

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Wildfire Safety Division
California Public Utilities Commission

**COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON THE
WILDFIRE SAFETY DIVISION'S DRAFT WILDFIRE MITIGATION PLAN
COMPLIANCE PROCESS**

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Subject: Comments of the Public Advocates Office on the Wildfire Safety Division's Draft Wildfire Mitigation Plan Compliance Process

I. INTRODUCTION

Pursuant to the Wildfire Safety Division's September 18, 2020 email notice soliciting comments, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these comments on the Wildfire Safety Division's (WSD) *Draft Wildfire Mitigation Plan [WMP] Compliance Process: Staff Proposal for Workshop and Public Comment* (Compliance Process Proposal).

In these comments, Cal Advocates makes the following recommendations:

- The WSD should focus on strict compliance with approved WMPs, rather than using a goal-oriented approach.
- The WSD should limit the flexibility afforded the utilities¹ in early years.

¹ Many of the Public Utilities Code requirements relating to wildfires apply to "electrical corporations." See e.g., Public Utilities Code Section 8386. These comments use the more common term "utilities" and the phrase "electrical corporations" interchangeably to refer to the entities that must comply with the wildfire safety provisions of the Public Utilities Code.

- The annual compliance assessment should examine compliance with all conditions of WMP approval and with California Public Utilities Commission (Commission) decisions. The WSD should develop a transparent process for the annual compliance assessments.
- The WSD should clarify the division of responsibilities between WSD and the Safety Enforcement Division (SED).
- The WSD should define critical terms in the Compliance Process Proposal.
- The WSD should continue to evaluate the compliance process and to encourage robust stakeholder engagement.
- The WSD needs to establish a prioritization of resources to identify and address the most important problems.

II. BACKGROUND

Public Utilities Code Section 8389 requires the California Public Utilities Commission (Commission), in consultation with the WSD, to adopt a “wildfire mitigation plan compliance process” by December 1, 2020 and annually thereafter.²

On September 18, 2020, the WSD issued its Compliance Process Proposal to the service list of Rulemaking (R.) 18-10-007. The WSD held a public workshop on the Compliance Process Proposal on September 29, 2020 and invited stakeholders to submit written comments by October 2, 2020.

III. DISCUSSION

A. The WSD should focus on strict compliance with approved WMPs, rather than using a goal-oriented approach.

The Compliance Process Proposal outlines a “goal-oriented framework,” in which the WSD will focus on whether each utility is accomplishing the goals of its WMP rather than strictly verifying that the utility has completed the activities described in the approved WMP.³ The outcomes that the WSD will track include the reduction of

² Public Utilities Code Section 8389(d)(3).

³ Compliance Process Proposal, p. 6; WSD staff presentation in WSD Compliance Branch Workshop, September 29, 2020.

wildfire risks and de-energization events.⁴ The Proposal also specifies that the WSD will assess electrical corporations' implementation of the initiatives identified in the approved WMPs.

A goal-oriented or performance-based framework is a common approach to compliance.⁵ This approach is designed to allow utilities flexibility in applying new technology and best practices to reduce risk, rather than prescribing specific actions through regulation. However, the approved WMPs are designed to outline specific, detailed, and actionable plans as to how each utility will reduce the risk of wildfires.⁶ In this context, a goal-oriented approach is not appropriate.

It is important to note that it is difficult to measure the outcomes of the utilities' wildfire mitigation efforts, and the WSD has not yet developed a framework for measuring their success.⁷ Until the WSD has adopted a policy on measuring outcomes, it cannot reasonably adopt an outcome-based approach to compliance.

Under these circumstances, a goal-oriented approach will allow utilities the flexibility to alter the prioritization of their wildfire mitigation initiatives, or to alter the initiatives themselves, under the guise of presenting the maximum risk reduction. This would be counter-productive to determining compliance, since it opens the scope for electric utilities to argue that they have achieved the goal of reducing wildfire risk despite not meeting the objectives stated in their approved WMPs. For example, if a utility fails to complete one of its WMP initiatives, the utility might argue that it achieved the overarching goal by achieving greater risk reduction through a different initiative, or it might point to a reduced number of wildfires and de-energization events as evidence of

⁴ Compliance Process Proposal, p. 6.

⁵ See, for example, The National Academy of Sciences, Engineering and Medicine, *Committee for a Study of Performance-Based Safety Regulation*, <http://www.trb.org/PolicyStudies/PBR.aspx>.

⁶ Public Utilities Code Section 8386(c) requires utility wildfire mitigation plans to meet numerous requirements and provide detailed information.

