UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 14, 2024

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: Sempra (the "Company")
Incoming letter dated December 29, 2023

Dear Elizabeth A. Ising:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Utility Workers Union of America for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks the board of directors or one of its committees to report to shareholders on the steps the Company has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving its operations, including describing board oversight of Company performance regarding environmental and safety risks and an analysis of the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety incidents during the preceding ten years.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters.

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Mark Brooks
Utility Workers Union of America

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Elizabeth A. Ising
Direct: +1 202.955.8287
Fax: +1 202.530.9569
Elsing@gibsondunn.com

December 29, 2023

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Sempra*
Shareholder Proposal of Utility Workers Union of America
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Sempra (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Shareholders Meeting (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from Utility Workers Union of America (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> RESOLVED: Shareholders of Sempra urge the Board of Directors or its Safety, Sustainability and Technology Committee (the "Committee") to report to shareholders by the 2025 annual meeting, at reasonable cost and excluding proprietary and personal information, on the steps Sempra has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of Sempra and its subsidiaries (collectively, the "Company").
>
> The report should describe the Board's oversight of Company performance regarding environmental and safety risks and include an analysis of the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety incidents during the preceding ten years.

The Supporting Statement asserts that "shareholders would benefit from a report by the Board or the Committee on the steps Sempra has taken to analyze the underlying causes of these sorts of incidents and therefore to help reduce their risks of recurrence." A copy of the Proposal and the Supporting Statement is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

For the reasons discussed below, we respectfully request that the Staff concur with our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations. Implementation of the Proposal would implicate the Company's litigation strategy in and the conduct of ongoing litigation to which the Company and one of its subsidiaries are defendants. Specifically, as explained below, the Proposal relates to the same subject matters and legal issues being litigated in several pending matters concerning the two specific incidents cited in the Supporting Statement as the bases for the Proposal. In addition, by requesting a report "on the steps [the Company] has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of [the Company] and its subsidiaries," the Proposal presupposes that such causes were within the control of the Company. The Company is currently litigating the "underlying causes" of the two incidents cited in the Supporting Statement, including whether the Company and/or its subsidiary was negligent or otherwise culpable. Thus, the Proposal relates to the Company's ordinary business operations because disclosing the information as requested by the Proposal would require the Company to take action that would harm its legal strategy.

BACKGROUND

The Company and one of its subsidiaries presently are defendants in various litigation relating to the two incidents discussed in the Supporting Statement: (1) a leak at the Southern California Gas Company ("SoCalGas") Aliso Canyon natural gas storage facility that began in 2015 (the "Aliso Canyon Incident"), which the Proposal alleges involved "one of the wells at the Aliso Canyon gas storage field owned by [SoCalGas] ruptur[ing] due to corrosion of the well casing from groundwater contact"; and (2) the explosion at a single-family residence in the City of Murrieta in 2019 and resulting injuries (the "Murrieta Incident," and, together with the Aliso Canyon Incident, the "Cited Incidents"), which the Proposal alleges involved an explosion after a "fail[ure] to accurately determine the concentration and extent of migration of gas escaping from a 2019 pipeline rupture."

SoCalGas and the Company were named in numerous lawsuits following the Aliso Canyon Incident, including actions filed by thousands of individual plaintiffs. In September 2021, SoCalGas and the Company entered into an agreement (in which, for many of the same reasons outlined in this letter, SoCalGas and the Company denied liability or wrongdoing) to resolve those plaintiffs' complaints, and most of them chose to participate in the settlement. The plaintiffs who did not participate in the settlement continue to pursue their claims. Further, additional lawsuits on behalf of new plaintiffs have been filed, and together with the plaintiffs who chose not to participate in the settlement, constitute hundreds of remaining claims against SoCalGas and the Company related to the Aliso Canyon Incident (the "Aliso Canyon Litigation"). The Aliso Canyon Litigation is coordinated before a single court in the Los Angeles Superior Court for pretrial management under a consolidated master complaint filed in November 2017. *Judicial Council Coordination Proceeding*, No. JCCP 4861, *S. Cal. Gas Leak Cases*, filed Nov. 20, 2017 (Super. Ct., County of Los Angeles). The Aliso Canyon Litigation consolidated master complaint asserts various causes of action against SoCalGas and the Company, including negligence, negligence per se, strict liability, negligent and intentional infliction of emotional distress, fraudulent concealment, private and public nuisance, trespass, inverse condemnation, loss of consortium and wrongful death. *Id.*

SoCalGas and the Company also are involved in an insurance coverage litigation arising from the Aliso Canyon Incident, *Sempra Energy et. al. v. Assoc. Elec. & Gas Ins. Svcs. Ltd., et. al.*, Case No. 2:19-CV-03340-SSS-JPRx, filed March 22, 2019 (C.D. Cal.), in which they are seeking indemnity from one of their insurers for the settlement with individual plaintiffs described above (the "Aliso Insurance Litigation"). Whether the insurer is obligated for such indemnity turns, in large part, on what are determined to be the "underlying causes" of the Aliso Canyon Incident and the nature and origin of the damages alleged by the private plaintiffs in the Aliso Canyon Litigation.

In addition, SoCalGas has been sued in three separate cases related to the Murrieta Incident:

- *Alexis Haaland, et al., v. S. Cal. Gas Co., et al.*, No. 21STCV01556, filed Jan. 14, 2021 (Super. Ct., County of Los Angeles) (in which the plaintiffs claim negligence and loss of consortium);

- *Anthony Borel v. S. Cal. Gas Co., et al.*, No. RIC2002687, filed July 17, 2020 (Super. Ct., County of Riverside) (in which the plaintiff asserts various negligence-related claims); and

- *State Farm Gen. Ins. Co. v. Hosopo Corp., et al.*, No. MCC2001769, filed Sept. 8, 2020 (Super. Ct., County of Riverside) (in which the plaintiff alleges negligence, trespass to land, private nuisance and inverse condemnation)

(collectively, the "Murrieta Litigation," and, together with the Aliso Canyon Litigation, the "Cited Litigation").

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations.

The Proposal requests a report "on the steps [the Company] has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of [the Company] and its subsidiaries," and its Supporting Statement urges support for the Proposal by referencing the Cited Incidents and asserting that a report "on the steps [the Company] has taken to analyze the underlying causes of these sorts of incidents . . . therefore [would] help reduce their risks of recurrence." As detailed below, the Proposal relates to the same subject matters and legal issues (specifically, "the underlying causes of these sorts of incidents") being litigated by the Company and its subsidiary in the Cited Litigation and the Aliso Insurance Litigation. Moreover, in assuming that the Company could "take[]" "steps" to reduce the occurrence of events like the Cited Incidents, the Proposal presupposes that such causes were within the Company's control. However, the "underlying causes" of each incident, including whether such causes were within the Company's control, and to the extent such causes were within the Company's control, whether and to what extent the Company and/or its subsidiary was culpable for alleged harms arising from each incident, are the subject of ongoing litigation. Thus, disclosing a report of any internal Company analysis of the "underlying causes" of the Cited Incidents, as requested by the Proposal,

would require the Company to take action that would harm its legal strategy and defense in pending litigation. For these reasons, the Proposal is excludable under Rule 14a-8(i)(7).

A. Background On Rule 14a-8(i)(7)

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, rather the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). The Staff has consistently concurred with the exclusion of shareholder proposals that implicate and seek to oversee a company's ordinary business operations, including when the subject matter of the proposal is the same as or similar to that which is at the heart of litigation in which a company is then involved.

In addition, a shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Release No. 20091 (Aug. 16, 1983). The Staff, likewise, has indicated that "[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under rule 14a-8(i)(7)." *Johnson Controls, Inc.* (avail. Oct. 26, 1999).

B. The Proposal Is Excludable Because It Relates To The Company's Litigation Strategy And The Conduct of Litigation To Which The Company Is A Party

We believe the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal implicates the Company's litigation strategy in multiple pending lawsuits and therefore seeks to interfere with the Company's ordinary business operations.

Management and the Board have a duty to act in the best interests of the Company and its shareholders, including defending the Company's interests against litigation, which it is committed to doing in each of these cases. As discussed below, the matters being litigated in the Cited Litigation and the Aliso Insurance Litigation are the very subject matters cited as the bases for the Proposal. In particular, the plaintiffs in the Cited Litigation seek to prove that the incidents cited as the bases for the Proposal were caused by the negligence of the Company and/or its subsidiary. The outcome of the pending cases hinges on, and necessarily requires, "analysis of the *underlying causes* of" (emphasis added) the incidents the Proposal identifies as "significant environmental incidents endangering public safety or life-threatening safety incidents." Creating and publishing a report of any internal Company analysis of the "underlying causes" of the Cited Incidents would implicate the Company's legal strategy and defense in pending litigation. The Company is actively litigating these lawsuits, including the "underlying causes" of the Cited Incidents, and may be subject to significant liability if the cases were to be decided against the Company or SoCalGas. Moreover, the Proposal calls for the Company to discuss "the steps [the Company] has taken" to reduce the occurrence of events like the Cited Incidents. As a result, the Proposal presupposes that (i) the Company could "take[]" "steps" to reduce the occurrence of events like the Cited Incidents, and (ii) the "underlying causes" of the Cited Incidents were within the Company's control, both of which are subject to pending litigation.

