



The Protect Our Communities Foundation
4452 Park Boulevard #202
San Diego, California 92116

June 10, 2020

Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102

Sent Via Email (wildfiresafetydivision@cpuc.ca.gov)

Re: Proposed Independent Evaluator Listing Criteria

Dear Wildfire Safety Division:

The Protect Our Communities Foundation (POC) submits these comments pursuant to the May 26, 2020 email from Christopher Meyer, Manager of the Compliance Branch of the Wildfire Safety Division, to the service list for R.18-10-007. POC's comments address the document entitled CPUC Wildfire Safety Division Seeks Public Comment on Proposed Criteria for Safety Evaluators (Proposed Criteria Document).

The Legislature has long insisted on robust and qualified independent evaluators (IEs) with "experience in assessing the safe operation of electrical infrastructure" to review and assess the investor-owned utilities' (IOUs) compliance with their respective WMPs and to issue a report which includes a determination regarding whether the IOUs have failed to fund the wildfire mitigation activities included in their WMPs.¹ The role of IEs begins after the Commission has unconditionally approved a wildfire mitigation plan (WMP) submitted by an IOU, and exists to assist the Wildfire Safety Division (WSD) in overseeing each IOU's compliance with its unconditionally approved WMP so that the Commission can ensure that each IOU not only properly plans to meet the statutory wildfire risk reduction mandate in Section 8386(a) which guides all wildfire mitigation practices, but that each IOU also implements such plan.²

The Proposed Criteria Document contravenes the statutory mandates that apply to the role and qualifications of independent evaluators because it does not require that IEs have "experience in assessing the safe operation of electrical infrastructure,"³ and because it does not reflect that the role of IEs begins post-approval and involves reviewing and assessing the IOUs' compliance with WMPs which have already been determined to effectively reduce the risks of wildfires.⁴

¹ Pub. Util. Code, § 8386.3, subd. (c)(2)(A), (B)(i).

² Pub. Util. Code, § 8386, subd. (a); Pub. Util. Code, § 8386.3, subd. (c) ("Following approval of a wildfire mitigation plan, the Wildfire Safety Division shall oversee compliance with the plan...").

³ Pub. Util. Code, § 8386.3, subd. (c)(2)(A).

⁴ Pub. Util. Code, § 8386.3, subs. (a), (c)(2); Pub. Util. Code, § 8386, subs. (a), (d).

More recently, the Legislature required WSD to perform vegetation management audits at the appropriate time.⁵ The new vegetation management audit requirement establishes an additional role for IEs by allowing WSD to utilize IEs to perform the vegetation management audit.⁶ The Proposed Criteria Document fails to adhere to the new vegetation audit-related statutory requirements because it does not require either that IEs be a certified arborist or that they meet other qualifications necessary to audit the IOUs' vegetation management practices.⁷

I. BACKGROUND

The statutory wildfire risk reduction mandate has not changed since the 2016 enactment of SB 1028. SB 1028, the legislation that initially mandated the utilities to prepare and submit WMPs, first required that “[e]ach electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.”⁸ Recognizing that the annual fire prevention plans required prior to SB 1028 were “of varying quality, have never been evaluated to determine their adequacy, and have never been audited,” SB 1028 also mandated that the Commission “conduct or contract for audits to determine if an electrical corporation is satisfactorily complying with its wildfire mitigation plan,” and allowed the Commission to “contract with an independent third party to evaluate wildfire mitigation plans or to conduct audits and inspections...”⁹

SB 901, enacted in 2018 “to reduce the risk of these wildfires by expanding the requirements” of SB 1028 by imposing “additional requirements as part of the electric utility’s annual wildfire mitigation plans,”¹⁰ kept SB 1028’s wildfire risk reduction mandate intact.¹¹ SB 901 mandated nineteen items to be included in WMPs, added the requirement that the Commission “verify that the plan complies with all applicable rules, regulations, and standards, as appropriate,”¹² and replaced the audit required by SB 1028 with a post-approval independent evaluation process.¹³

AB 1054, which was effective on July 12, 2019, was intended to “create additional safety oversight.”¹⁴

⁵ Pub. Util. Code, § 8386.3, subd. (c)(5)(A).

⁶ Pub. Util. Code, § 8386.3, subd. (c)(5)(B).

⁷ Pub. Util. Code, § 8386.3, subd. (c)(5)(B).

⁸ Sen. Bill No. 1028 (2015-2016 Reg. Sess.) § 1.

⁹ Senate Floor Analysis of Sen. Bill No. 1028 (2015-2016 Reg. Sess.) (August 23, 2016), p. 6; Pub. Util. Code, § 8386, subd. (e)-(f) (2017).

¹⁰ Sen. Floor Analysis of Sen. Bill No. 901 (2017-2018 Reg. Sess.) August 31, 2018, p. 13.

¹¹ Sen. Bill No. 901 (2017-2018 Reg. Sess.) § 38 (“(d) The commission shall...verify that the plan complies with all applicable rules, regulations, and standards, as appropriate.”).