⁷ Cal Advocates offered recommendations on measuring effectiveness in its recent comments on the 2021 WMP guidelines. *Comments of the Public Advocates Office on the Wildfire Safety Division's August 2020 Workshops and Staff Proposals*, August 26, 2020, pp. 2-6.

success. Such undefined and hard to measure standards would make the compliance framework unenforceable.

The WMP process already allows ample flexibility for utilities to accomplish the key goals while adhering to the approved plan. Utilities can make any necessary program adjustments through Change Orders⁸ and annual updates.² Electric utilities should utilize these processes to adjust their programs to pursue the most effective approaches and further the goal of reducing wildfire risk. Providing additional flexibility with a goal-oriented compliance approach is not necessary and may be counter-productive.

As an example, suppose that a utility's WMP indicates that the utility will rely on a combination of four methods to inspect its distribution lines. After the WMP is approved, the utility concludes that one method is ineffective. The utility decides to instead rely on the other three methods to inspect all of its miles of distribution circuits. The utility should submit a Change Order or WMP update at the next opportunity to reflect this change in its WMP programs. Until it does so, it is out of compliance with its approved WMP.

Instead of a goal-oriented approach, the WSD should audit utilities based on their approved WMPs and encourage utilities to utilize the Change Order process to adjust to real-world conditions and lessons learned. Under this approach, a utility that does not comply with its WMP but does substantially reduce wildfire risk would be out of compliance, but need not be issued a citation. The utility should instead be required to update its WMP based on lessons learned and directed to comply with the revised and approved WMP during the next compliance period.

The WSD compliance process is new and including flexibility through a goal-oriented approach at this stage could hinder the WSD's ability to enforce timely compliance and open the WSD to utility pushback on any enforcement actions. While it

⁸ Resolution WSD-002, pp. 32-35.

² Public Utilities Code Section 8386(b).

is premature at this time, the WSD can consider affording the utilities increasing flexibility in the future.

B. The WSD should limit the flexibility afforded the utilities in early years.

The WSD should be cautious in allowing the utilities the flexibility to make unilateral modifications to the WMP, especially in the early years of WMP implementation. At present, California’s energy utilities have track records ranging from acceptable¹⁰ to dismal¹¹ in terms of safety outcomes, which stem from being afforded too much flexibility in how safety programs are implemented.

The WSD can consider increasing flexibility over time as accountability mechanisms become entrenched and as utilities demonstrate that they are following through on the safety commitments made in their WMPs. At present, however, the compliance framework should take a strict view of compliance and should ensure that the electric utilities fulfill all of the commitments made in their WMPs.

C. The annual compliance assessment should examine compliance with all conditions of WMP approval and with Commission decisions.

The Compliance Process Proposal states that “the WSD will conduct an annual assessment of each electrical corporation’s compliance with its WMP.”¹² In this process, each utility will file an annual report “addressing its compliance with WMPs over the prior compliance period.” Additionally, independent evaluators, who are employed

¹⁰ *Wildfire Safety Division Approval of San Diego Gas & Electric Company’s 2020 Safety Certification Request*, September 14, 2020, p. 6: SDG&E’s submission regarding safety culture is “satisfying” legal requirements.

¹¹ D.20-05-053 in I.19-09-016, *Decision Approving Reorganization Plan*, p. 17.

¹² Compliance Process Proposal, p. 4.

pursuant to Public Utilities Code Section 8386.3(c),¹³ will submit annual reports on compliance findings.¹⁴

The annual compliance assessment should explicitly consider whether each utility has complied with all conditions of approval of its WMP. In 2020, the WSD has conditionally approved the WMPs of Liberty Utilities (Liberty), Pacific Gas and Electric Company (PG&E), PacifiCorp, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). The WSD identified numerous deficiencies and imposed conditions of approval to correct those deficiencies. To ensure that utilities rectify the known deficiencies in their WMPs, and to create effective accountability, it is vital to track compliance with each condition. Without this follow-up, utilities may fail to resolve deficiencies in a timely manner, thereby risking health and human safety due to utility-caused wildfires.

Additionally, the annual compliance assessment should examine whether each utility has complied with any pertinent Commission orders. For example, Decision (D.) 19-05-039 directed SDG&E to provide greater detail on its vegetation management practices and evidence to support those practices.¹⁵ In the annual compliance report envisioned in the Compliance Process Proposal, each utility should explain whether and how it has complied with all pertinent Commission orders, including providing specific

¹³ Public Utilities Code Section 8386.3(c)(2): “Each electrical corporation shall engage an independent evaluator ... to review and assess the electrical corporation’s compliance with its plan.”