The Staff regularly concurs with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that implicate and seek to interfere with a company's ordinary business operations, including when the subject matter of the proposal is the same as or similar to the subject matter of litigation in which a company is then involved. *See, e.g.*, *Chevron Corp. (Sisters of St. Francis of Philadelphia et al.)* (avail. Mar. 30, 2021) ("Chevron 2021") (concurring with the exclusion of a proposal requesting a "third-party report . . . analyzing how [the company's] policies, practices, and the impacts of its business, perpetuate racial injustice and inflict harm on communities of color in the United States," while the company was involved in numerous pending lawsuits seeking to hold the company liable for its alleged role in climate change and the alleged resulting injuries, including the alleged harmful impacts of climate change on communities of color); *Walmart Inc.* (avail. Apr. 13, 2018) (concurring with the exclusion of a shareholder proposal requesting a report on risks associated with emerging public policies on the gender pay gap while the company was involved in numerous pending lawsuits regarding gender-based pay discrimination and related claims before the U.S. Equal Employment Opportunity Commission, as "affect[ing] the conduct of ongoing litigation relating to the subject matter of the [p]roposal to which the [c]ompany is a party"); *General Electric Co.* (avail. Feb. 3, 2016) (concurring with the exclusion of a shareholder proposal requesting a report assessing all potential sources of liability related to PCB discharges in the Hudson River while the company was defending multiple pending lawsuits

related to its alleged past release of chemicals into the Hudson River); *Chevron Corp.* (avail. Mar. 19, 2013) (concurring with the exclusion of a shareholder proposal requesting that the company review its "legal initiatives against investors" because "[p]roposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable"); *Johnson & Johnson* (avail. Feb. 14, 2012) (concurring with the exclusion of a shareholder proposal where implementation would have required the company to report on any new initiatives instituted by management to address the health and social welfare concerns of people harmed by LEVAQUIN®, thereby taking a position contrary to the company's litigation strategy); *Reynolds American Inc.* (avail. Mar. 7, 2007) (concurring with the exclusion of a shareholder proposal requesting that the company provide information on the health hazards of secondhand smoke, including legal options available to minors to ensure their environments are smoke free, while the company was defending several cases alleging injury as a result of exposure to secondhand smoke and a principal issue concerned the health hazards of secondhand smoke); *AT&T Inc.* (avail. Feb. 9, 2007) (concurring with the exclusion of a shareholder proposal requesting that the company issue a report containing specified information regarding the alleged disclosure of customer records to governmental agencies, while the company was defending multiple pending lawsuits alleging unlawful acts related to such disclosures); *Reynolds American Inc.* (avail. Feb. 10, 2006) (concurring with the exclusion of a shareholder proposal requesting that the company notify African Americans of the unique health hazards to them associated with smoking menthol cigarettes, which would be inconsistent with the company's pending litigation position of denying such health hazards); *Exxon Mobil Corp.* (avail. Mar. 21, 2000) (concurring with the exclusion of a shareholder proposal requesting immediate payment of settlements associated with the Exxon Valdez oil spill as relating to litigation strategy); *Philip Morris Companies Inc.* (avail. Feb. 4, 1997) (concurring with the exclusion of a shareholder proposal where the Staff noted that although it "has taken the position that proposals directed at the manufacture and distribution of tobacco-related products by companies involved in making such products raise issues of significance that do not constitute matters of ordinary business," the proposal "primarily addresses the litigation strategy of the [c]ompany, which is viewed as inherently the ordinary business of management to direct").

Similar to the precedents described above, the Proposal involves the same subject matters as, and necessarily implicates the Company's litigation strategy in, the Cited Litigation. Specifically, at the same time the Company is defending these lawsuits, the Proposal requests "an analysis of *the underlying causes*" (emphasis added) of these incidents. Each of these lawsuits asserts causes of action premised on allegations (which the Company disputes) that would be directly implicated by the report requested in the Proposal, as evidenced by the complaints filed in each lawsuit:

- *S. Cal. Gas Leak Cases*, No. JCCP4861, Third Am. Consol. Compl. ¶ 139 ("*As a direct and legal result* of the storage and distribution of natural gas and other toxic substances *by Defendants* in aged, deteriorated and unmaintained pipes and storage facilities . . . Defendants SoCalGas and Sempra, and each of them, *caused noxious and toxic fumes, gases and chemicals to escape* from the Facility . . . *causing harm* to Plaintiffs as described herein.") (emphasis added);

- *Haaland*, No. 21STCV01556, Compl. ¶ 30 ("[SoCalGas] should have immediately squeezed off the gas at the main in the street to stop feeding the ruptured Haaland line, and *said failure directly caused the explosion* . . . . ," and "[SoCalGas] . . . failed to establish and maintain the required evacuation zone around and inside the Haaland home so no persons were in proximity to or imminent danger of the inherent risk of explosion due to the gas leak.") (emphasis added);

- *Borel*, No. RIC2002687, Compl. ¶ 18 ("[SoCalGas] breached its duty to BOREL when its employees failed to evacuate BOREL to a distance away from the gas leak . . . . ," and "[t]he breach of this duty [by Defendants] *caused BOREL serious bodily injuries* when the leaking gas was ignited *and caused an explosion* . . . .") (emphasis added); and

- *State Farm Gen. Ins. Co.*, No. MCC2001769, First Am. Compl. ¶ 40 ("[SoCalGas] . . . failed to control and maintain the leak, *resulting in a gas explosion* . . . . ," and "Plaintiff . . . allege[s] that the damage from the explosion was *due to unsafe conditions* related to the gas lines . . . controlled and/or investigated, by [SoCalGas].") (emphasis added).

Each of these lawsuits is ongoing, and, to date, there has been no adverse judgment against the Company in any of these matters. The "underlying causes" of the Cited Incidents are at the very heart of the allegations in the pending litigation. As a result, the Proposal would obligate the Company to in effect reveal key aspects of its legal strategy in the Cited Litigation, and thereby prejudice the Company's ability to defend these lawsuits. Thus, the Proposal would require the Company to take action (in the form of public disclosures) that would harm its legal strategy in pending litigation by hampering its defense against the plaintiffs' allegations.

The Proposal delves even further into the Company's litigation strategy by assuming that there are "steps" the Company could have "taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of [the Company] and its subsidiaries." In this regard, the Proposal presupposes that such causes were within the control of the Company. A report as requested on "the steps [the Company]

has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving [its] operations," including a description of "the Board's oversight of Company performance regarding environmental and safety risks," would require disclosure of any internal Company assessment of its risk mitigation and oversight mechanisms. Regardless of its conclusions, such a report could be construed as an implied admission relating to the functioning of those programs and processes and whether they met the standard of care. A report on these matters would contravene the Company's litigation position by prematurely disclosing the Company's litigation strategy to opposing parties in the pending litigation and undermining the Company's defense (or, in the case of the insurance coverage action, prosecution) on the merits.

The Proposal would require the Company to take positions that would harm the Company's litigation strategy in defending itself against each plaintiff's claims that the Company and SoCalGas are legally culpable for harms arising from the incidents, as evidenced by the allegations in the Cited Litigation:

- *S. Cal. Gas Leak Cases*, Third Am. Consol. Compl. ¶ 77 ("Defendants . . . negligently, carelessly, recklessly, and/or unlawfully used, owned, operated, managed, supervised, maintained, repaired, and/or controlled the Facility . . . .");

- *Haaland*, Compl. ¶ 30 ("Defendants, and each of them, were negligent, careless, and reckless . . . .");

- *Borel*, Compl. ¶ 30 ("Defendants . . . were negligent in the hiring, retention, training, and supervision of Alex Salzar and Wade Kilpatrick and DOE EMPLOYEES . . . .");

- *State Farm Gen. Ins. Co.*, First Am. Compl. ¶ 14 ("Defendants . . . were negligent in their acts and/or omissions on the date of the incident when they installed, constructed, connected, repaired, worked on, inspected, operated, and/or investigated, the solar panels and gas lines and appurtenances at the subject property . . . .").

This is because the Proposal presupposes that the Company could "take[] [steps] to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of [the Company] and its subsidiaries." That presupposition forms the basis for the plaintiffs' various claims alleging that the Company failed to exercise reasonable care, and so was culpable for harms allegedly arising from the incidents. The creation and disclosure of the requested report effectively endorsing the Proposal's presupposition that the Company could have but failed to take steps to avoid the "underlying causes" of the Cited Incidents

would harm the Company's litigation strategy in these cases. Moreover, the Proposal requests information about "*any* significant environmental incidents endangering public safety or life-threatening safety incidents *during the preceding ten years*" (emphasis added), which, following the Company's assessment, could include other incidents that by their very nature could be the subject of pending negligence or other similar claims. By assuming the existence of a necessary aspect of these claims and requiring related disclosure, the Proposal requests a report that could advantage the plaintiffs in the Cited Litigation.

Thus, disclosing the information requested by the Proposal would require the Company to take action that would harm its legal strategy and defense in pending litigation. In this regard, the Proposal is like the shareholder proposals in *Walmart Inc.* and *Johnson & Johnson*, for example. In *Walmart Inc.*, the Staff concurred with the exclusion of a proposal that made assumptions regarding the presence of gender-based pay discrimination, which was the very issue being litigated by the Company. Similarly, in *Johnson & Johnson*, the Staff concurred with the exclusion of a proposal that asked the company to report on any new initiatives instituted by management to address the health and social welfare concerns of people harmed by LEVAQUIN®, thereby requiring the company to take a position contrary to its litigation strategy. As in those precedents, it is not proper for Rule 14a-8 to be used to require the Company to commission a report designed to increase the likelihood that it will be found liable in pending litigation.

The Proposal is readily distinguishable from instances where the Staff has not concurred with the exclusion of a shareholder proposal despite related litigation. For example, in *The Dow Chemical Co.* (avail. Feb. 11, 2004), the Staff did not concur with the exclusion of a proposal requesting a report describing any new initiatives instituted by management to address the health, environmental and social concerns of survivors of the incident at the Bhopal Facility in India. In *Dow*, the information requested did not implicate the subject matter of then-pending litigation involving the company. Dow was then involved as a defendant in a lawsuit alleging that the Bhopal Facility caused pollution that resulted in health problems. The claims at issue in that case concerned a leak of toxic gas at a facility owned by Union Carbide Corporation, which Dow subsequently acquired. In that instance, Union Carbide Corporation publicly accepted moral responsibility for the tragedy. Thus, the proposal at issue in *Dow* did not concern the issue being litigated and, thus, did not implicate the company's litigation strategy. Unlike the *Dow* proposal, and similar to the proposals in *Johnson & Johnson* and the other precedents cited above, the Proposal at issue directly concerns the subject matters and legal issues in the pending litigation. As discussed above, the Company is involved in pending litigation in which a central issue is whether the Company and/or SoCalGas were negligent or otherwise culpable. Therefore, the Proposal, which would require the Company to report on the "underlying causes" of the incidents and the presumed relationship between the incidents and the proper functioning of the Company's

risk and oversight mechanisms, concerns the same subject matters and principal legal issues in pending litigation involving the Company. Furthermore, at the time Dow submitted its no-action request, oral argument in the single pending lawsuit remaining had already occurred, and the court's ruling was pending. In the present case, however, similar to *Johnson & Johnson* and as indicated above, the Company is actively litigating the causes of the Cited Incidents in multiple lawsuits, including litigation in which the Company is still developing its litigation strategy and the bases for its defense (or, in the case of the insurance coverage action, prosecution).