¹² Sen. Bill No. 901 (2017-2018 Reg. Sess.) § 38, emphasis added; *see also* D.19-05-036, p. 13.

¹³ Sen. Bill No. 901 (2017-2018 Reg. Sess.) § 38 (Section 8386, subd. (h)).

¹⁴ Assem. Floor Analysis of Assem. Bill No. 1054 (2019-2020 Reg. Sess.) July 11, 2019, p. 1.

AB 1054 left intact the risk reduction mandate contained in SB 1028 and SB 901, as well as the independent evaluation requirement contained in SB 901. Among other things, AB 1054 amended SB 901 by requiring the establishment of the WSD.¹⁵ AB 1054 moved the independent evaluation requirement from Section 8386 to Section 8386.3 and identified WSD as the body with oversight over the independent evaluation process, but AB 1054 neither modified substantively the independent evaluation requirement nor did it modify the timing of the independent evaluation as occurring separately from and after the statutory review, verification, and approval processes.¹⁶

SB 247, effective January 1, 2020, added the vegetation management audit requirement to Section 8386.3¹⁷ and provides that WSD “may engage its own independent evaluator, who shall be a certified arborist and have any other qualifications determined appropriate” to perform the requisite audit.¹⁸ SB 247 did not change or in any way limit the role of the IEs in the independent evaluation required by Section 8386.3(c)(2)(B).

II. THE PROPOSED CRITERIA DOCUMENT MUST BE REVISED AND STRENGTHENED BECAUSE IT DOES NOT ADHERE TO THE STATUTORY LANGUAGE SET FORTH IN SECTION 8386.3.

As set forth below, the Proposed Criteria Document contravenes the statutory mandates set forth in Section 8386.3(c)(2) and Section 8386.3(c)(5). Thus, it must be revised to conform with all of the applicable statutory mandates that govern the qualifications, role, authority and selection of an IE.

A. The Document Does Not Adhere to Section 8386.3(c)(2).

Although the language contained in Section 8386.3(c)(2)(B) has been in effect since the enactment of SB 901,¹⁹ the Proposed Criteria Document summarizes Section 8386.3(c)(2) without mentioning two critical statutory components: the requirement that independent evaluators have “experience in assessing the safe operation of electrical infrastructure,” and the requirement that IEs be qualified “to review and assess the electrical corporation’s compliance with its plan.”²⁰

¹⁵ Pub. Util. Code, § 326, subd. (a) (“By January 1, 2020, the commission shall establish the Wildfire Safety Division within the commission...”).

¹⁶ Pub. Util. Code, § 8386.3, subd. (b).

¹⁷ Pub. Util. Code, § 8386.3, subd. (c)(5)(A).

¹⁸ Pub. Util. Code, § 8386.3, subd. (c)(5)(B).

¹⁹ Pub. Util. Code, § 8386, subd. (h) (2018). Relevant excerpts of the current statute as well as the previous versions are set forth in the Appendix attached hereto.

²⁰ Pub. Util. Code, § 8386, subd. (c)(2)(A)-(B).

The Proposed Criteria Document does not reflect the statutory mandate in Section 8386.3(c)(2) because it fails to require that IEs have the experience necessary to evaluate whether the IOUs comply with effective WMPs that actually reduce the risks of wildfire. Rather than adhere to the requirement in Section 8386.3(c)(2)(A) that independent evaluators have “experience in assessing the safe operation of electrical infrastructure,”²¹ the Proposed Criteria Document lists ten categories of “desired competencies,” which includes “vegetation management and inspections” as well as nine other categories.²² Particularly in light of the specific deficiencies identified by the Commission and WSD with respect to the IOUs’ 2019 and 2020 WMPs, the “desired competencies” set forth in the Proposed Criteria Document lack the specificity required to ensure IEs will have the qualifications necessary to meaningfully evaluate effective WMPs that actually reduce risk. As discussed in Section III, below, the Proposed Criteria Document does not even include the specificity already identified by the assigned ALJ and Commissioner last year.

Additionally, the Proposed Criteria Document fails to refer to the requirement in Section 8386.3(c)(2)(B) that the role of the independent evaluator is “to review and assess the electrical corporation’s compliance with its plan.”²³ In failing to acknowledge the statutory purpose for independent evaluations, the Proposed Criteria Document fails both to ensure that the IEs have the qualifications necessary to address each aspect of the WMPs required by Section 8386(c), and to ensure the IEs will perform their statutory role of assisting WSD ensure compliance with only those WMPs that have been unconditionally approved and have thus already been determined by the Commission to meet the statutory mandate of effectively mitigating wildfire risk to the public. Instead, the Proposed Criteria Document sets the IEs down a path of ensuring the IOUs are complying with WMPs that WSD has already determined may not be effective in the first place. Ensuring compliance with ineffective WMPs that may not reduce wildfire risk does not advance Legislative directives and would be a waste of IOU or ratepayer money.