Public Utilities Code Section 8386.3(c)(5)(B): “The Wildfire Safety Division may engage its own independent evaluator, who shall be a certified arborist and shall have any other qualifications determined appropriate by the division...”

¹⁴ Compliance Process Proposal, p. 4.

¹⁵ D.19-05-039, *Decision on San Diego Gas & Electric Company’s 2019 Wildfire Mitigation Plan Pursuant To Senate Bill 901*, in Rulemaking (R.) 18-10-007, Ordering Paragraph 5 at pp. 29-30: “San Diego Gas & Electric Company may implement a 25-foot post-trim clearance where necessary and feasible if such a practice is supported by scientific evidence or other data showing that such clearance will reduce risk under wildfire conditions.”

D.19-05-039, Ordering Paragraph 6 at p. 30: “In San Diego Gas & Electric Company’s next Wildfire Mitigation Plan, it shall propose detailed guidelines for where a 25-foot post-trim clearance for vegetation management is both feasible and necessary.”

citations and documentation. Likewise, the independent evaluator examining each utility's compliance should address compliance with all relevant orders.

The WSD should revise the Compliance Process Proposal to specify that the annual compliance assessments will evaluate compliance with conditions of approval and Commission decisions. The WSD should direct utilities and independent evaluators to address these compliance requirements in their annual reports.

D. The WSD should develop a transparent process for the annual compliance assessments.

The WSD should create a transparent and thorough process for determining whether a utility is in compliance with its WMP. The proposed annual compliance process described in the Compliance Process Proposal is a good start toward this goal.

However, the Compliance Process Proposal currently lacks details about the outcomes of the annual compliance process. The Compliance Process Proposal states that the WSD will review submissions and “make a recommendation of whether each electrical corporation substantially complied,”¹⁶ but it does not specify when the WSD will make findings about compliance, whether the WSD will make its findings public, or to whom the WSD will make a recommendation. The Compliance Process Proposal also does not state whether the utilities' annual compliance reports or the independent evaluators' reports will be issued publicly, or whether stakeholders will have an opportunity to provide input on any of these documents.

The WSD should provide more specificity about the annual compliance process. The WSD should require utilities and independent evaluators to serve their annual reports on the service list of R.18-10-007. The WSD should allow stakeholders to submit comments to the WSD on these documents within 30 days of service. Additionally, for transparency purposes, the WSD should publish the utilities' and independent evaluators' reports as well as stakeholders' comments on WSD's website.

¹⁶ Compliance Process Proposal, p. 4.

Once the WSD reviews these submissions, the WSD should issue written findings on each utility's compliance with its WMP. The WSD should publish its findings in a draft resolution about each utility and place these resolutions on the Commission's agenda. A draft resolution process promotes transparency by enabling stakeholder input¹⁷ and providing a clear and binding decision at the end of the process. It is also consistent with Public Utilities Code Section 8389(d), which indicates that both the Commission and the WSD will be involved in the WMP compliance process.

E. The WSD should clarify the division of responsibilities between WSD and SED.

The Compliance Process Proposal refers to "internal agreements and a division of responsibilities between the WSD and the Commission's Safety and Enforcement Division (SED)."¹⁸ The nature of these agreements and the division of responsibilities between the WSD and SED are unclear, and not known to the public.

Within SED, the Electric Safety and Reliability Branch (ESRB) and the Wildfire Safety and Enforcement Branch (WSEB) each perform inspections and investigations to determine the safe design, operation, and maintenance of electric systems. There is likely some overlap of responsibilities between inspections performed by these branches and the WSD's own compliance-focused audits and inspections.¹⁹

In order to minimize overlap and encourage efficiency in the compliance assessment process, the WSD should revise the Compliance Process Proposal to address in writing the division of responsibilities between the WSD and SED. The WSD should consider providing examples of the types of audits and inspections it plans to perform, and how those differ from planned audits and inspections to be conducted by the ESRB and WSEB.

¹⁷ Pursuant to Rule 14.5 of the Commission's Rules of Practice and Procedure, "Any person may comment on a draft or alternate resolution ... within 20 days of the date of its notice in the Commission's Daily Calendar and in accordance with the instructions accompanying the notice."

¹⁸ Compliance Process Proposal, p. 5.

¹⁹ WSD staff discussion in WSD Compliance Branch Workshop, September 29, 2020.

If it is not feasible to complete this task in time for the Commission to adopt the Compliance Process Proposal, the WSD should develop a written statement of compliance responsibilities to be issued publicly in the first half of 2020. The WSD should publish a draft resolution by May 2020, which would allow the Commission to adopt the resolution by June 2020, before the WSD moves to the Natural Resources Agency.