Moreover, the Proposal does not resolve this problem simply by stating that "proprietary and personal information" should be excluded from the requested report. This carve-out is insufficient because the Proposal would nevertheless require the Company to generate a report that involves the very subject matters and legal issues being litigated in the Cited Litigation and the Aliso Insurance Litigation, and by its nature, would interfere with the Company's legal strategy and defense. Thus, similar to the precedents above, the Proposal implicates the Company's litigation strategy such that it is excludable under Rule 14a-8(i)(7).

Further, we note that a proposal relating to ordinary business matters such as ongoing litigation is excludable under Rule 14a-8(i)(7) regardless of whether it touches upon a significant policy issue. Although the Commission has stated in the 1998 Release that "proposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable," the Staff has expressed the view that proposals relating to both ordinary business matters and significant social policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7). As an example, although significant discrimination matters and climate change are often considered to be significant policy issues, the Staff concurred with the exclusion of a proposal that requested a third-party report analyzing how the company's policies, practices and operations "perpetuate racial injustice and inflict harm on communities of color," because the subject matter of the report was the same as the subject matter at the heart of pending litigation to which the company was party. *See Chevron 2021*; *see also Philip Morris Companies Inc.* (avail. Feb. 4, 1997) (noting that although the Staff "has taken the position that proposals directed at the manufacture and distribution of tobacco-related products by companies involved in making such products raise issues of significance that do not constitute matters of ordinary business," the company could exclude a proposal that "primarily addresses the litigation strategy of the [c]ompany, which is viewed as inherently the ordinary business of management to direct"). Here, the Proposal seeks a report from the Company on "the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety incidents," and the only incidents its Supporting Statement cites as examples are the subject matters of pending litigation. Thus,

the Proposal is calculated to interfere with the Company's litigation strategy, which is an ordinary business matter, and the Proposal is excludable under Rule 14a-8(i)(7).

Fundamentally, the Proposal seeks to substitute the judgment of shareholders for that of Company management by requiring the Company to take action that undermines its litigation strategy and would harm its legal defenses (or, in the case of the insurance coverage action, prosecution) in multiple pending lawsuits. Thus, implementing the Proposal would intrude upon Company management's exercise of its day-to-day business judgment with respect to pending litigation in the ordinary course of its business operations. Accordingly, and consistent with long-standing precedent, we believe that the Proposal may be properly excluded from the Company's 2024 Proxy Materials under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or James M. Spira, Associate General Counsel for the Company, at (619) 699-5120.

Sincerely,

Elizabeth A. Ising

Enclosures
cc: April R. Robinson, Sempra
Lisa H. Abbot, Sempra
James M. Spira, Sempra
Mark Brooks, Utility Workers Union of America
James Slevin, Utility Workers Union of America

EXHIBIT A

RESOLVED: Shareholders of Sempra urge the Board of Directors or its Safety, Sustainability and Technology Committee (the "Committee") to report to shareholders by the 2025 annual meeting, at reasonable cost and excluding proprietary and personal information, on the steps Sempra has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of Sempra and its subsidiaries (collectively, the "Company").

The report should describe the Board's oversight of Company performance regarding environmental and safety risks and include an analysis of the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety incidents during the preceding ten years.

Supporting Statement

Safe operation of Sempra's utilities is of great importance to shareholders, and yet the Company has experienced catastrophic incidents in recent years endangering public safety and resulting in substantial damages and regulatory penalties.

In October 2015, for example, one of the wells at the Aliso Canyon gas storage field owned by Southern California Gas ("SoCalGas") ruptured due to corrosion of the well casing from groundwater contact. The ensuing leak emitted 109,000 metric tons of methane over four months and caused nearly 20,000 people to evacuate from nearby homes until the Company was finally able to stop the leak.

Sempra estimates this leak has cost at least $3.5 billion as of 12/31/2022. Some of the legal and financial consequences so far include:

- A $1.8 billion settlement by Sempra resolving 390 lawsuits involving 36,000 plaintiffs;
- Over $200 million in penalties and other remedies in settlements with state and local regulators; and
- A SoCalGas criminal misdemeanor no-contest plea for failing to promptly report the leak to local authorities.

In 2019, an independent root cause analysis ordered by the California Public Utilities Commission ("CPUC") concluded that SoCalGas never conducted failure analyses for over 60 previous casing leaks at Aliso Canyon wells dating back to the 1970's. The report also found the 2015 leak could have been successfully stopped as early as three weeks or even one day after the initial leak if SoCalGas had followed best industry practices for gas leak top-kill operations.

The Board of Directors has not issued any report to shareholders confirming whether Sempra concurs with this independent analysis, or alternatively whether the Company has performed or plans to perform its own analysis of underlying causes of the Aliso Canyon leak.

Regulators have also cited the Company for significant safety violations.

For example, the CPUC found in 2021 that SoCalGas failed to accurately determine the concentration and extent of migration of gas escaping from a 2019 pipeline rupture caused by a homeowner's contractor. The ensuing explosion caused one employee death, injuries to firefighters and the general public, and widespread property damage.

We believe shareholders would benefit from a report by the Board or the Committee on the steps Sempra has taken to analyze the underlying causes of these sorts of incidents and therefore to help reduce their risks of recurrence. We urge shareholders to vote FOR this proposal.

UTILITY WORKERS UNION OF AMERICA

JAMES SLEVIN
PRESIDENT

MICHAEL COLEMAN
SECRETARY-TREASURER

PATRICK M. DILLON
EXECUTIVE VICE PRESIDENT

CRAIG PINKHAM
VICE PRESIDENT

Affiliated with A.F.L.-C.I.O.

1300 L STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20005
202-899-2851
202-899-2852 FAX
www.uwua.net

January 8, 2024

Via Electronic Mail & UPS Express

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F. Street, N.E.
Washington, DC 20549

Re: Sempra
Shareholder Proposal of Utility Workers Union of America
Reference No. 472726

Dear Sir or Madam:

I am writing on behalf of Utility Workers Union of America ("UWUA") – the shareholder proponent in this matter – in response to the no-action request submitted by Sempra ("Sempra" or the "Company") on December 29, 2023.

In its request, Sempra argues that our Proposal may be omitted based solely on a claim that the Proposal relates to the Company's "ordinary business operations" under Rule 14a-8(i)(7). The Company makes this claim, notwithstanding the fact – which Sempra does not dispute – that the Proposal clearly relates to significant social policy issues that transcend the Company's ordinary business operations, thus making the Proposal particularly appropriate for a shareholder vote.

In particular, the Proposal focuses on the substantial social policy issues involving significant environmental hazards and life-threatening safety incidents, and the broad societal impacts and risks these pose to the public at large as well as to investors. These are precisely the sorts of significant social policy issues that the Commission and Staff have previously determined to transcend a company's ordinary business and thus to be non-excludable under Rule 14a-8(i)(7).

Sempra's no-action request ignores the Proposal's focus on these significant social policy issues, and instead erroneously – and rather wildly – claims the Proposal is "calculated to interfere with the Company's litigation strategy." As summarized below, the Company's arguments are sorely misplaced.

A. Sempra mischaracterizes our Proposal, which clearly relates to significant social policy issues that transcend the Company's ordinary business operations.

Sempra is a major energy and utility holding corporation. The Proposal requests the Company's Board of Directors to report to shareholders "on the steps Sempra has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents" involving Sempra or its subsidiaries.[1]

More specifically, the Proposal asks the directors "to describe the Board's oversight of Company performance regarding environmental and safety risks," and to "include an analysis of the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety incidents during the preceding ten years."

The Proposal is advisory only, and more importantly is designed to afford the directors maximum discretion in all decisions concerning how they might prepare the requested report.[2]

In addition, the Proposal expressly excludes from the requested report any "proprietary and personal information." The Proposal therefore *by its own terms* excludes the directors from any obligation or even suggestion that they publicly report the sort of confidential information Sempra speculates might undermine its positions or strategies in any pending or threatened litigation.[3]

The Proposal's supporting statement summarizes two recent environmental and safety accidents involving Sempra, merely as examples of the sorts of significant environmental or safety incidents that we suggest the directors should analyze in any report. We offer one of these – the Aliso Canyon disaster – as an example of a "significant environmental incident endangering public safety," as referenced in the Proposal. The other – the Murrieta gas pipeline explosion – provides an example of a "life-threatening safety incident."

---

[1] The entire text of our proposed resolution provides:

"RESOLVED: Sempra shareholders urge the Board of Directors or its Safety, Sustainability and Technology Committee (the "Committee") to report to shareholders by the 2025 annual meeting, at reasonable cost and excluding proprietary and personal information, on the steps Sempra has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of Sempra and its subsidiaries (collectively, the "Company").

"The report should describe the Board's oversight of Company performance regarding environmental and safety risks and include an analysis of the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety events during the preceding ten years."

[2] The Proposal therefore could not be excluded as "micromanaging" the Company under the second line of analysis under the ordinary business exclusion, and Sempra makes no such claim.

[3] Although UWUA believes this is unnecessary, we would be pleased to revise the Proposal to clarify this point by excluding any "confidential, proprietary, or personal information," or to make any other clarifying revisions recommended by Staff.

Sempra does not challenge the accuracy of any fact recited in our supporting statement.[4] This in itself demonstrates that the subject of our Proposal squarely focuses on significant social policy issues that transcend the Company's ordinary business operations.

In the Aliso Canyon disaster, for example, a ruptured well at a Sempra gas storage field spewed 109,000 metric tons of methane into the atmosphere over four months, causing 20,000 people to evacuate from nearby homes and the temporary relocation of two schools. The Aliso Canyon incident was easily one of the largest – if not *the* largest – methane gas leaks in U.S. history and occurred at a time when climate change issues are a paramount social policy issue in the nation.