B. The Document Does Not Adhere to Section 8386.3(c)(5).

Confusing the matter further, the Proposed Criteria Document summarizes Section 8386.3(c)(5)(C) as requiring the Independent Evaluator to perform five tasks: (1) “Consult with the WSD on compliance assurance auditing that will be performed,” (2) “Perform compliance assurance auditing, including field inspections,” (3) “Draft and provide to the WSD a report on audit findings, including deficiencies of underfunded WMP activities,” (4) “Draft and provide to the WSD a report on deficiencies of IOUs and expected resolution timelines,” and (5) “Track and report deficiencies of audit findings.”²⁴

²¹ Pub. Util. Code, § 8386, subd. (c)(2)(A).

²² Proposed Criteria Document, p. 4.

²³ Pub. Util. Code, § 8386, subd. (c)(2)(B).

²⁴ Proposed Criteria Document, p. 1.

This summary cites to the wrong subdivision(s) of Section 8386.3²⁵ and omits key and critical functions and qualifications that the statute requires of IEs, and thus impermissibly dilutes the IEs' multiple statutory roles.

The new audit requirement in Section 8386.3(c)(5)(A) relates to vegetation management practices and exists separate and distinct from the independent evaluation required by Section 8386.3(c)(2). To conduct this vegetation management audit, Section 8386.3(c)(5)(B) allows WSD to engage "its own independent evaluator, who shall be a certified arborist and shall have any other qualifications determined appropriate by the division."²⁶ Here again, the Proposed Criteria Document fails to abide by statutory mandates. The Proposed Criteria Document does not require a certified arborist and does not set forth a list of qualifications required to ensure that any and all vegetation management practices result in wildfire risk reduction rather than increasing wildfire risk by eliminating natural carbon sinks and exacerbating adverse climate change impacts.²⁷

III. THE QUALIFICATIONS DESCRIBED IN THE PROPOSED CRITERIA DOCUMENT FAIL TO INCLUDE CRITERIA IDENTIFIED BY THE ALJ AND ASSIGNED COMMISSIONER JUST LAST YEAR.

As discussed above, AB 1054 assigned the initial oversight of the independent evaluation to WSD, but did not substantively change the independent evaluation requirement. As a result, the list of minimum tasks and qualifications for IEs identified last year by the ALJ and Assigned Commissioner overseeing the utilities' WMP filings remains applicable:

At a minimum, the following is a list of tasks the independent evaluator should undertake, issues it should address, and qualifications it should possess...

1. Assemble a team of qualified engineers, linemen and others;

²⁵ Section 8386.3(c)(5)(C) in fact states: "Within one year of the expiration of the time period for an electrical corporation to correct and eliminate any deficiency identified in the audit, the independent evaluator shall issue a report to the electrical corporation, the Wildfire Safety Division, and the Safety and Enforcement Division of the commission specifically describing any failure of the electrical corporation to substantially comply with the substantial portion of the vegetation management requirements in the electrical corporation's wildfire mitigation plan. The report shall be made publicly available. The division shall include the report in its compliance review prepared pursuant to paragraph (4)." Pub. Util. Code, § 8386.3, subd. (c)(5)(C).

²⁶ Pub. Util. Code, § 8386.3, subd. (c)(5)(B).

²⁷ Jean-Francois Bastin et al., *The global tree restoration potential*, Science (July 5, 2019); see also The Guardian, *Tree planting 'has mind-blowing potential' to tackle climate crisis*, available at <https://www.theguardian.com/environment/2019/jul/04/planting-billions-trees-best-tackle-climate-crisis-scientists-canopy-emissions>; The Guardian, *Greta Thunberg: 'We are ignoring natural climate solutions'* Film by Swedish activist and Guardian journalist George Monbiot says nature must be used to repair broken climate, available at <https://www.theguardian.com/environment/2019/sep/19/greta-thunberg-we-are-ignoring-natural-climate-solutions>.

2. Establish a field inspection program for the inspection of facilities being constructed (either new construction or upgrades to existing facilities) and in-service electric transmission and distribution lines. The primary goal is to identify significant conditions that increase risks of wildfire ignitions;
 - a. Develop risk-based criteria for field inspections and procedures for inspection, based on an order of priority that emphasizes the most consequential facilities or work first;
 - b. Perform field inspection of electric overhead facilities; work includes visual pole integrity, asset management data discrepancies (including GPS location), cross arm angle and integrity, joint pole cable management, signage, vegetation clearance, conductor sag and sway, insulator integrity, guy wire integrity and other elements required to assure compliance with CPUC rules and regulations;
3. Request necessary records from electrical corporation;
4. Identify safety issues and potential violations;
 - a. Communicate identified issues and potential violations to the electrical corporation and work with company representatives directly to address the concerns and resolve conditions;
 - b. Escalate issues to CPUC as necessary;
 - c. Issue correction notices and non-conformance reports to ensure compliance as necessary;
5. Perform analysis of information being collected through field inspections and develop reports that summarize trends, patterns and other information that may be required by CPUC in order to assess overall compliance performance of electrical corporations; and
6. Assess whether the electrical corporation failed to fund any activities included in its Plan.²⁸

POC and others provided comments on the independent evaluator issue on August 21, 2019, November 06, 2019, and November 18, 2019.²⁹ As discussed in Section IV, *infra*, POC's comments focused upon the independence of the independent evaluator. Although the Commission failed to take action to incorporate the parties' comments before WSD was established, the Commission's prior determinations and POC's prior comments remain applicable and should be incorporated into revisions to the Proposed Criteria Document.

