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VIA ELECTRONIC MAIL

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Subject: Comments of the Public Advocates Office on the Proposed Independent Evaluator List

I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the guidance of the Wildfire Safety Division (WSD),¹ the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these comments on the Proposed Independent Evaluator (IE) List for Public Comment.

In these comments, Cal Advocates makes the following recommendations:

- The WSD should revise the Proposed IE List to state the ethical restrictions placed upon each IE.
- The WSD should prevent IEs from contracting with a utility for WMP-related work for a specified period after serving as an IE for that utility.

II. BACKGROUND

Public Utilities Code Section 8386.3(c)(2)(A) requires the WSD, in consultation with the Department of Forestry and Fire Protection (CAL FIRE), to make available by March 1, 2021 a list of qualified IEs with experience in assessing the safe operation of electrical infrastructure. Each utility shall engage an IE from this list to review and assess the utility's compliance with its wildfire mitigation plan (WMP).²

¹ Wildfire Safety Division, *Proposed Independent Evaluator List for Public Comment*, January 7, 2021, p. 3.

² Public Utilities Code Section 8386.3(c)(2)(B)(i).

From October 21, 2020 through November 30, 2020, the WSD solicited applications for the Electrical Corporation Independent Evaluator List through Request for Qualifications (RFQ) No. 20NC0427. The RFQ required bidders to disclose potential conflicts of interest.³

On January 7, 2021, the WSD and CAL FIRE served the Proposed Independent Evaluator List for Public Comment (hereinafter, the Proposed IE List). The WSD permits stakeholders to submit comments on the Proposed IE List by February 4, 2021 and will release the final list of independent evaluators by March 1, 2021.⁴

III. DISCUSSION

A. The WSD should revise the Proposed IE List to state the ethical restrictions placed upon each IE.

Independent evaluator reports are a key component of the WSD's WMP compliance process, outlined in Resolution WSD-012.⁵ In order for an IE to perform an effective assessment of a utility's compliance with its WMP, the IE must be fair and impartial.⁶ An IE should not have any existing contracts with a utility during the period it is serving as an IE for that utility, nor should an IE have recently performed WMP-related work that the IE may be required to evaluate as part of its assessment. Transparent restrictions on IEs are needed to ensure no such conflicts of interest affect the validity and integrity of the compliance process.

Several of the proposed IEs have recently performed work related to utilities' WMPs. For example, Guidehouse, Inc. (Navigant) assisted Bear Valley Electric Service and Liberty Utilities in preparing their 2020 WMPs.⁷ ⁸ The WSD has appropriately stated that it may restrict IEs

³ RFQ 20NC0427 Conflict of Interest Declaration (Attachment D) requires IE applicants to disclose work for utilities in the past three years.

⁴ Wildfire Safety Division, *Proposed Independent Evaluator List for Public Comment*, January 7, 2021, p. 3.

⁵ Resolution WSD-012, p. 6.

⁶ Request for Qualifications, Independent Evaluator List, RFQ No. 20NC0427, p. 3. Section 2.2 of the RFQ defines "Conflict of Interest" to include, "Any financial interest or relationship that may impair the ability of the individual or firm to deliver fair unbiased work for the State."

⁷ Bear Valley Electric Service Wildfire Mitigation Plan, filed February 7, 2020, cover page. Liberty Utilities (CalPeco Electric) LLC Revised 2020 Wildfire Mitigation Plan, filed February 28, 2020, Attachment "Liberty CalPeco's Fire Prevention Plan for Overhead Electric Facilities," p. 1.

⁸ Utility responses to data requests from Cal Advocates indicate that several other proposed IEs have performed WMP-related work for utilities within the last two years. NV5, Inc. performed engineering and design, survey, and permitting support for SDG&E. Pride Resources performed project management for SDG&E. Sargent & Lundy Engineers provided engineering, project management, and construction oversight services to Horizon West Transmission, LLC. Jensen Hughes provided fire risk and resilience assessments for Horizon West and Trans Bay Cable.

from working for particular utilities to prevent conflicts of interest;² however, the Proposed IE List does not yet identify any such restrictions placed upon individual IEs.

Transparency and fairness in the WMP compliance process are matters of public concern. Listing the restrictions placed on each proposed IE would serve the public interest by providing transparency and ensuring that each utility is scrutinized by an impartial evaluator. The WSD should be specific by identifying restrictions on individual IE team members or subcontractors, if a conflict of interest only affects those individuals.

The WSD should adopt clear rules to mitigate conflicts of interest. First, the WSD should prohibit utilities from contracting with any IE firm that has worked for the same utility in a WMP-related capacity in the previous two years.¹⁰ The purposes for this cooling off period are to disentangle any previous financial relationships between the IE and the utility and to prevent the type of conflict of interest whereby an IE is asked to evaluate work that the IE helped shape.¹¹ Two years of separation is sufficient for these purposes. This two-year cooling off period after WMP-related work is a stronger but more targeted requirement than disclosure of past utility work in the last three years, as the RFQ appropriately requires.¹² In a somewhat analogous situation, the Commission permanently prohibits firms that evaluate the impact of energy efficiency programs from also designing or implementing energy efficiency programs.¹³

Second, the WSD should specify that utilities may not retain any IE firm that simultaneously maintains a contractual relationship with the same utility in *any* capacity, including for non-WMP work. Non-WMP contract work could include performing routine vegetation management or project management services for capital projects, and such contracts could be significantly more valuable than contracts for IE services. This separation will serve to prevent current financial relationships from influencing IEs' findings.