The ensuing disaster resulted in extensive emergency, environmental, and public health responses by numerous federal, state, and local government agencies – not to mention a hurricane of regulatory and legislative actions, especially in Sempra's home state of California.[5] The result has been substantial damage to the corporate reputations of Sempra and its subsidiary SoCalGas, at a time when companies operating in the energy and utility industries already face intense public scrutiny over environmental concerns.[6]

Staff has recognized on many occasions that environmental concerns raise significant policy issues that transcend a company's ordinary business operations – especially in recent years with respect to climate change matters.[7] Likewise, concerns over company performance on safety matters that might endanger members of the public, employees, or first responder personnel – as in the Murrieta gas pipeline explosion – also raise significant social policy issues.

---

[4] Sempra perhaps makes a half-hearted attempt to suggest that we merely "allege" that the Aliso Canyon and Murrieta incidents occurred as summarized in the Proposal's supporting statement, but never disputes the accuracy of our summary. Nor could the Company do so, since the supporting statement is carefully derived from Sempra's own SEC filings and official government orders and findings, most notably from the California Public Utilities Commission.

If Sempra could challenge any part of the supporting statement, we assume it would have requested a no-action determination under Rule 14a-8(i)(3) on the basis the Proposal is "false and misleading." Since Sempra makes no effort to do so, we will not belabor our response with a discussion of the underlying source material. Sempra of course bears the burden of demonstrating that the Proposal may be excluded, and Staff "will not consider any basis for exclusion that is not advanced by the company." Staff Legal Bulletin No. 14, ¶ B.5. (July 13, 2001). *See also* Rule 14a-8(q).

[5] Sempra has summarized many of these in its SEC filings. *See, e.g.*, Sempra Energy Form 10K, filed Feb. 18, 2022, pages 47-48, 81-82 & F-133–F-136.

[6] Since Sempra does not challenge the fact that our Proposal focuses on significant social policy issues, we will also not belabor this response with citations to the plethora of news media and other public criticisms that ensued in the wake of the Aliso Canyon disaster, resulting in significant corporate reputational damage to the Company. These are available upon request, however.

[7] *See, e.g., Duke Energy Corporation* (available March 12, 2019); *Franklin Resources, Inc.* (available Oct. 2, 2015), and *The PNC Financial Services Group* (Feb. 13, 2013).

Indeed, the Commission's seminal 1976 release articulating the social policy exception to the ordinary business exclusion expressly held this to be the case. The 1976 Release concluded that shareholder proposals relating to "the economic and safety considerations" of a utility company nuclear power plant and other proposals of a similar nature "will in the future be considered *beyond the realm of an issuer's ordinary business operations*. . . ."[8]

B. Since the Proposal relates to significant social policy issues, it is "beyond the realm" of the Company's ordinary business operations and therefore may not be excluded under Rule 14a-8(i)(7).

Sempra's no-action request ignores long-standing Commission precedent and Staff guidance holding that shareholder proposals raising significant social policy issues may not be excluded as "ordinary business" under Rule 14a-8(i)(7). Indeed, as noted above, the Commission definitively stated in its 1976 Release that proposals raising "significant policy, economic or other implications" are "*beyond the realm* of an issuer's ordinary business operations" under the Rule.

The Commission reiterated this principle in Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission emphasized that shareholder proposals that relate to a company's ordinary business concerns, but which raise significant social policy issues nevertheless may not be excluded under the Rule:

> "[P]roposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues . . . *generally would not be considered to be excludable*, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote."[9]

Staff Legal Bulletins have also stressed this principle. In Staff Legal Bulletin No. 14H, for example, the Division noted:

> "[A] proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the 'nitty-gritty of its core business.' Therefore, proposals that focus on a significant policy issue transcend a company's ordinary business operations and *are not excludable under Rule 14a-8(i)(7).*"[10]

---

[8] Exchange Act Release No. 12999, 41 Fed. Reg. 52994, 52998 (Nov. 22, 1976) (emphasis supplied) (the "1976 Release").

[9] Exchange Act Release No. 40018 (emphasis supplied). Notably, former Division Director Renee Jones observed in a speech in March 2022 that the "1998 release represents the most recent statement from the Commission on the ordinary business exception and the social policy exception, and as such, it continues to guide Division action." *See* "The Shareholder Proposal Rule: A Cornerstone of Corporate Democracy," Renee Jones (Washington, D.C., March 8, 2022) (available at *www.sec.gov/news/speech/jones-cii-2022-03-08*).

[10] Staff Legal Bulletin No. 14H (Oct. 22, 2015) (emphasis supplied).

More recently, the Division emphasized in Staff Legal Bulletin No. 14L that the exception to the ordinary business exclusion for "proposals that raise significant social policy issues . . . is *essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement.*"[11]

C. Sempra's claims that the Proposal may be excluded as interfering with the Company's litigation strategies are unfounded.

Ignoring these principles, Sempra seeks to prevent its shareholders from having an opportunity to vote on our Proposal by claiming that it would undermine if not sabotage management's strategies in pending or seemingly even hypothetical future litigation. In somewhat overwrought terms, the Company variously claims that the Proposal "seeks to interfere" with Sempra's litigation strategies; would "hamper its defense" and "reveal key aspects of its legal strategy" to opposing parties; and even that the Proposal "is calculated to interfere with the Company's litigation strategy." These claims are mistaken.

As an initial matter, we note that the Proposal in no way asks the Board of Directors to publish any report that would assess the Company's potential liability, fault, or supposed negligence in any environmental or safety accidents involving Sempra. Nor does the Proposal ask the directors to reveal anything about Sempra's litigation strategies or defenses.

In addition, the Proposal does not "pre-suppose" that the underlying causes of any such incidents were within the control of Sempra or caused by Company negligence, as Sempra erroneously claims. The Proposal is entirely neutral in this respect: as far as the Proposal is concerned, any independent review by the directors might well conclude that the underlying causes of any such incidents were the result of factors completely outside the Company's control.

It would be preposterous, however, for Sempra to suggest that its business does not pose significant environmental and safety-related risks. Indeed, the risk factors Sempra routinely discloses in its SEC filings are replete with Company acknowledgements of these risks.

What the Proposal seeks is merely for the directors to describe for shareholders the board's oversight of Company performance regarding these risks, including an analysis of the underlying causes of any significant, recent safety and environmental incidents. The purpose of this review would be entirely forward-looking: to help reduce the likelihood of recurrence of such events, whether any underlying causes identified by the directors might have been within the Company's control or outside its control. This is surely a matter of important shareholder concern.

Certainly, an independent review by the Board of Directors of the underlying causes of a significant environmental or safety-related incident *might* reveal *to the directors* that the underlying causes were within Sempra's control – but this would not be the result of our Proposal. Instead, this

[11] Staff Legal Bulletin No. 14L (Nov. 3, 2021) (emphasis supplied).

would merely represent the directors' exercise of their proper oversight responsibilities. Moreover, nothing in our Proposal would require the directors to publicly report any such conclusions in a way that could harm the Company's strategies in litigation.

As noted above, the Proposal is designed to afford the directors maximum discretion in crafting a good faith response to the requested report to shareholders. The directors would have the discretion under our Proposal not to include in their report the sorts of disclosures conjectured by Sempra. Indeed, the Proposal by its terms *excludes* from the requested report any information that might be considered confidential or proprietary.

In our view, assurance to shareholders that the Board of Directors will exercise its responsibility to provide oversight of Sempra's performance on environmental and safety matters – as envisioned by the Proposal – would go a long way *by itself* to advance the significant social policy concerns raised by our Proposal. The report to shareholders requested by our Proposal would *also* help promote these important social policy concerns, but nothing in the Proposal would require the directors to publish any information that might undermine Sempra's litigation strategies.

In short, the speculations posited by Sempra about theoretical disclosures the directors might make in the report requested by our Proposal do not support management's bold request that shareholders should be deprived of the opportunity to vote on a common-sense corporate governance proposal focusing on significant social policy concerns. The sorts of arguments Sempra seeks to raise here are more appropriately made in any company opposition statement in the proxy.

D. Sempra's arguments to exclude our Proposal have been rejected in previous Staff no-action determinations.

Numerous no-action determinations previously issued by Staff have rejected the kinds of arguments advanced by Sempra. This reflects an understanding that allowing companies to exclude any proposal that might "implicate" in some way litigation involving a company – as Sempra argues here – would eviscerate the social policy exception to the ordinary business exclusion. And yet, Staff stressed only recently that this exception "is *essential* for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement. . . ."[12]

***- American International Group, Inc.* (available March 14, 2005)**

In *American International Group*, for example, Staff declined the company's no-action request for a proposal that called for a special committee of independent directors to oversee a recently created "transaction review committee" charged with examining allegations raised by the New York Attorney General of improper sales practices, including "recent revelations of bid rigging and price fixing." The proposal specifically requested that this committee "make available to shareholders at reasonable cost *a comprehensive, company-wide report of its findings and recommendations.*" (Emphasis supplied.)

[12] Staff Legal Bulletin No. 14L (Nov. 3, 2021) (emphasis supplied).

Staff rejected AIG's no-action request, notwithstanding that the company was "currently involved in various legal actions" related to the same matters raised by the proposal. AIG specifically argued – as Sempra similarly claims here – that the request for the company to publish a report on the committee's findings would interfere with the company's litigation strategies in active litigation and therefore improperly intrude into the company's ordinary business operations.

***- Cabot Oil & Gas Corp.* (available Jan. 28, 2010)**

In *Cabot Oil & Gas*, Staff also rejected ordinary business claims similar to those advanced here by Sempra. The shareholder in *Cabot Oil* made the following proposal concerning the company's natural gas production practices:

> "Shareholders request that the Board of Directors prepare a report . . . at reasonable cost and omitting proprietary information, summarizing (1) the environmental impact of fracturing operations at Cabot Oil & Gas; (2) potential policies for the company to adopt, above and beyond regulatory requirements, to reduce or eliminate hazards to air, water, and soil quality from fracturing; and (3) other information *regarding the scale, likelihood and/or impacts of potential material risks, short or long term, to the company's finances or operations, due to environmental concerns regarding fracturing*." (Emphasis supplied.)

Like Sempra here, Cabot Oil asserted that it was "currently a party to litigation relating to its activities in areas where fracking has been used," and that publishing a report on its material risks due to fracking – as called for in the proposal – "could improperly interfere with the Company's legal strategy and increase the Company's potential exposure to liability."

Staff disagreed, concluding instead that the proposal "focuses primarily on the environmental impacts of Cabot's operations," thus rejecting the claim that the proposal "would affect the conduct of ongoing litigation to which the company is a party."