²⁸ R.18-10-007, Assigned Commissioner and Administrative Law Judge's Ruling Launching Phase 2 of the Wildfire Mitigation Plan Proceeding (June 14, 2019), p. 8.

²⁹ R.18-10-007, Protect Our Communities Foundation Comments on Phase II (August 21, 2019), p. 11-12; R.18-10-007, The Protect Our Communities Foundation Comments on Phase 2 Workshop Materials (November 6, 2019), p. 23-24; R.18-10-007, The Protect Our Communities Foundation Reply Comments on Phase 2 Workshop Materials (November 18, 2019), 5-6.

IV. THE PROPOSED CRITERIA DOCUMENT FAILS TO ASSURE THE INDEPENDENCE OF THE INDEPENDENT EVALUATORS.

The Proposed Criteria Document states that “WSD is carefully taking into consideration the listed IE’s ability to demonstrate having the capability to act independently and meet the expectations outlined in the PU Code.”³⁰ However, the Proposed Criteria Document also misleadingly states that the costs incurred for the IEs “shall be the sole responsibility of the IOU.”³¹ The Proposed Criteria Document should be revised to include the criteria that WSD will use to assess whether the independent evaluator can, in fact, act independently. As POC commented previously, every effort must be made to ensure that the independent evaluators are actually independent and do not view themselves as contractors paid by the IOUs. And as POC and others have noted in previous comments on this issue, the Commission should develop specific and enforceable conflict of interest rules to assure that the evaluations are independent, fair, and unbiased.³²

V. COMMENCING THE INDEPENDENT EVALUATION BEFORE THE UTILITIES PROVIDE THE CRITICAL INFORMATION REQUIRED BY THE COMMISSION AND WSD WOULD BE PREMATURE.

The fundamental purpose of the independent evaluation is to ensure that the IOUs comply with approved WMPs not for the sake of checking a box, but actually to “minimize the risk of catastrophic wildfire.”³³ Just as the Commission found with respect to the IOUs’ 2019 WMPs, WSD recently determined it cannot assess the effectiveness of the activities proposed in the IOUs’ 2020 WMPs - or even the extent of the risks involved - because the utilities failed to provide WSD with the basic information necessary to understand, quantify, and prioritize the risk reduction estimated from each proposed activity. For example, WSD found that “[a] common deficiency in 2020 WMPs relates to the practice of aggregating initiatives into broader programs and reporting of data and information at the program level, thus preventing the WSD from evaluating the efficacy of individual initiatives.”³⁴

³⁰ Proposed Criteria Document, p. 2.

³¹ Proposed Criteria Document, p. 1; *compare* Pub. Util. Code, § 8386.3, subd.(c)(3).

³² Pub. Util. Code, § 8386.3, subd. (c)(3) (“The commission shall authorize the electrical corporation to recover in rates the costs of the independent evaluator.”); R.18-10-007, Protect Our Communities Foundation Comments on Phase II (August 21, 2019), p. 11-12; R.18-10-007, The Protect Our Communities Foundation Comments on Phase 2 Workshop Materials (November 6, 2019), p. 24; R.18-10-007, The Protect Our Communities Foundation Reply Comments on Phase 2 Workshop Materials (November 18, 2019), 6.

³³ D.19-05-039, p. 22; D.19-05-036, p. 3-4, 26.

³⁴ Draft Resolution, p. 20; *see also* Draft Resolution, p. 21 (“First, because cost data is typically reported across programs and not individual initiatives, it is not possible for the WSD to evaluate the efficacy of each initiative. Second, when initiatives are bundled and reported together as programs, it prevents WSD from being able to assess which initiatives are effectively reducing utility wildfire risk. Consequently, this creates the challenge that ineffective elements of broad programs cannot be determined and future considerations of initiatives within programs can only be done collectively.”).

Moreover, despite the fact that the Commission acknowledged that Section 8386 requires the utilities “to include all relevant wildfire risk and risk mitigation information” required by the Commission’s S-MAP and RAMP decisions - which includes the RSE requirements contained in D.18-12-014 - WSD correctly concluded that the IOUs continue to fail to provide the requisite analysis of risk reduction per dollar spent in their 2020 WMPs.³⁵ WSD also properly acknowledged that IOUs such as SDG&E failed to meet the Commission’s transparency requirements,³⁶ including that SDG&E fails adequately to describe its internal modeling³⁷ and alternatives to its proposed wildfire risk reduction activities.³⁸

