEGALLY SUFFICIENT TO MEET THE REQUIREMENTS FOR SAFETY CERTIFICATIONS

Section 8389(e)(4) and (e)(6) specify detailed requirements for executive incentive compensation programs and executive compensation generally that must be met before a utility can be granted a safety certification. With full knowledge of those requirements, in January 2020, SCE and SDG&E presented for WSD's consideration their respective proposals for executive compensation programs.

In February 2020, TURN and the California Environmental Justice Alliance (CEJA) provided comments to WSD showing that both proposals failed to satisfy the Section 8389(e) requirements. TURN's comments presented considerable detail regarding the ways in which the utilities' submissions fell short of the statutory criteria.

On June 30, 2020, WSD's Director sent substantially similar letters to SCE and SDG&E (June 30, 2020 Letters). The Letter to SCE summarized TURN and CEJA's comments as offering "an overarching critique that metrics used in the executive compensation program insufficiently weigh safety outcomes in the awards calculation" and that "the metrics are not 'measurable and enforceable' as required by law."⁴ The SDG&E letter gave a similar summary of the TURN/CEJA comments.⁵ Both letters stated that "the WSD finds that these comments have merit" and that, in the future, "the WSD expects there to be a greater emphasis on compensation awards criteria directly tied to safety, based on

⁴ June 30, 2020 Letter to SCE, p. 3.

⁵ June 30, 2020 Letter to SDG&E, p. 3.

enforceable metrics that measure safety outcomes.”⁶ In so finding, the WSD made the correct determination that the utilities’ programs failed to meet the requirements of Section 8389(e).

However, the June 30, 2020 Letters went on to suggest that WSD did not intend to find this determination of non-compliance to be a bar to approval in 2020 of the utilities’ executive compensation programs. The Letters stated:

The requirements set forth in the statute for the structure of an executive compensation program are detailed and complex, and more work needs to be done on aligning utility compensation metrics to those used in WMPs. Developing 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.⁷

The Letters concluded by finding that the utilities’ programs “minimally and conditionally” satisfy the requirements of Section 8389(e) and that, in a future stakeholder process, it will adopt metrics and structure requirements to inform the utilities’ 2021 programs and with which the utilities’ programs will be expected to conform.⁸

TURN recognizes that WSD felt that statutory deadlines prevented it from devoting the time to thoughtfully determine the specific improvements that the utilities’ programs must meet in time for the disposition of these safety certification requests. However, the fact remains that WSD also violates the law when it approves safety certifications that do not meet the AB 1054 requirements.

It should not be overlooked that the utilities bear significant responsibility for putting WSD into a bind. Even though the AB 1054 requirements are clear and specific, the utilities chose to design programs for 2020 that fell short of the required criteria. Whatever WSD does with these requests, it should make explicit that it will not allow the utilities to gain favorable decisions on any future safety certification requests until they have re-designed their programs to comply with the AB 1054 requirements. Utility executives should understand that their 2021 executive compensation programs are dependent on gaining WSD approval, even if that occurs after January 1, 2021. “Settled expectations” of utility executives, who should not be approving programs that WSD has already found

⁶ June 30, 2020 Letters, p. 3.

⁷ June 30, 2020 Letters, p. 4.

⁸ *Id.*

deficient, should not be allowed to serve as a reason to approve deficient executive compensation programs in the future.

4. SCE'S REQUEST RAISES SIGNIFICANT CONCERNS

In addition to needing to address the deficiencies identified in WSD-04, SCE's submissions raise other issues that warrant careful consideration before approving SCE's request.

4.1. SCE Has Experienced a High Number of Fatalities and Serious Injuries Among Its Contractors and Employees Since Approval of Its Last Safety Certification Request

Section 8389(e)(2) requires that the utility seeking a safety certification be "in good standing." In a May 6, 2020 Letter to the utilities, WSD directed that the showing in support of this requirement should include documentation concerning, among other things: (1) the number of fatalities and structures damaged or destroyed by wildfires caused by the utility's facilities; and (2) worker and contractor fatalities and incidents since issuance of the previous safety certification.

SCE's submission indicates that, in the less than 11 months since the approval of its previous safety certification on July 25, 2019, SCE had experienced a disturbingly high number of fatalities and injuries among contractors and employees:

- 3 contractor fatalities
- 10 contractor serious injuries
- 5 employee serious injuries.