The Commission has previously dealt with similar issues in the energy efficiency space. When the Commission required energy utilities to retain IEs to oversee energy efficiency program

² Request for Qualifications, Independent Evaluator List, RFQ No. 20NC0427, p. 4. Section 2.3 of the RFQ states, "The WSD may conditionally include an independent evaluator on the list with specific restrictions excluding a particular electrical corporation if there is a Conflict of Interest issue with only that electrical corporation but the independent evaluator is otherwise qualified."

¹⁰ This cooling off period should start when the contract ends or the last invoice is paid, whichever is later. The cooling off period should cover anyone serving as a WMP Independent Evaluator, including partners, affiliates and subcontractors.

¹¹ In comparison, energy efficiency IEs must wait six months to one year after working for a utility on energy efficiency programs before serving as an IE for energy efficiency.

¹² RFQ 20NC0427 Conflict of Interest Declaration (Attachment D) requires IE applicants to disclose work for utilities in the past three years.

¹³ D.05-01-055, pp. 121-126 and Findings of Fact 53-56.

procurement, the Commission stated a need for “arms-length expertise”¹⁴ and the contracting process included broad restrictions on recent, current or future work that could present conflicts of interest.¹⁵

The WSD should revise the Proposed IE List to reflect the ethical restrictions placed upon each IE and individual IE team members.

B. The WSD should prevent IEs from contracting with a utility for WMP-related work for a specified period after serving as an IE for that utility.

The impartiality of an IE’s assessment could also be affected by the prospect of future work with a utility, even if an IE meets all conflict of interest restrictions based on past work. For example, an IE could conceivably give a utility an unjustifiably favorable evaluation in expectation of future contract work with the utility. Alternately, an IE could recommend that the utility create a program or project that the IE is well- positioned to compete for. An IE could also structure an evaluation in a way that would provide the IE an advantage in competing for work suggested or required by the evaluation.

The RFQ contains language intended to prohibit IEs from reaping future benefit by using information gained while serving as an IE for a utility.¹⁶ However, neither the RFQ nor the Proposed IE List explicitly restrict IEs from contracting with a utility to perform WMP-related work after they have served as an IE for that utility. Without an explicit restriction, conflicts of interest could arise that may not be indicated by an accounting of IE’s past work with a utility, as discussed in the previous section of these comments.

The WSD should adopt clear rules to minimize such potential conflicts of interest. The WSD should revise the Proposed IE List to state that utilities may not contract for WMP-related work

¹⁴ D.18-01-004, p. 38.

¹⁵ See, e.g., PG&E’s 2018 Independent Evaluator RFP, available at https://www.pge.com/en_US/for-our-business-partners/energy-efficiency-solicitations/2018-independent-evaluator-rfp.page. See the Specific Conditions, p. 6. Among other things, energy efficiency (EE) IEs are prohibited from bidding on EE programs, having any relationship to firms bidding on EE programs, or consulting for utilities related to EE strategy or programs “in the past six months, current, or future.” PG&E also stated:

If any conflict of interest, or potential conflict of interest arises, IE will disclose it and the nature of the circumstances to PG&E immediately. ... If in doubt, IE shall assume there is a conflict of interest and promptly disclose the nature of the solicitation [in which] IE would like to participate.

¹⁶ Request for Qualifications, Independent Evaluator List, RFQ No. 20NC0427, p. 5. The RFQ states that an IE must “Avoid any activity that may provide an opportunity to benefit from having access to confidential information related to this work and/or use information gained in the course of this project to provide an unfair competitive advantage to a Team Member.”

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with any person or firm who has served as an IE for the same utility in the previous three years.¹⁷ The RFQ requires IE applicants to disclose “Prior contracts during the last three years with the Covered Entities or any parent, subsidiary, or affiliate thereof.”¹⁸ Cal Advocates recommends that the WSD restrict IEs from performing WMP-related work for a utility for the same amount of time—three years—after serving as an IE for that utility. Three years is a reasonable period of time, because it matches the duration of a WMP cycle. Therefore, work that occurs at least three years in the future will be part of a new comprehensive WMP and is not directly driven by an IE’s current recommendations.

IV. CONCLUSION

Cal Advocates respectfully requests that the Wildfire Safety Division adopt the recommendations discussed herein. Please contact Alan Wehrman (alan.wehrman@cpuc.ca.gov) or Henry Burton (henry.burton@cpuc.ca.gov) with any questions relating to these comments.

Sincerely,

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¹⁷ This restriction should apply to anyone serving as a WMP Independent Evaluator, including team members, partners, affiliates, and subcontractors.

¹⁸ RFQ 20NC0427 Conflict of Interest Declaration (Attachment D).