³⁵ D.19-05-036, p. 28-29 (“The WMP statute refers to the Commission’s safety-oriented processes carried out during GRCs.[] We interpret the inclusion of those processes to reflect a desire to ensure the safety work in GRCs is incorporated into WMPs. We agree that both processes are important to a consideration of the adequacy of utility safety efforts. Our recent decision in the S-MAP/GRC context adopted an approach that prioritizes actions based on their ‘Risk-Spend Efficiency.’ ...As stated above, the statute requires ‘all relevant wildfire risk and risk mitigation information that is part of the Safety Model Assessment Proceeding and Risk Assessment Mitigation Phase filings.’ This quantitative information is relevant, and the process of conducting these analyses may allow stakeholders to better understand the cost effectiveness of proposed mitigations.”); Draft Resolution WSD-002, p. 18 (“Although RSE concepts have been considered for several years through Commission GRCs, utilities still display unrefined and limited abilities to produce such information. Considering that utilities propose to spend billions of dollars on WMP initiatives, not having quantifiable information on how those initiatives reduce utility ignition risk relative to their cost severely limits the WSD’s ability to evaluate the efficacy of such initiatives and each utility’s portfolio of initiatives, as outlined in 2020 WMPs.”); Draft Resolution WSD-005, p. 31 (“SDG&E does not provide adequate details of its risk assessment process and how it considers alternatives to identify the most effective risk-reduction initiative, nor does SDG&E identify and describe the specific risk(s) it intends to mitigate with each type of inspection.”); The Protect Our Communities Foundation Comments on the 2020 Wildfire Mitigation Plans Pursuant to Resolution WSD-001 (April 7, 2020), p. 15.

³⁶ Draft Resolution WSD-005, p. 27 (“SDG&E’s WMP does not adequately identify or describe the details of its more costly planned investments or of its decision-making process with respect to its various planned initiatives...the WMP does not provide an adequate description of those methods and processes nor how specifically they lead SDG&E to identify which measures to pursue, where to pursue them, and in what order to pursue them. Such detail is particularly important for significant investments, i.e., additional overhead distribution facilities and undergrounding, in order to evaluate whether SDG&E is pursuing these very costly mitigations in the most efficient manner.”); POC Comments on the 2020 Wildfire Mitigation Plans Pursuant to Resolution WSD-001 (April 7, 2020), p. 18-19.

³⁷ Draft Resolution WSD-005, p. 22 (“SDG&E’s risk assessment and mapping plans consist of a primarily automated risk assessment and mapping methodology referred to as its Wildfire Risk Reduction Model (WRRM)...the WMP does not adequately address how SDG&E factors its modeling into decision-making, nor whether and how it updates its models based on lessons learned.”); Draft Resolution WSD-005, p. 24 (“SDG&E does not adequately explain how it utilizes FPI or incorporates FPI into protocols and procedures.”); The Protect Our Communities Foundation Comments on the 2020 Wildfire Mitigation Plans Pursuant to Resolution WSD-001 (April 7, 2020), p. 18.

³⁸ Draft Resolution WSD-005, p. 30 (“...the WMP does not adequately describe the details of its risk assessment process, or whether and how it considers alternatives to identified risk-reduction initiatives...as a proportion of its overall expenditures (from 2020 to 2022), SDG&E plans to spend more

Both the IOUs' failure to include RSEs and their transparency failures violate the Commission's minimum risk assessment requirements and preclude the Commission's ability to assess whether the utilities are adequately protecting the public from the risks posed by their electrical systems and practices.³⁹ Only after the IOUs comply with the transparency and other requirements of D.18-12-014 and its predecessors will the meaningful independent evaluation required by the wildfire mitigation statutes be possible. To date, despite the Commission's repeated orders to comply with D.18-12-014, the IOUs still have not complied.⁴⁰

WSD attempts to address the many risk assessment failures in the IOUs' 2020 WMPs by requiring remedial correction plans (RCPs) and quarterly reports.⁴¹ Although POC continues to suggest that WSD should consider how to coordinate and incorporate SDG&E's WMP risk-related deficiencies with ongoing formal proceedings which require evaluation of SDG&E's risk assessment deficiencies more generally,⁴² it remains to be seen whether the RCPs and quarterly reports yield the results necessary to bring the IOUs into compliance with D.18-12-014.

POC does not object to starting the conversation about the qualifications for IEs. But it would not be appropriate to commence an independent evaluation before the IOUs provide WSD with the additional information necessary to assess the effectiveness of the IOUs' proposed wildfire risk reduction activities or the additional information necessary to remedy the IOUs' failures to evaluate properly the risks and the costs of their programs that purport to reduce risk. At minimum, the independent evaluation cannot occur before the RCPs and quarterly reports required by the Commission are actually provided to WSD (and the IEs) because the Legislature directed that IEs help assess compliance with only those WMPs the Commission has already determined effectively minimize the risk of wildfires.⁴³

than twice as much as PG&E or SCE on asset management and inspections; a large portion of these planned expenditures are for drone inspections. Consideration of alternatives is not apparent from SDG&E's WMP...the WMP lacks a detailed breakdown of the factors contributing to its specific planned additions."); The Protect Our Communities Foundation Comments on the 2020 Wildfire Mitigation Plans Pursuant to Resolution WSD-001 (April 7, 2020), p. 19.