- Additional Staff determinations contradicting Sempra's position

The following additional no-action determinations – notable among others – also contradict the arguments Sempra makes here:

- *The Dow Chemical Company* (available Feb. 11, 2004). The proposal involved in *Dow* arose from the 1984 chemical disaster in Bhopal, India at a plant owned by Union Carbide Corp. ("UCC"). UCC was a wholly-owned subsidiary of Dow at the time the shareholder proposal was filed.

  The proposal called upon Dow to prepare a report to shareholders "describing new initiatives instituted by the management to address the specific health, environmental and social concerns of the survivors." The proposal's supporting statement urged that

this report "should also assess the impacts that the Bhopal matter may reasonably pose on the company, its reputation, its finances and its expansion in Asia and elsewhere."

Dow observed that "the proposal goes to the very essence of [a] lawsuit that is currently pending against the Company's subsidiary," and asserted that the report requested by the proposal "asks the Company to effect an action that is precisely what the Company's subsidiary is arguing in the pending litigation that it has no obligation to do." Staff nevertheless declined the no-action request.

Curiously, Sempra seeks to distinguish *Dow* on the basis that Union Carbide had "accepted moral responsibility for the tragedy." And yet the underlying materials make clear that Dow and its subsidiary were indisputably contesting any additional legal liability, and a lawsuit asserting the company's liability was still very much in litigation.

- *R.J. Reynolds Tobacco Holdings, Inc.* (available March 7, 2000). In *R.J. Reynolds*, the proposal urged the company's board of directors to "create a committee of outside directors to investigate policies and procedures regarding placement of our tobacco products in retail outlets," and to report to shareholders on recommendations aimed at ensuring that tobacco products could not be accessed or stolen by minors.

  RJR asserted that the proposal directly contradicted its litigation strategies in pending cases in which the company was challenging the authority of the U.S. FDA and the Commonwealth of Massachusetts to impose substantially identical regulations.

  RJR also insisted the proposal "amounted to a collateral attack on what is properly management's judgment call as to well-established matters of ordinary business operations as to the conduct of litigation." Staff disagreed the proposal could be omitted.

- *Philip Morris Companies, Inc.* (available Feb. 14, 2000). Philip Morris challenged on ordinary business grounds a shareholder proposal urging the company to publish a report to shareholders "with the details of how the company intends to address . . . that our products cause ill-health among humans," and moreover "how the company intends to correct the defects in the products that cause such sicknesses."

  Staff declined the company's arguments that the proposal would directly interfere with its litigation strategies in hundreds of then-pending cases in which Philip Morris was contesting whether its tobacco products had caused plaintiffs' sicknesses.

- *R.J. Reynolds Tobacco Holdings, Inc.* (available March 7, 2002). In this instance also involving RJR, Staff disagreed with the company's bid to omit a proposal on the basis that it would directly contradict RJR's litigation strategies in thousands of pending cases involving the alleged adverse health effects of smoking and the adequacy of warnings on the company's packaging.

E. The no-action determinations cited by Sempra are distinguishable.

In its request, Sempra cites various Staff determinations in which companies prevailed with arguments that shareholder proposals impermissibly intruded into litigation strategies under Rule 14a-8(i)(7). These instances do not support Sempra's no-action request, since in each case the proposal focused not on broader social policy considerations, but instead on attempts to effectively dictate the manner in which the companies conducted their litigation strategies.

In *Exxon Mobil Corp.* (available March 21, 2000), for example, the proposal requested immediate payment of settlements arising from the Valdez oil spill litigation. Similarly in *Chevron Corp.* (available March 19, 2013), the proposal requested that the company review its "legal initiatives against investors."

In *General Electric Company* (Feb. 3, 2016), the proposal went so far as to recommend a specific settlement strategy contrary to management's litigation choices, and further requested that the company produce a report assessing "all potential sources of liability related to PCB discharges in the Hudson River, including all possible liability" from natural resources damage ("NRD") claims. Indeed, the proposal urged that GE should reduce its potential liability "through a single cooperative NRD settlement," contrary to management's existing approach to pending litigation.

In *AT&T Inc.* (available Feb. 9, 2007), the proposal attempted an end-run around discovery procedures involving numerous pending cases challenging the company's alleged provision of customer data to U.S. intelligence agencies without legal authorization. AT&T noted that the proponent had served as a consultant and ally to the ACLU in ongoing efforts against the purportedly unlawful conduct and argued that the proponent "now seeks the same information through the shareholder approval process that the ACLU has sought through litigation."[13]

In short, these and other determinations cited by Sempra merely represent implicit Staff judgments that the proposals at issue did not focus so much on significant social policy issues, but instead impermissibly sought to dictate the manner and terms of how the companies conducted their litigation and settlement strategies.

In contrast, our Proposal merely requests Sempra's Board of Directors to report to shareholders on the directors' oversight of the Company's performance on environmental and safety issues, including a review of underlying causes of major, recent incidents – without disclosing any confidential information – to help prevent their recurrence. The Proposal therefore focuses on significant social policy issues transcending the Company's ordinary business operations, and therefore is particularly appropriate for a shareholder vote.

---

[13] *AT&T Inc.*, letter from AT&T dated Dec. 11, 2006, footnote 4.

CONCLUSION

For these reasons, the Company has failed to meet its burden of establishing that the Proposal may be omitted as ordinary business under Rule 14a-8(i)(7). We therefore urge the Staff to decline the Company's request for a no-action determination.

Thank you for your attention in this matter, and please let me know if I can provide additional information concerning the UWUA's position.

Sincerely,

Mark Brooks

Mark Brooks
Special Counsel to UWUA National President

521 Central Avenue,
Nashville, TN 37211
(615)259-1186
markbrooks@uwua.net

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP
James M. Spira, Associate General Counsel, Sempra

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Elizabeth A. Ising
Direct: +1 202.955.8287
Fax: +1 202.530.9569
EIsing@gibsondunn.com

January 22, 2024

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Sempra*
Supplemental Letter Regarding Shareholder Proposal of Utility Workers Union of America
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On December 29, 2023, we submitted a no-action request (the "No-Action Request") to the staff of the Division of Corporation Finance (the "Staff") on behalf of our client, Sempra (the "Company"), relating to the shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from Utility Workers Union of America (the "Proponent") for inclusion in the Company's proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (the "2024 Proxy Materials").

As further discussed in the No-Action Request, the Proposal requests that the Company issue a report on the same subject matters and legal issues being litigated in several pending lawsuits concerning the two incidents cited in the Supporting Statement as the bases for the Proposal (the "Cited Incidents"). Specifically, the Proposal requests a report "on the steps [the Company] has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of [the Company] and its subsidiaries," which presupposes that such causes are within the control of the Company, a legal determination that the Company is currently litigating in various lawsuits regarding the "underlying causes" of the Cited Incidents. As such, we believe the Proposal may be properly excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations because it seeks to substitute the judgment of shareholders for that of Company management by requiring the Company to take action that undermines its litigation strategy.

This supplemental letter responds to a letter dated January 8, 2024 received from the Proponent in response to the No-Action Request (the "Response Letter"). The Response Letter, which is attached hereto as Exhibit A, argues against exclusion of the Proposal.

At the outset, we note that throughout the Response Letter, the Proponent misstates the test under the "ordinary business" exclusion. As the Staff stated in Exchange Act Release No. 40018 (May 21, 1998), there are two central considerations that underlie Rule 14a-8(i)(7), of which one is that "[c]ertain tasks are so fundamental to management's

ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). In this case, implementation of the Proposal would intrude upon management's exercise of its day-to-day business judgment with respect to the conduct of and strategies related to pending litigation, particularly as the Proposal relates to the very same subject matters and legal issues being litigated. The Response Letter erroneously presumes that a connection to a significant policy issue saves the Proposal from exclusion under Rule 14a-8(i)(7) and repeatedly asserts that the subject matter of the Proposal "raise[s] significant policy issues." However, as noted in the No-Action Request, the Staff has previously expressed the view that proposals relating to both ordinary business matters and significant social policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7).

As relevant here, and as discussed in the No-Action Request, the Staff has concurred with the exclusion of proposals that impact ongoing litigation, regardless of whether the proposal also touches upon a significant policy issue. *See, e.g.*, *Chevron Corp. (Sisters of St. Francis of Philadelphia et al.)* (avail. Mar. 30, 2021); *Walmart Inc.* (avail. Apr. 13, 2018). Moreover, the Response Letter cites to precedent that is readily distinguishable from the Proposal. For instance, in *American International Group, Inc.* (avail. Mar. 14, 2005), the Staff did not concur with the exclusion of a proposal where the company merely noted that the proposal "[was] reasonably likely" to impact the company's litigation strategy, but did not establish a direct causal link as to how the proposal would impact the litigation at issue. The Response Letter also discussed *Cabot Oil & Gas Corp.* (avail. Jan. 28, 2010) where the Staff did not concur with the exclusion of a proposal, but in that instance the company merely indicated that "it should be noted that the [c]ompany [was] currently a party to litigation," and, in fact, acknowledged that "certain information requested to be included in the report might not necessarily reveal the [c]ompany's litigation strategy." There, the Staff noted that it was "unable to conclude that Cabot [had] met its burden of demonstrating that implementation of the proposal would affect the conduct of ongoing litigation to which the company is a party." Unlike the proposals at issue in *AIG* and *Cabot Oil*, and as further discussed in the No-Action Request, the Proposal directly interferes with the Company's conduct of ongoing litigation as it would require the Company to take positions that would harm the Company's litigation strategy in defending itself against plaintiffs' claims that the Company and its subsidiary are legally culpable for harms arising from the Cited Incidents.[1] This intrusion is not mitigated by the fact that the Proposal is "advisory only." First, that

[1] The No-Action Request also distinguishes the Proposal from the proposal in *The Dow Chemical Co.* (avail. Feb. 11, 2004). We further note that the Response Letter does not refute any of the more recent Staff decisions that were cited in the No-Action Request where the Staff concurred with the exclusion of proposals due to the impact on company litigation strategy.

point is irrelevant for purposes of Rule 14a-8(i)(7). Second, even if directors have "maximum discretion in all decisions concerning how they might prepare the requested report," publication of the requested report would effectively endorse the Proposal's presupposition that the Company could have but failed to take steps to avoid the "underlying causes" of the Cited Incidents.[2]

In addition, throughout the Response Letter, the Proponent mischaracterizes the express text of the Proposal. As a preliminary matter, the Response Letter attempts to broaden the scope of information excludable from the Proposal's requested report and asserts that the Proposal "*by its own terms* excludes . . . the sort of confidential information . . . [that] might undermine [the Company's] positions or strategies in any pending or threatened litigation" because it excludes any "proprietary and personal information." The Response Letter seemingly conflates "proprietary" and "confidential," an interpretation a plain reading does not support. "Proprietary" is defined by The Merriam-Webster Dictionary as "something that is used, produced, or marketed under exclusive legal right of the inventor or maker," whereas, "confidential" (a word we note the Proposal does not use) is defined as "intended for or restricted to the use of a particular person, group, or class." *Proprietary*, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/proprietary?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (last visited Jan. 19, 2024); *Confidential*, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/confidential (last visited Jan. 19, 2024). Contrary to the attempt to redefine this phrase in the Proposal, the Proposal's exclusion of "proprietary and personal information" does not exclude information prejudicial to the Company's ongoing litigation regarding the Cited Incidents.

