

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

**SAFETY POLICY DIVISION**

**Resolution SPD-7  
December 15, 2022**

**R E S O L U T I O N**

**RESOLUTION SPD-7. Resolution Adopting Wildfire Mitigation Plan Compliance Process for Electrical Corporations Pursuant to Public Utilities Code § 8389(d)(3).**

This Resolution satisfies the requirements of Public Utilities Code Section 8389(d)(3) related to catastrophic wildfires<sup>1</sup> by adopting, with clarifications, the Office of Energy Infrastructure Safety’s (Energy Safety) proposed processes for overseeing Wildfire Mitigation Plan (WMP) compliance.

**OUTCOME SUMMARY:**

- Adopts Energy Safety’s compliance process to assess an electrical corporation’s compliance with its WMP, with clarifications.

**SAFETY CONSIDERATIONS:**

- Mitigation of catastrophic wildfires in California is among the most important safety challenges the California Public Utilities Commission (Commission)-regulated electrical corporations face. WMPs provide an electrical corporation’s proposed actions to help prevent catastrophic wildfires, so comprehensive WMPs are essential to safety.
- The process for ensuring compliance with WMPs is essential to achieving a reduction in catastrophic wildfires.

**ESTIMATED COST:**

- This Resolution does not address or approve costs.
- Reasonable costs incurred to comply with WMPs are to be addressed in electrical corporation general rate cases or other applications. The WMPs do not approve costs for recovery in rates.

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise noted.

**SUMMARY**

Public Utilities Code § 8389(d)(3), related to catastrophic wildfires, requires the following:

- (d) By December 1, 2020, and annually thereafter, the [C]ommission, after consultation with the division [Energy Safety],<sup>2</sup> shall adopt and approve ... the following:
  - (3) A wildfire mitigation plan compliance process.

Energy Safety's proposals related to § 8389(d)(3) are contained within this Resolution in **Attachment 1, Compliance Process**.

In the proposed Compliance Process, Energy Safety reiterates its existing objectives for assessing compliance. The proposal is reorganized from the prior focus on annual and ongoing compliance processes, and instead discusses five components that Energy Safety considers in assessing WMP compliance (inspections, the electrical corporation's annual report on compliance, the independent evaluator's annual report on compliance, audits, and Energy Safety's annual report on compliance). The proposal has refined the discussion of Energy Safety's Notices of Violation and Notices of Defects. Finally, Energy Safety adds another criterion to prioritize audits and inspections with higher fire risk for WMP implementation.

Pursuant to § 8389(d)(3), this Resolution approves the proposed compliance process with the clarifications discussed herein.

**DISCUSSION**

Last year's adoption of Resolution M-4860 by the Commission in December 2021 updated the compliance process to, in part, align with Energy Safety's new statutory authority and role following the transition from a division within the Commission to a new department under the California Natural Resources Agency.

In considering whether to approve refinements to the WMP compliance process in 2022, and in consultation with Energy Safety, the Commission reviewed Energy Safety's updated compliance process attached herein as Attachment 1 to this Resolution.

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<sup>2</sup> The "division" refers to the Wildfire Safety Division (WSD) which transitioned from the California Public Utilities Commission to the Office of Energy Infrastructure Safety (Energy Safety) at the California Natural Resources Agency (CNRA) on July 1, 2021.

## Energy Safety's Recommendations on Compliance Process

Energy Safety's proposal contains an updated structure, although with similar contents as in last year's approved compliance process. A summary of Energy Safety's proposed updates and changes is below:

- Instead of organizing compliance efforts around two major components (compliance assessments and the consequences of compliance assessments), as in Energy Safety's proposals submitted in 2020 and 2021, the 2022 proposed compliance process is now organized around five compliance components that Energy Safety undertakes to determine whether electrical corporations implement wildfire mitigation initiatives specified in their approved WMPs.<sup>3</sup> The five components are: 1) inspections,<sup>4</sup> 2) electrical corporation's self-assessment of compliance,<sup>5</sup> 3) independent evaluator's assessments on compliance,<sup>6</sup> 4) audits,<sup>7</sup> and 5) Energy Safety's annual report on compliance.<sup>8</sup> Energy Safety states that these track the legal requirements and processes in § 8386.3.<sup>9</sup>
- The proposal retains, but expands on, Energy Safety's two stated compliance objectives of: 1) assessing an electrical corporation's completion of WMP commitments; and 2) tracking outcomes to determine the effectiveness of WMPs.<sup>10</sup>
- In developing its annual report on compliance, Energy Safety will review the totality of all compliance assessments completed and the electrical corporation's and independent evaluator's evaluations of compliance.<sup>11</sup> It will examine whether the electrical corporation implemented the wildfire mitigation initiatives in its approved WMP, whether the electrical corporation met the stated goals and objectives of its plan, and

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<sup>3</sup> Attachment 1, pp. 3-4.

<sup>4</sup> Pub. Util. Code § 326(a)(3).

<sup>5</sup> Pub. Util. Code § 8386.3(c)(1).

<sup>6</sup> Pub. Util. Code § 8386.3(c)(2).

<sup>7</sup> Pub. Util. Code § 8386.3(c)(5).

<sup>8</sup> Pub. Util. Code § 8386.3(c)(4).

<sup>9</sup> Attachment 1, p 3.

<sup>10</sup> Attachment 1, p 2.

<sup>11</sup> Attachment 1, p 6.

the ultimate performance of its infrastructure relative to its wildfire risk.<sup>12</sup>

- The proposal briefly references and explains the timing of its inspection program.<sup>13</sup>
- With regard to Energy Safety’s prioritization of inspections and audits, Energy Safety adds a new specific criterion compared to the compliance process adopted in 2021, to account for “[a]reas where electrical corporation reported data shows increased wildfire, ignition, or PSPS [public safety power shutoff] risk.”<sup>14</sup>
- As with the previous compliance processes, this proposal prescribes timelines for the electrical corporation to correct non-compliances identified in a Notice of Violation or Notice of Defect and acknowledges that Energy Safety may refer Notices of Violations and Notices of Defect to the Commission for consideration for enforcement.<sup>15</sup>

### **Discussion and Clarifications**

The Commission reviewed Energy Safety’s recommendations and is satisfied with Energy Safety’s updates and revisions to the compliance process with the following clarifications.

First, we clarify, as we did in Resolution M-4860, that the Commission retains discretion in determining whether to pursue an enforcement action.<sup>16</sup> And nothing restricts or reduces the Commission from pursuing appropriate enforcement through any enforcement tools or procedures allowed by statute or authorized by the Commission’s Enforcement Policy.<sup>17</sup>

If Energy Safety recommends the Commission pursue an enforcement action pursuant to § 8389(g) based on a final Notice of Violation or final Notice of Deficiency, the Commission will determine whether to pursue enforcement for noncompliance.

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<sup>12</sup> Attachment 1, p. 7.

<sup>13</sup> Attachment 1, p. 4.

<sup>14</sup> Attachment 1, p. 8.

<sup>15</sup> Attachment 1, pp. 9-10; Pub. Util. Code § 8389(g) provides that if Energy Safety “determines an electrical corporation is not in compliance with its approved wildfire mitigation plan, it may recommend that the commission pursue an enforcement action against the electrical corporation for noncompliance with its approved plan.”

<sup>16</sup> Resolution M-4860, p. 8.

<sup>17</sup> See Resolution M-4846.

Consistent with its authority pursuant to Public Utilities Code § 8386.1, the Commission may assess penalties on an electrical corporation that fails to substantially comply with its WMP.