³⁹ D.14-12-025, *Decision Incorporating a Risk-Based Decision-Making Framework Into the Rate Case Plan and Modifying Appendix A of Decision 07-07-004* (December 4, 2014), p. 35 (RAMP and other risk assessment requirements "will provide a transparent process to ensure that the energy utilities are placing the safety of the public, and their employees, as a top priority...").

⁴⁰ D.18-12-014, p. 67 (OP 1) (adopting settlement agreement requiring, among other things, RSEs and transparency); D.19-05-036, p. 28-29; D.19-05-039, p. 31 (OP 12) ("San Diego Gas & Electric's 2020 Wildfire Mitigation Plan shall use the quantitative risk assessment framework adopted in Decision 18-12-014 in the Safety Model Assessment Proceeding to evaluate and compare the cost effectiveness of each of the mitigations that were under consideration in developing the Wildfire Mitigation Plan. The Wildfire Mitigation Plan shall provide the risk spend efficiency results of the quantitative risk analysis and include an explanation of the Multi-Attribution Variable Framework used and how it was constructed.").

⁴¹ Draft Resolution WSD-002, p. 17-19.

⁴² The Protect Our Communities Foundation Comments on Draft Resolution WSD-002 Through WSD-008 (May 27, 2020), p. 8.

⁴³ Pub. Util. Code, §§ 8386, 8386.3.

Moreover, as the Proposed Criteria Document recognizes, the independent evaluators are required to determine whether the IOUs “failed to fund any activities including in” their respective WMPs.⁴⁴ In requiring the independent evaluation to occur only after unconditional approval of WMPs, the statutory scheme contemplates that at the time of the independent evaluation, the utilities should be funding their WMP activities.⁴⁵ Presently, based on WSD’s findings that the 2020 WMPs contained information insufficient to warrant unconditional approval, it would be imprudent for the utilities to proceed with (and fund) certain proposed WMP activities. For example, WSD concluded that SDG&E failed to link its extraordinary spending with risk reduction,⁴⁶ and appropriately recognized that the utilities may be unable to obtain cost recovery if, in subsequent cost approval applications, they provide the same inadequate level of detail provided to date.⁴⁷ In any event, the Legislature requires IEs to determine whether the IOUs are funding effective wildfire risk reduction activities – not whether they are funding expensive and unnecessary capital projects like many of the activities contained in the 2020 WMPs.

VI. SDG&E LACKS AUTHORITY TO PROCEED WITH ITS NON-COMPLIANT VEGETATION MANAGEMENT PRACTICES AND ANY SECTION 8386.3(c)(5) VEGETATION AUDIT WOULD THUS BE INAPPROPRIATE.

Last year, in its decision on SDG&E’s 2019 WMP, the Commission identified numerous deficiencies in SDG&E’s 2019 WMP, including problems with SDG&E’s vegetation management practices.⁴⁸

⁴⁴ Pub. Util. Code, § 8386.3, subd. (c)(2)(B).

⁴⁵ Pub. Util. Code, § 8386.3, subd. (a) (“The Wildfire Safety Division shall approve or deny each wildfire mitigation plan...”), § 8386.3, subd. (c) (“Following approval of a wildfire mitigation plan...”).

⁴⁶ Cover Letter to Draft Resolution WSD-005, p. 8 (“SDG&E is planning to continue to increase its annual spending on WMP activities, increasing by 45% between 2019 actual and 2020, followed by less than 1% annual increases through 2022. This represents a large “jump” from SDG&E’s existing approach, which should be matched by a commensurate decrease in wildfire risk. SDG&E has not provided the data needed to quantitatively show the level of ignition reduction that would result from its planned mitigations, though SDG&E experiences relatively few ignitions, with fewer than 20 ignitions in 2019. SDG&E’s historical wildfire mitigation implementation, few ignitions, and mature situational awareness relative to peers raises the question of where and when SDG&E will find diminishing wildfire risk reduction returns on some investments.”); *see also* Draft Resolution WSD-005, p. 33 (“...We anticipate that increased underground infrastructure will result in cost savings from reduced or eliminated need for vegetation management for underground infrastructure. However, SDG&E’s WMP reports no changes in vegetation management costs over the plan period (i.e. 2020-2022) and lacks detail on how its planned investment in undergrounding initiatives correlates to cost savings in other initiatives, such as vegetation management.”); The Protect Our Communities Foundation Comments on the 2020 Wildfire Mitigation Plans Pursuant to Resolution WSD-001 (April 7, 2020), p. 16.

⁴⁷ Pub. Util. Code, § 8386.4, subd. (b)(1), (2).