F. The WSD should define critical terms in the Compliance Process Proposal.

The Compliance Process Proposal describes the assessment and enforcement process at a high level, but uses some terms that are not clearly defined and may be open to interpretation. The WSD should include a glossary or otherwise define the following terms in order to clarify for utilities and stakeholders what constitutes compliance.

1. Define “defect codes.”

The Compliance Process Proposal states that the WSD is in the process of developing and assigning “defect codes” for multiple noncompliance situations in each WMP initiative. The WSD also is developing metrics to track the defects.²⁰ The WSD, upon development of these defect codes and metrics, should publish them on its website to inform stakeholders of the criteria the WSD will use to assess compliance with approved WMPs.

2. Define “substantial.”

Under the section titled “Ongoing Compliance Assessment,” the WSD states that electrical corporations will notify the WSD when they have completed a substantial portion of vegetation management requirements in their approved WMPs.²¹ Under the section titled “Consequences of Compliance Assessments,” the Proposal states that the

²⁰ Compliance Process Proposal, p. 4.

²¹ Compliance Process Proposal, p. 4.

WSD may determine that an electrical corporation is not in substantial compliance with its WMP.²²

The meaning of the term “substantial” will be critical to determining whether a utility is in compliance with its WMP. Therefore, the WSD should define what constitutes a “substantial portion” of vegetation management, and what constitutes “substantial compliance” with a utility’s WMP.

3. Define severity categories and correction timelines.

The Compliance Process Proposal includes a table that proposes required timelines for the correction of defects.²³ This table lists three defect categories as “Severe,” “Moderate,” and “Minor,” but does not define what these terms mean, nor provide examples of defects that would fall into each category. For “Severe” defects, the proposed timeline is “immediate resolution.” The WSD should define the three severity categories, and define what constitutes “immediate resolution.”

Additionally, some defects may not be possible to resolve within the allotted timeframe (for example, a defect that requires construction may require time to mobilize resources and acquire permits). The WSD should update the proposed timelines to include periodic monitoring requirements until the defect is fully corrected.

G. The WSD should continue to evaluate the compliance process and to encourage robust stakeholder engagement.

Development of a functional compliance framework will be a long-term effort, and the WSD should be prepared to modify the process in future years based on the lessons learned through application. Public Utilities Code Section 8389(d)(3) requires that a wildfire mitigation plan compliance process be adopted annually, providing an opportunity for an iterative process incorporating improvements and corrections as lessons are learned in the future. Stakeholders and the WSD should be mindful that there

²² Compliance Process Proposal, p. 5.

²³ Compliance Process Proposal, p. 5.

may need to be large revisions to the framework in the early years based on the experience of implementation.

One particular area for improvement is facilitating stakeholder engagement. The current comments, due within three days of the WSD's September 29, 2020 workshop presenting the Compliance Process Proposal, place a real constraint on the ability of stakeholders to engage in a meaningful way on development of the compliance framework. The WSD has been tasked with building the WMP framework and compliance requirements from the ground up. The work involved is substantial and the short timeline to do this work is a challenge. As such, tight turnarounds for stakeholders may be unavoidable in the early days of developing this framework.

However, an effective process requires meaningful stakeholder feedback. Many stakeholders have years of experience in wildfire safety and utility regulation, and can make important contributions to the compliance process. In the future, the WSD should conduct a more thorough stakeholder input process, and provide adequate time to consider and develop ideas presented by stakeholders.

H. The WSD needs to establish a prioritization of resources to identify and address the most important problems.

The WSD should establish and provide an explanation that describes how it will prioritize its resources on hand to identify and resolve the most important problems as part of the compliance process.

The Compliance Process Proposal currently lacks guidance and should specify how the WSD will distribute its resources to identify and address compliance issues. The WSD should also articulate and explain in a clear manner within the finalized Compliance Process Proposal how it will allocate the limited staff and resources available.

As part of this explanation, the WSD should explain how it will ensure that it targets the most important WMP initiatives and key geographic areas as identified within the WMPs. It would be helpful to provide a description of the types of field inspections

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Wildfire Safety Division
October 2, 2020
Page 12

that the WSD will conduct as part of the Compliance Process Proposal (as well as the types of field inspections that will be the responsibility of SED). By being transparent and conveying specific focal areas within the compliance process, the WSD can establish a compliance framework that is fair and effective in promoting safety.

IV. CONCLUSION

Cal Advocates respectfully requests that the Wildfire Safety Division adopt the recommendations discussed herein.

Sincerely,

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