Second, we note that the proposal states that Energy Safety will consider in its determination of compliance whether the electrical corporation “acted in a manner to reduce the risk of catastrophic wildfire,”<sup>18</sup> and that in the annual report on compliance it “also considers the electrical corporation’s stated goals and objectives of its plan, its performance of initiatives essential to reducing wildfire risk and achieving its objectives.”<sup>19</sup> In the key objectives for compliance, Energy Safety also explains that it “uses a dynamic approach for its WMP compliance assessments that considers completion of commitments in the WMP while also factoring in accomplishment of plan objectives and overall quality of work.”<sup>20</sup>

As we recognized in our approval of the compliance process in 2021, we again clarify that we have no concerns with Energy Safety’s use of outcome-based metrics to inform and focus compliance tracking.<sup>21</sup> Energy Safety’s compliance process will verify that electrical corporations implement the actions they have committed to taking in their approved WMPs.<sup>22</sup> Finally, if the Commission were to consider assessing a penalty for substantial noncompliance, it considers a number of statutorily defined factors when determining an appropriate penalty.<sup>23</sup>

Third, we note Energy Safety’s primary focus is on assessing electrical corporations’ WMP compliance through their successful implementation of the WMPs, but that Energy Safety is also focused on tracking outcomes to determine the effectiveness of WMP implementation to reduce wildfire ignition risk and public safety power shutoff risk.<sup>24</sup> For clarity, only the Commission regulates and enforces an electrical corporation’s compliance with the Commission’s public safety power shutoff guidelines and rules, including evaluating whether an electrical corporation implemented public safety power shutoff events in compliance with all guidelines and requirements, whether to review the reasonableness of an electrical corporation’s decision to call a public safety power shutoff event, and whether to pursue enforcement resulting from any such events.

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<sup>18</sup> Attachment 1, p. 4.

<sup>19</sup> Attachment 1, p. 7.

<sup>20</sup> Attachment 1, p. 2.

<sup>21</sup> See Resolution M-4860, p. 11 (noting concerns raised by some electrical corporations regarding the use of outcome-based metrics to assess compliance).

<sup>22</sup> Attachment 1, p. 2.

<sup>23</sup> Pub. Util. Code § 8386.1.

<sup>24</sup> Gov. Code § 15475.1, Attachment 1, p. 2.

Finally, regarding Notices of Violation and Notices of Defect, we note that a hearing, if requested, will be presided over by a designated hearing examiner as set forth in Energy Safety's regulations.<sup>25</sup>

Pursuant to § 8389(d)(3), the Commission adopts Energy Safety's proposed compliance process, in Attachment 1, with the clarifications noted herein.

### **COMMENTS**

Public Utilities Code § 311(g)(1) provides that resolutions must be served on all parties and subject to at least 30 days public review. However, given that this Resolution is issued outside of a formal proceeding, interested stakeholders need not have party status in a Commission proceeding in order to submit comments. Comments are due 20 days from the mailing date of this Resolution. Replies will not be accepted.

This draft Resolution was served on the service list of R.18-10-007, noticed on the Commission's Daily Calendar, and will be placed on the Commission's agenda no earlier than 30 days from today.

### **FINDINGS**

1. Public Utilities Code § 8389(d)(3) requires the Commission to adopt, after consultation with Energy Safety, a compliance process for wildfire mitigation plans. This Resolution with its Attachment meets the foregoing requirement.
2. Public Utilities Code § 326(a)(1) requires Energy Safety to oversee and enforce electrical corporations' compliance with wildfire safety pursuant to Chapter 6 (commencing with § 8385) of Division 4.1 and § 8386.3(c) requires Energy Safety to oversee compliance with the WMPs.
3. Energy Safety's recommendations contained in Attachment 1 regarding the WMP compliance process reasonably addresses the requirements of Public Utilities Code § 8389(d)(3).

### **THEREFORE, IT IS ORDERED THAT:**

1. The Office of Energy Infrastructure Safety's recommendations are hereby adopted, along with the clarifications identified herein, for the Wildfire Mitigation Plan compliance process.

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<sup>25</sup> Cal. Code Regs., tit. 14, § 29104.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, 2022; the following Commissioners voting favorably thereon:

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Rachel Peterson  
Executive Director

Attachment 1:  
Office of Energy Infrastructure Safety Compliance Process