The Response Letter also makes various additional assertions that mischaracterize the Proposal. For example, the Response Letter asserts that:

- "[t]he purpose of this review would be entirely forward-looking";
- "nothing in our Proposal would require the directors to publicly report any such conclusions in a way that could harm the Company's strategies in litigation"; and
- "[t]he Proposal is entirely neutral" and allows a conclusion that "the underlying causes of any such incidents were the result of factors completely outside the Company's control."

[2] For purposes of this supplemental letter, we are not addressing the Response Letter's references to the micromanagement prong of Rule 14a-8(i)(7) as the No-Action Request did not seek exclusion on that basis.

Notably, regardless of the asserted "forward-looking" purpose of the Proposal, it requests "an analysis of the underlying causes of any significant environmental incidents . . . *during the preceding ten years*" (emphasis added). Further, as discussed in the No-Action Request, the outcome of the Company's pending litigation hinges on, and necessarily requires, what the Proposal calls "an analysis of the underlying causes" of these incidents. As such, the Proposal's request that the Company publish its internal analysis of these causes would cause "harm [to] the Company's strategies in litigation" by prematurely disclosing the Company's position to opposing parties in the pending litigation. It is also worth noting that the Proposal is not "entirely neutral" as it calls for the Company to discuss "the steps [the Company] has taken" to reduce the occurrence of events like the Cited Incidents, which presupposes that these "underlying causes" were within the Company's control.[3] Thus, as the Company's No-Action Request demonstrates, the Proposal is excludable under Rule 14a-8(i)(7) because it interferes with the Company's litigation strategy, which is an ordinary business matter.

CONCLUSION

Based upon the foregoing and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials pursuant to Rule 14a-8. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any assistance in this matter, please do not hesitate to call me at (202) 955-8287 or James M. Spira, Associate General Counsel for the Company, at (619) 699-5120.

Sincerely,

Elizabeth A. Ising

Enclosures

---

[3] The Response Letter additionally asserts that the Company "does not challenge the accuracy of any fact recited in [the] [S]upporting [S]tatement," so "[t]his in itself demonstrates that the subject of [the] Proposal squarely focuses on significant social policy issues." The purpose of the No-Action Request is to establish for the Staff that the Proposal is excludable under Rule 14a-8 (which it has done) and not to debate every fact in the Supporting Statement. *See, e.g.*, Staff Legal Bulletin No. 14B (Sep. 15, 2004) (noting that "it is appropriate under rule 14a-8 for companies to address . . . objections [to certain matters] in their statements of opposition" (instead of a no-action request), including "company object[ions] to factual assertions."). The suggestion that the Company conceded the Proponent's conclusion by not litigating facts alleged in the Proposal—many of which are at issue in the pending litigation—demonstrates the interference it poses. In any event, the assertion is a non sequitur.

cc: April R. Robinson, Sempra
Lisa H. Abbot, Sempra
James M. Spira, Sempra
Mark Brooks, Utility Workers Union of America
James Slevin, Utility Workers Union of America

EXHIBIT A

UTILITY WORKERS UNION OF AMERICA

JAMES SLEVIN
PRESIDENT

MICHAEL COLEMAN
SECRETARY-TREASURER

PATRICK M. DILLON
EXECUTIVE VICE PRESIDENT

CRAIG PINKHAM
VICE PRESIDENT

Affiliated with A.F.L.-C.I.O.

1300 L STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20005
202-899-2851
202-899-2852 FAX
www.uwua.net

January 8, 2024

Via Electronic Mail & UPS Express

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F. Street, N.E.
Washington, DC 20549

Re: Sempra
Shareholder Proposal of Utility Workers Union of America
Reference No. 472726

Dear Sir or Madam:

I am writing on behalf of Utility Workers Union of America ("UWUA") – the shareholder proponent in this matter – in response to the no-action request submitted by Sempra ("Sempra" or the "Company") on December 29, 2023.

In its request, Sempra argues that our Proposal may be omitted based solely on a claim that the Proposal relates to the Company's "ordinary business operations" under Rule 14a-8(i)(7). The Company makes this claim, notwithstanding the fact – which Sempra does not dispute – that the Proposal clearly relates to significant social policy issues that transcend the Company's ordinary business operations, thus making the Proposal particularly appropriate for a shareholder vote.

In particular, the Proposal focuses on the substantial social policy issues involving significant environmental hazards and life-threatening safety incidents, and the broad societal impacts and risks these pose to the public at large as well as to investors. These are precisely the sorts of significant social policy issues that the Commission and Staff have previously determined to transcend a company's ordinary business and thus to be non-excludable under Rule 14a-8(i)(7).

Sempra's no-action request ignores the Proposal's focus on these significant social policy issues, and instead erroneously – and rather wildly – claims the Proposal is "calculated to interfere with the Company's litigation strategy." As summarized below, the Company's arguments are sorely misplaced.

A. Sempra mischaracterizes our Proposal, which clearly relates to significant social policy issues that transcend the Company's ordinary business operations.

Sempra is a major energy and utility holding corporation. The Proposal requests the Company's Board of Directors to report to shareholders "on the steps Sempra has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents" involving Sempra or its subsidiaries.[1]

More specifically, the Proposal asks the directors "to describe the Board's oversight of Company performance regarding environmental and safety risks," and to "include an analysis of the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety incidents during the preceding ten years."

The Proposal is advisory only, and more importantly is designed to afford the directors maximum discretion in all decisions concerning how they might prepare the requested report.[2]

In addition, the Proposal expressly excludes from the requested report any "proprietary and personal information." The Proposal therefore *by its own terms* excludes the directors from any obligation or even suggestion that they publicly report the sort of confidential information Sempra speculates might undermine its positions or strategies in any pending or threatened litigation.[3]

The Proposal's supporting statement summarizes two recent environmental and safety accidents involving Sempra, merely as examples of the sorts of significant environmental or safety incidents that we suggest the directors should analyze in any report. We offer one of these – the Aliso Canyon disaster – as an example of a "significant environmental incident endangering public safety," as referenced in the Proposal. The other – the Murrieta gas pipeline explosion – provides an example of a "life-threatening safety incident."

---

[1] The entire text of our proposed resolution provides:

"RESOLVED: Sempra shareholders urge the Board of Directors or its Safety, Sustainability and Technology Committee (the "Committee") to report to shareholders by the 2025 annual meeting, at reasonable cost and excluding proprietary and personal information, on the steps Sempra has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents involving the operations of Sempra and its subsidiaries (collectively, the "Company").

"The report should describe the Board's oversight of Company performance regarding environmental and safety risks and include an analysis of the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety events during the preceding ten years."

[2] The Proposal therefore could not be excluded as "micromanaging" the Company under the second line of analysis under the ordinary business exclusion, and Sempra makes no such claim.

[3] Although UWUA believes this is unnecessary, we would be pleased to revise the Proposal to clarify this point by excluding any "confidential, proprietary, or personal information," or to make any other clarifying revisions recommended by Staff.

Sempra does not challenge the accuracy of any fact recited in our supporting statement.[4] This in itself demonstrates that the subject of our Proposal squarely focuses on significant social policy issues that transcend the Company's ordinary business operations.

In the Aliso Canyon disaster, for example, a ruptured well at a Sempra gas storage field spewed 109,000 metric tons of methane into the atmosphere over four months, causing 20,000 people to evacuate from nearby homes and the temporary relocation of two schools. The Aliso Canyon incident was easily one of the largest – if not *the* largest – methane gas leaks in U.S. history and occurred at a time when climate change issues are a paramount social policy issue in the nation.

The ensuing disaster resulted in extensive emergency, environmental, and public health responses by numerous federal, state, and local government agencies – not to mention a hurricane of regulatory and legislative actions, especially in Sempra's home state of California.[5] The result has been substantial damage to the corporate reputations of Sempra and its subsidiary SoCalGas, at a time when companies operating in the energy and utility industries already face intense public scrutiny over environmental concerns.[6]

Staff has recognized on many occasions that environmental concerns raise significant policy issues that transcend a company's ordinary business operations – especially in recent years with respect to climate change matters.[7] Likewise, concerns over company performance on safety matters that might endanger members of the public, employees, or first responder personnel – as in the Murrieta gas pipeline explosion – also raise significant social policy issues.

---

[4] Sempra perhaps makes a half-hearted attempt to suggest that we merely "allege" that the Aliso Canyon and Murrieta incidents occurred as summarized in the Proposal's supporting statement, but never disputes the accuracy of our summary. Nor could the Company do so, since the supporting statement is carefully derived from Sempra's own SEC filings and official government orders and findings, most notably from the California Public Utilities Commission.

If Sempra could challenge any part of the supporting statement, we assume it would have requested a no-action determination under Rule 14a-8(i)(3) on the basis the Proposal is "false and misleading." Since Sempra makes no effort to do so, we will not belabor our response with a discussion of the underlying source material. Sempra of course bears the burden of demonstrating that the Proposal may be excluded, and Staff "will not consider any basis for exclusion that is not advanced by the company." Staff Legal Bulletin No. 14, ¶ B.5. (July 13, 2001). *See also* Rule 14a-8(q).