⁴⁸ D.19-05-039, *Decision on San Diego Gas & Electric Company’s 2019 Wildfire Mitigation Plan Pursuant to Senate Bill 901* (May 30, 2019), p. 10 (requiring SDG&E to ensure its vegetation

After reviewing SDG&E's 2020 WMP, WSD determined that SDG&E failed to comply with the Commission's express orders.⁴⁹ WSD determined that "SDG&E's WMP lacks details with which to evaluate its vegetation management practices, in particular whether and how its 'enhanced' vegetation management practices provide incremental risk reduction benefits,"⁵⁰ and concluded that "[w]ithout the ability to understand or even observe an incremental benefit of this increased clearance, it will be difficult to determine the effectiveness of" a 25-foot clearance."⁵¹

Based on WSD's conclusion that SDG&E failed to justify its proposed vegetation management practices as previously required by the Commission, the Commission's orders bar SDG&E from proceeding with any enhanced vegetation management.⁵² At minimum, SDG&E must first provide the information required by WSD to address the numerous vegetation management deficiencies in SDG&E's 2020 WMP.⁵³

Thus, SDG&E should not trigger the vegetation management practices audit required by Section 8386.3(c)(5) unless and until WSD first completes its review of the additional information SDG&E is required to provide and determines appropriate next steps. If an IE were to proceed with an audit of the "requirements" in SDG&E's WMP based on information available to date, the IE would be auditing "requirements" in SDG&E's WMP which violate Commission orders.

The wildfire mitigation statutes do not authorize IEs to audit compliance with "requirements" in WMPs that violate Commission orders. Rather, the statutes require that IEs audit only those vegetation management requirements contained in WMPs that have been determined to effectively reduce wildfire risk and which WSD has already verified "complies with all applicable rules, regulations, and standards."⁵⁴

management practices are "supported by scientific evidence or other data showing that such clearance will reduce risk under wildfire conditions").

⁴⁹ Draft Resolution WSD-005, p. 34-35 ("Specifically, SDG&E does not detail proposed guidelines for where such a clearance is both feasible and necessary, or scientific evidence or other data showing that such clearance will reduce wildfire risk, as directed in our decision approving SDG&E's 2019 WMP.").

⁵⁰ Draft Resolution WSD-005, p. 11.

⁵¹ Draft Resolution WSD-005, p. 35.

⁵² D.19-05-039, p. 29-30 (OP 5) (SDG&E's excessive clearance not allowed unless supported by scientific evidence).

⁵³ Draft Resolution WSD-005, p. 31-35; Appendix A, p. A5-A11.

⁵⁴ Pub. Util. Code, § 8386, subd. (d).

VII. CONCLUSION

POC respectfully requests that WSD revise the Proposed Independent Evaluator Listing Criteria to address POC's comments and incorporate POC's recommendations as described herein.

Sincerely,

/s/ Malinda Dickenson

Malinda Dickenson, General Counsel
The Protect Our Communities Foundation
4452 Park Blvd. #202
San Diego, California 92116
Tel: (858) 521-8492
Email: malinda@protectourcommunities.org

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

APPENDIX

SB 247 – Effective January 1, 2020 through present

§ 8386.3. Evaluation and approval of wildfire mitigation plans; Compliance

. . . (c) Following approval of a wildfire mitigation plan, the Wildfire Safety Division shall oversee compliance with the plan consistent with the following:

(1) Three months after the end of an electrical corporation's initial compliance period as established by the Wildfire Safety Division pursuant to subdivision (b) of Section 8386, and annually thereafter, each electrical corporation shall file with the division a report addressing its compliance with the plan during the prior calendar year.

(2) (A) Before March 1, 2021, and before each March 1 thereafter, the Wildfire Safety Division, in consultation with the Department of Forestry and Fire Protection, shall make available a list of qualified independent evaluators with experience in assessing the safe operation of electrical infrastructure.

(B) (i) Each electrical corporation shall engage an independent evaluator listed pursuant to subparagraph (A) to review and assess the electrical corporation's compliance with its plan. The engaged independent evaluator shall consult with, and operate under the direction of, the Wildfire Safety Division of the commission. The independent evaluator shall issue a report on July 1 of each year in which a report required by paragraph (1) is filed. As a part of the independent evaluator's report, the independent evaluator shall determine whether the electrical corporation failed to fund any activities included in its plan.

(ii) The Wildfire Safety Division shall consider the independent evaluator's findings, but the independent evaluator's findings are not binding on the division, except as otherwise specified.

(iii) The independent evaluator's findings shall be used by the Wildfire Safety Division to carry out its obligations under Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

(iv) The independent evaluator's findings shall not apply to events that occurred before the initial plan is approved for the electrical corporation.

(3) The commission shall authorize the electrical corporation to recover in rates the costs of the independent evaluator.

(4) The Wildfire Safety Division shall complete its compliance review within 18 months after the submission of the electrical corporation's compliance report.

(5) (A) An electrical corporation shall notify the Wildfire Safety Division, within one month after it completes a substantial portion of the vegetation management requirements in its wildfire mitigation plan, of the completion. Upon receiving the notice from the electrical corporation, the division shall, consistent with its authority pursuant to paragraph (1) of subdivision (a) of Section 326, promptly audit the work performed by, or on behalf of, the electrical corporation. The audit shall specify any failure of the electrical corporation to fully comply with the vegetation management requirements in the wildfire mitigation plan. The division shall provide the audit to the electrical corporation. The electrical corporation shall have a reasonable time, as determined by the division, to correct and eliminate any deficiency specified in the audit.

(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, to conduct the audit specified in subparagraph (A). The independent evaluator shall consult with, and operate under the direction of, the division.