Half of these fatalities or injuries happened in the months of March, April and May of 2020, despite the Board discussions and other efforts SCE described in its three Section 8389(e)(7) advice letters to improve contractor and employee safety.

WSD did not require the utilities to provide comparable information about fatalities and serious injuries in prior years. However, the CPUC's website has an SED report from January 2017 with SCE serious injury and fatality (SIF) data from that offers some historical data that WSD can use for context. This data suggests that, compared to 2014 and 2016, SCE's submission show higher SIF numbers for contractors.⁹

⁹ Risk and Safety Aspects of SCE's 2019-2022 GRC Application 16-09-001, Jan. 31, 2017, PDF page 65, found at:

In addition, SCE reports one fatality from a utility-caused wildfire. SCE does not report on other fatalities or serious injuries to the public caused by SCE facilities, apparently because it was not required to do so by WSD. In light of the high number of SIFs for contractors and employees, the WSD should require data regarding SIFs affecting the public caused by SCE facilities.

The information that SCE has supplied raises serious questions about whether SCE can be found to be “in good standing” as a safe utility. Before it passes judgment on SCE’s request, WSD should, at a minimum, obtain more information from SCE, including:

- Data relating to all serious injuries and fatalities for the public, not just those relating to wildfires;
- Data relating to all employee and contractor SIFs for employees, contractors and the public from 2015 to the present, for comparison purposes; and
- A detailed discussion of the reasons for the results in March through May and how SCE is addressing those results.

For transparency, WSD’s data requests and the responses should be served on the service list for R.18-10-007.

4.2. SCE’s Efforts to Demonstrate Compliance With Section 8389(e)(5) Miss the Point

TURN is concerned with the showing SCE presents to attempt to demonstrate compliance with Section 8389(e)(5), which requires that the utility “has established board-of-director level reporting to the commission on safety issues.” In TURN’s view, to satisfy this requirement, it should be sufficient for the utility to designate a Board-level contact with the commission on safety issues and to meet any other requirements that WSD or the Commission may establish. In addition, as SDG&E notes, Section 8389(e)(7) requires the utilities to communicate the recommendations of their Boards’ safety committees in their quarterly advice letter submissions.

SCE’s reliance on “meet and greet” meetings of SCE executives with commissioners does not provide any information that furthers the requirements of Section 8389(e)(5), particularly when there

https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Safety/Risk_Assessment/SCE%202018%20GRC%20Report%20Final%20with%20Appendix%20A.pdf

were no written materials that show what was discussed. Utilities should not be encouraged to believe that merely holding such meetings (which as SDG&E notes have ex parte implications), without supplying any written substantiation of what was discussed, helps to demonstrate compliance with the requirement.

5. &THE WSD SHOULD PREPARE A DRAFT RESOLUTION FOR A CPUC VOTE

TURN recommends that, as it did with the 2020-2022 WMPs, WSD should prepare draft resolutions resolving safety certification requests and that these resolutions be voted on by the CPUC as part of the approval process. TURN recognizes that a CPUC vote is not currently required by statute, but the WSD is certainly free to follow this course if it so chooses. CPUC review and approval of the WSD determinations would serve at least two important purposes.

First, the Commission should be required to have a formal role in the approval process because the statutory criteria for a safety certification directly relate to the regulatory activities of the CPUC. In addition, as noted, the impact of a safety certification directly affects decision-making by the CPUC relating to the reasonableness of utility wildfire claims costs under Section 451.1. For these reasons, the CPUC decision-makers should have input into this important decision and the impact of such input should be transparent to the public.

Second, CPUC approval of a WSD resolution clarifies appeal rights and procedures, which are otherwise not addressed by statute and thus uncertain if the final decision is made by WSD. Such uncertainty can lead to unnecessary disputes and litigation, which should be avoided for matters such as this that are both highly important and time-sensitive.

6. &RECOMMENDATIONS FOR FUTURE SAFETY CERTIFICATION REQUESTS

For the reasons discussed in Section 4.1 above, the WSD should require all future requests for safety certification to include the following additional information:

- Data regarding all public SIFs, not just those related to wildfires, and
- SIF data, for employees, contractors and the public, that is comparable to the data provided in the safety certification request for the prior 5 years, for comparison purposes.

7. CONCLUSION

TURN appreciates this opportunity to comment on the utilities' safety certification requests. For the reasons set forth above, TURN requests that the WSD adopt the recommendations discussed in these comments.

Respectfully submitted,

Dated: July 9, 2020

By: _____/s/_____
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