[5] Sempra has summarized many of these in its SEC filings. *See, e.g.*, Sempra Energy Form 10K, filed Feb. 18, 2022, pages 47-48, 81-82 & F-133–F-136.

[6] Since Sempra does not challenge the fact that our Proposal focuses on significant social policy issues, we will also not belabor this response with citations to the plethora of news media and other public criticisms that ensued in the wake of the Aliso Canyon disaster, resulting in significant corporate reputational damage to the Company. These are available upon request, however.

[7] *See, e.g., Duke Energy Corporation* (available March 12, 2019); *Franklin Resources, Inc.* (available Oct. 2, 2015), and *The PNC Financial Services Group* (Feb. 13, 2013).

Indeed, the Commission's seminal 1976 release articulating the social policy exception to the ordinary business exclusion expressly held this to be the case. The 1976 Release concluded that shareholder proposals relating to "the economic and safety considerations" of a utility company nuclear power plant and other proposals of a similar nature "will in the future be considered *beyond the realm of an issuer's ordinary business operations*. . . ."[8]

B. Since the Proposal relates to significant social policy issues, it is "beyond the realm" of the Company's ordinary business operations and therefore may not be excluded under Rule 14a-8(i)(7).

Sempra's no-action request ignores long-standing Commission precedent and Staff guidance holding that shareholder proposals raising significant social policy issues may not be excluded as "ordinary business" under Rule 14a-8(i)(7). Indeed, as noted above, the Commission definitively stated in its 1976 Release that proposals raising "significant policy, economic or other implications" are "*beyond the realm* of an issuer's ordinary business operations" under the Rule.

The Commission reiterated this principle in Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission emphasized that shareholder proposals that relate to a company's ordinary business concerns, but which raise significant social policy issues nevertheless may not be excluded under the Rule:

> "[P]roposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues . . . *generally would not be considered to be excludable*, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote."[9]

Staff Legal Bulletins have also stressed this principle. In Staff Legal Bulletin No. 14H, for example, the Division noted:

> "[A] proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the 'nitty-gritty of its core business.' Therefore, proposals that focus on a significant policy issue transcend a company's ordinary business operations and *are not excludable under Rule 14a-8(i)(7).*"[10]

---

[8] Exchange Act Release No. 12999, 41 Fed. Reg. 52994, 52998 (Nov. 22, 1976) (emphasis supplied) (the "1976 Release").

[9] Exchange Act Release No. 40018 (emphasis supplied). Notably, former Division Director Renee Jones observed in a speech in March 2022 that the "1998 release represents the most recent statement from the Commission on the ordinary business exception and the social policy exception, and as such, it continues to guide Division action." *See* "The Shareholder Proposal Rule: A Cornerstone of Corporate Democracy," Renee Jones (Washington, D.C., March 8, 2022) (available at *www.sec.gov/news/speech/jones-cii-2022-03-08*).

[10] Staff Legal Bulletin No. 14H (Oct. 22, 2015) (emphasis supplied).

More recently, the Division emphasized in Staff Legal Bulletin No. 14L that the exception to the ordinary business exclusion for "proposals that raise significant social policy issues . . . is *essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement.*"[11]

C. Sempra's claims that the Proposal may be excluded as interfering with the Company's litigation strategies are unfounded.

Ignoring these principles, Sempra seeks to prevent its shareholders from having an opportunity to vote on our Proposal by claiming that it would undermine if not sabotage management's strategies in pending or seemingly even hypothetical future litigation. In somewhat overwrought terms, the Company variously claims that the Proposal "seeks to interfere" with Sempra's litigation strategies; would "hamper its defense" and "reveal key aspects of its legal strategy" to opposing parties; and even that the Proposal "is calculated to interfere with the Company's litigation strategy." These claims are mistaken.

As an initial matter, we note that the Proposal in no way asks the Board of Directors to publish any report that would assess the Company's potential liability, fault, or supposed negligence in any environmental or safety accidents involving Sempra. Nor does the Proposal ask the directors to reveal anything about Sempra's litigation strategies or defenses.

In addition, the Proposal does not "pre-suppose" that the underlying causes of any such incidents were within the control of Sempra or caused by Company negligence, as Sempra erroneously claims. The Proposal is entirely neutral in this respect: as far as the Proposal is concerned, any independent review by the directors might well conclude that the underlying causes of any such incidents were the result of factors completely outside the Company's control.

It would be preposterous, however, for Sempra to suggest that its business does not pose significant environmental and safety-related risks. Indeed, the risk factors Sempra routinely discloses in its SEC filings are replete with Company acknowledgements of these risks.

What the Proposal seeks is merely for the directors to describe for shareholders the board's oversight of Company performance regarding these risks, including an analysis of the underlying causes of any significant, recent safety and environmental incidents. The purpose of this review would be entirely forward-looking: to help reduce the likelihood of recurrence of such events, whether any underlying causes identified by the directors might have been within the Company's control or outside its control. This is surely a matter of important shareholder concern.

Certainly, an independent review by the Board of Directors of the underlying causes of a significant environmental or safety-related incident *might* reveal *to the directors* that the underlying causes were within Sempra's control – but this would not be the result of our Proposal. Instead, this

[11] Staff Legal Bulletin No. 14L (Nov. 3, 2021) (emphasis supplied).

would merely represent the directors' exercise of their proper oversight responsibilities. Moreover, nothing in our Proposal would require the directors to publicly report any such conclusions in a way that could harm the Company's strategies in litigation.

As noted above, the Proposal is designed to afford the directors maximum discretion in crafting a good faith response to the requested report to shareholders. The directors would have the discretion under our Proposal not to include in their report the sorts of disclosures conjectured by Sempra. Indeed, the Proposal by its terms *excludes* from the requested report any information that might be considered confidential or proprietary.

In our view, assurance to shareholders that the Board of Directors will exercise its responsibility to provide oversight of Sempra's performance on environmental and safety matters – as envisioned by the Proposal – would go a long way *by itself* to advance the significant social policy concerns raised by our Proposal. The report to shareholders requested by our Proposal would *also* help promote these important social policy concerns, but nothing in the Proposal would require the directors to publish any information that might undermine Sempra's litigation strategies.

In short, the speculations posited by Sempra about theoretical disclosures the directors might make in the report requested by our Proposal do not support management's bold request that shareholders should be deprived of the opportunity to vote on a common-sense corporate governance proposal focusing on significant social policy concerns. The sorts of arguments Sempra seeks to raise here are more appropriately made in any company opposition statement in the proxy.

D. Sempra's arguments to exclude our Proposal have been rejected in previous Staff no-action determinations.

Numerous no-action determinations previously issued by Staff have rejected the kinds of arguments advanced by Sempra. This reflects an understanding that allowing companies to exclude any proposal that might "implicate" in some way litigation involving a company – as Sempra argues here – would eviscerate the social policy exception to the ordinary business exclusion. And yet, Staff stressed only recently that this exception "is *essential* for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement. . . ."[12]

***- American International Group, Inc.* (available March 14, 2005)**

In *American International Group*, for example, Staff declined the company's no-action request for a proposal that called for a special committee of independent directors to oversee a recently created "transaction review committee" charged with examining allegations raised by the New York Attorney General of improper sales practices, including "recent revelations of bid rigging and price fixing." The proposal specifically requested that this committee "make available to shareholders at reasonable cost *a comprehensive, company-wide report of its findings and recommendations.*" (Emphasis supplied.)

[12] Staff Legal Bulletin No. 14L (Nov. 3, 2021) (emphasis supplied).

Staff rejected AIG's no-action request, notwithstanding that the company was "currently involved in various legal actions" related to the same matters raised by the proposal. AIG specifically argued – as Sempra similarly claims here – that the request for the company to publish a report on the committee's findings would interfere with the company's litigation strategies in active litigation and therefore improperly intrude into the company's ordinary business operations.

***- Cabot Oil & Gas Corp.* (available Jan. 28, 2010)**

In *Cabot Oil & Gas*, Staff also rejected ordinary business claims similar to those advanced here by Sempra. The shareholder in *Cabot Oil* made the following proposal concerning the company's natural gas production practices:

> "Shareholders request that the Board of Directors prepare a report . . . at reasonable cost and omitting proprietary information, summarizing (1) the environmental impact of fracturing operations at Cabot Oil & Gas; (2) potential policies for the company to adopt, above and beyond regulatory requirements, to reduce or eliminate hazards to air, water, and soil quality from fracturing; and (3) other information *regarding the scale, likelihood and/or impacts of potential material risks, short or long term, to the company's finances or operations, due to environmental concerns regarding fracturing*." (Emphasis supplied.)

Like Sempra here, Cabot Oil asserted that it was "currently a party to litigation relating to its activities in areas where fracking has been used," and that publishing a report on its material risks due to fracking – as called for in the proposal – "could improperly interfere with the Company's legal strategy and increase the Company's potential exposure to liability."

Staff disagreed, concluding instead that the proposal "focuses primarily on the environmental impacts of Cabot's operations," thus rejecting the claim that the proposal "would affect the conduct of ongoing litigation to which the company is a party."

- Additional Staff determinations contradicting Sempra's position

The following additional no-action determinations – notable among others – also contradict the arguments Sempra makes here:

- *The Dow Chemical Company* (available Feb. 11, 2004). The proposal involved in *Dow* arose from the 1984 chemical disaster in Bhopal, India at a plant owned by Union Carbide Corp. ("UCC"). UCC was a wholly-owned subsidiary of Dow at the time the shareholder proposal was filed.

  The proposal called upon Dow to prepare a report to shareholders "describing new initiatives instituted by the management to address the specific health, environmental and social concerns of the survivors." The proposal's supporting statement urged that

this report "should also assess the impacts that the Bhopal matter may reasonably pose on the company, its reputation, its finances and its expansion in Asia and elsewhere."

Dow observed that "the proposal goes to the very essence of [a] lawsuit that is currently pending against the Company's subsidiary," and asserted that the report requested by the proposal "asks the Company to effect an action that is precisely what the Company's subsidiary is arguing in the pending litigation that it has no obligation to do." Staff nevertheless declined the no-action request.

Curiously, Sempra seeks to distinguish *Dow* on the basis that Union Carbide had "accepted moral responsibility for the tragedy." And yet the underlying materials make clear that Dow and its subsidiary were indisputably contesting any additional legal liability, and a lawsuit asserting the company's liability was still very much in litigation.