(C) Within one year of the expiration of the time period for an electrical corporation to correct and eliminate any deficiency identified in the audit, the independent evaluator shall issue a report to the electrical corporation, the Wildfire Safety Division, and the Safety and Enforcement Division of the commission specifically describing any failure of the electrical corporation to substantially comply with the substantial portion of the vegetation management requirements in the electrical corporation's wildfire mitigation plan. The report shall be made publicly available. The division shall include the report in its compliance review prepared pursuant to paragraph (4).

(6) Each electrical corporation shall reimburse the Wildfire Safety Division for its costs to implement this section with respect to that electrical corporation. . . .

AB 1054 – Effective July 12, 2019 through December 31, 2019
§ 8386.3. Evaluation and approval of wildfire mitigation plans; Compliance

...(c) Following approval of a wildfire mitigation plan, the Wildfire Safety Division shall oversee compliance with the plan consistent with the following:

(1) Three months after the end of an electrical corporation's initial compliance period as established by the Wildfire Safety Division pursuant to subdivision (b) of Section 8386, and annually thereafter, each electrical corporation shall file with the division a report addressing its compliance with the plan during the prior calendar year.

(2) (A) Before March 1, 2021, and before each March 1 thereafter, the Wildfire Safety Division, in consultation with the Department of Forestry and Fire Protection, shall make available a list of qualified independent evaluators with experience in assessing the safe operation of electrical infrastructure.

(B) (i) Each electrical corporation shall engage an independent evaluator listed pursuant to subparagraph (A) to review and assess the electrical corporation's compliance with its plan. The engaged independent evaluator shall consult with, and operate under the direction of, the Wildfire Safety Division of the commission. The independent evaluator shall issue a report on July 1 of each year in which a report required by paragraph (1) is filed. As a part of the independent evaluator's report, the independent evaluator shall determine whether the electrical corporation failed to fund any activities included in its plan.

(ii) The Wildfire Safety Division shall consider the independent evaluator's findings, but the independent evaluator's findings are not binding on the division, except as otherwise specified.

(iii) The independent evaluator's findings shall be used by the Wildfire Safety Division to carry out its obligations under Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

(iv) The independent evaluator's findings shall not apply to events that occurred before the initial plan is approved for the electrical corporation.

(3) The commission shall authorize the electrical corporation to recover in rates the costs of the independent evaluator.

(4) The Wildfire Safety Division shall complete its compliance review within 18 months after the submission of the electrical corporation's compliance report...

SB 901 – Effective January 1, 2019 through July 11, 2019

§8386. Electrical corporation to minimize wildfire risk; Wildfire mitigation plan

(a) Each electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment.

(b) Each electrical corporation shall annually prepare and submit a wildfire mitigation plan to the commission for review and approval, according to a schedule established by the commission, which may allow for the staggering of compliance periods for each electrical corporation. The Department of Forestry and Fire Protection shall consult with the commission on the review of each wildfire mitigation plan. Prior to approval, the commission may require modifications of the plans. Following approval, the commission shall oversee compliance with the plans pursuant to subdivision (h). . . .

(h) The commission shall conduct an annual review of each electrical corporation's compliance with its plan as follows:

(1) Three months after the end of an electrical corporation's initial compliance period as established by the commission pursuant to subdivision (b), and annually thereafter, each electrical corporation shall file with the commission a report addressing its compliance with the plan during the prior calendar year.

(2) (A) Before March 1, 2021, and before each March 1 thereafter, the commission, in consultation with the Department of Forestry and Fire Protection, shall make available a list of qualified independent evaluators with experience in assessing the safe operation of electrical infrastructure.

(B) (i) Each electrical corporation shall engage an independent evaluator listed pursuant to subparagraph (A) to review and assess the electrical corporation's compliance with its plan. The engaged independent evaluator shall consult with, and operate under the direction of, the Safety and Enforcement Division of the commission. The independent evaluator shall issue a report on July 1 of each year in which a report required by paragraph (1) is filed. As a part of the independent evaluator's report, the independent evaluator shall determine whether the electrical corporation failed to fund any activities included in its plan.

(ii) The commission shall consider the independent evaluator's findings, but the independent evaluator's findings are not binding on the commission, except as otherwise specified.

(iii) The independent evaluator's findings shall be used by the commission to carry out its obligations under Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

(iv) The independent evaluator's findings shall not apply to events that occurred before the initial plan is approved for the electrical corporation.

(3) The commission shall authorize the electrical corporation to recover in rates the costs of the independent evaluator.

(4) The commission shall complete its compliance review within 18 months after the submission of the electrical corporation's compliance report...

SB 1028 – Effective January 1, 2017 through December 31, 2018

§ 8386. Electrical corporation to minimize wildfire risk; Wildfire mitigation plan

(a) Each electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment. . . .

(e) The commission shall conduct or contract for audits to determine if an electrical corporation is satisfactorily complying with its wildfire mitigation plan.

(f) The commission may contract with an independent third party to evaluate wildfire mitigation plans or to conduct audits and inspections authorized by this section, and may require electrical corporations to reimburse any related expenses.