- *R.J. Reynolds Tobacco Holdings, Inc.* (available March 7, 2000). In *R.J. Reynolds*, the proposal urged the company's board of directors to "create a committee of outside directors to investigate policies and procedures regarding placement of our tobacco products in retail outlets," and to report to shareholders on recommendations aimed at ensuring that tobacco products could not be accessed or stolen by minors.

  RJR asserted that the proposal directly contradicted its litigation strategies in pending cases in which the company was challenging the authority of the U.S. FDA and the Commonwealth of Massachusetts to impose substantially identical regulations.

  RJR also insisted the proposal "amounted to a collateral attack on what is properly management's judgment call as to well-established matters of ordinary business operations as to the conduct of litigation." Staff disagreed the proposal could be omitted.

- *Philip Morris Companies, Inc.* (available Feb. 14, 2000). Philip Morris challenged on ordinary business grounds a shareholder proposal urging the company to publish a report to shareholders "with the details of how the company intends to address . . . that our products cause ill-health among humans," and moreover "how the company intends to correct the defects in the products that cause such sicknesses."

  Staff declined the company's arguments that the proposal would directly interfere with its litigation strategies in hundreds of then-pending cases in which Philip Morris was contesting whether its tobacco products had caused plaintiffs' sicknesses.

- *R.J. Reynolds Tobacco Holdings, Inc.* (available March 7, 2002). In this instance also involving RJR, Staff disagreed with the company's bid to omit a proposal on the basis that it would directly contradict RJR's litigation strategies in thousands of pending cases involving the alleged adverse health effects of smoking and the adequacy of warnings on the company's packaging.

E. The no-action determinations cited by Sempra are distinguishable.

In its request, Sempra cites various Staff determinations in which companies prevailed with arguments that shareholder proposals impermissibly intruded into litigation strategies under Rule 14a-8(i)(7). These instances do not support Sempra's no-action request, since in each case the proposal focused not on broader social policy considerations, but instead on attempts to effectively dictate the manner in which the companies conducted their litigation strategies.

In *Exxon Mobil Corp.* (available March 21, 2000), for example, the proposal requested immediate payment of settlements arising from the Valdez oil spill litigation. Similarly in *Chevron Corp.* (available March 19, 2013), the proposal requested that the company review its "legal initiatives against investors."

In *General Electric Company* (Feb. 3, 2016), the proposal went so far as to recommend a specific settlement strategy contrary to management's litigation choices, and further requested that the company produce a report assessing "all potential sources of liability related to PCB discharges in the Hudson River, including all possible liability" from natural resources damage ("NRD") claims. Indeed, the proposal urged that GE should reduce its potential liability "through a single cooperative NRD settlement," contrary to management's existing approach to pending litigation.

In *AT&T Inc.* (available Feb. 9, 2007), the proposal attempted an end-run around discovery procedures involving numerous pending cases challenging the company's alleged provision of customer data to U.S. intelligence agencies without legal authorization. AT&T noted that the proponent had served as a consultant and ally to the ACLU in ongoing efforts against the purportedly unlawful conduct and argued that the proponent "now seeks the same information through the shareholder approval process that the ACLU has sought through litigation."[13]

In short, these and other determinations cited by Sempra merely represent implicit Staff judgments that the proposals at issue did not focus so much on significant social policy issues, but instead impermissibly sought to dictate the manner and terms of how the companies conducted their litigation and settlement strategies.

In contrast, our Proposal merely requests Sempra's Board of Directors to report to shareholders on the directors' oversight of the Company's performance on environmental and safety issues, including a review of underlying causes of major, recent incidents – without disclosing any confidential information – to help prevent their recurrence. The Proposal therefore focuses on significant social policy issues transcending the Company's ordinary business operations, and therefore is particularly appropriate for a shareholder vote.

---

[13] *AT&T Inc.*, letter from AT&T dated Dec. 11, 2006, footnote 4.

CONCLUSION

For these reasons, the Company has failed to meet its burden of establishing that the Proposal may be omitted as ordinary business under Rule 14a-8(i)(7). We therefore urge the Staff to decline the Company's request for a no-action determination.

Thank you for your attention in this matter, and please let me know if I can provide additional information concerning the UWUA's position.

Sincerely,

Mark Brooks

Mark Brooks
Special Counsel to UWUA National President

521 Central Avenue,
Nashville, TN 37211
(615)259-1186
markbrooks@uwua.net

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP
James M. Spira, Associate General Counsel, Sempra

UTILITY WORKERS UNION OF AMERICA

JAMES SLEVIN
PRESIDENT

MICHAEL COLEMAN
SECRETARY-TREASURER

PATRICK M. DILLON
EXECUTIVE VICE PRESIDENT

CRAIG PINKHAM
VICE PRESIDENT

Affiliated with A.F.L.-C.I.O.

1300 L STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20005
202-899-2851
202-899-2852 FAX
www.uwua.net

January 26, 2024

Via Electronic Mail & UPS Express

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F. Street, N.E.
Washington, DC 20549

Re: Sempra
Shareholder Proposal of Utility Workers Union of America
Reference No. 472726

Dear Sir or Madam:

I am writing on behalf of Utility Workers Union of America ("UWUA") – the shareholder proponent in this matter – in response to the supplemental letter submitted by Sempra on January 22, 2024 in further support of its no-action request dated December 29, 2023.

As summarized below, Sempra's supplemental letter continues to mischaracterize long-standing law concerning the significant social policy exception to the "ordinary business" exclusion under Rule 14a-8(i)(7), and moreover distorts and indeed misrepresents our Proposal in its efforts to preclude Sempra's shareholders from having an opportunity to vote on the Proposal.

A. The Proposal by its terms obviates Sempra's sole argument for exclusion.

As an initial matter, we note that Sempra's supplemental letter completely ignores the statement in our January 8, 2024, letter that we would be pleased to modify the Proposal to make abundantly clear the requested report to shareholders should exclude any "confidential, proprietary, or personal information," or to make any other clarifying revisions recommended by Staff.

We believe this is unnecessary, since the Proposal already stipulates that the requested report should exclude any "proprietary and personal information." In our view, this grants the Company's directors more than ample discretion to exclude from the proposed report the sorts of confidential information that Sempra claims could undermine its positions or strategies in any litigation.

Indeed, even accepting Sempra's proposed definition of "proprietary," as posited in its supplemental letter, it seems obvious that confidential, litigation-related material is necessarily "something that is used [or] produced . . . under exclusive legal right of the . . . maker."

Nevertheless, as stated in our previous letter, we would be happy to clarify this point by expressly excluding any "confidential, proprietary, or personal information," including any litigation-related matter, or to make any other revision suggested by Staff. This is consistent with Staff's "long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal." Staff Legal Bulletin No. 14, ¶ E.1. (July 13, 2001).

B. Sempra's supplemental letter continues to mischaracterize long-standing Commission precedent and Staff guidance providing that shareholder proposals focused on significant social policy issues may not be excluded as ordinary business.

1. The Company's supplemental letter misstates SEC policy.

Sempra erroneously claims that our January 8 letter "misstates the test under the 'ordinary business' exclusion," although the Company fails to plainly state what "test" it has in mind.

Certainly, Sempra then accurately quotes from the Commission's summary in Release No. 40018 of the first of the two policy considerations underlying Rule 14a-8(i)(7) – namely that "certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."[1] This establishes nothing, of course, since our Proposal involves the significant social policy *exception* to the "ordinary business" exclusion.

Misleadingly, the Company then omits entirely the very next, crucial passage from Release No. 40018:

> "However, proposals relating to such matters but focusing on sufficiently significant social policy issues . . . generally *would not be considered to be excludable*, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." (Emphasis supplied.)

The Commission emphasized this same fundamental principle in its 1976 release that first articulated the significant social policy exception under Rule 14a-8(i)(7):

---

[1] Sempra erroneously states that Release No. 40018 was issued *by Staff*, as opposed to the Commission. We assume this was inadvertent and that counsel for Sempra understands the difference. We mention this, however, since throughout its no-action request the Company seems to place greater emphasis on various Staff determination letters, rather than Commission releases. It is the latter, of course, which establish authoritative Commission policy and guide Division Staff's determinations.

> "[T]he term 'ordinary business operations' has been deemed on occasion to include certain matters which have significant policy, economic or other implications inherent in them. . . In retrospect, however, it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an 'ordinary' business matter. Accordingly, proposals of that nature, as well as others that have major implications, will in the future be considered *beyond the realm of an issuer's ordinary business operations*, and future interpretive letters of the Commission's staff will reflect that view."

Exchange Act Release No. 12999 (Nov. 22, 1976) (emphasis supplied).

Staff interpretive letters and guidance support this principle, notwithstanding Sempra's arguments to the contrary. In Staff Legal Bulletin No. 14H (Oct. 22, 2015), for example, Staff emphasized that "proposals that focus on a significant policy issue transcend a company's ordinary business operations and *are not excludable under Rule 14a-8(i)(7)*." (Emphasis supplied.)

In short, long-standing Commission policy establishes that shareholder proposals focusing on significant social policy issues necessarily transcend companies' ordinary business operations, and therefore are "beyond the realm" of Rule14a-8(i)(7) and "are not excludable."

Sempra tries to evade this basic principle in its supplemental letter and the underlying no-action request with various misleading arguments, claiming for example that "Staff has concurred with the exclusion of proposals that impact ongoing litigation, regardless of whether the proposal also touches upon a significant policy issue." The Company presumably justifies these misleading claims by substituting verbal formulations such as "touches upon" or "relating to" significant social policy issues, as opposed to proposals "focusing on" such issues.

Even so, the Company's sleight-of-hand argument is still misleading, since our Proposal squarely focuses on the significant social policy issues involving substantial environmental and safety hazards potentially endangering the public. As we noted in our January 8 letter, the Company has never disputed that our Proposal focuses on these significant social policy issues, nor does Sempra's supplemental letter make any effort to dispute this.[2]

---

[2] As we also previously observed, the Commission's 1976 release explicitly held that public safety considerations for utility company operations focus on significant social policy issues transcending ordinary business. In addition, Staff has found on numerous occasions that proposals focusing on environmental concerns, greenhouse gas emissions, and climate change matters also focus on significant policy issues. *See, e.g., Duke Energy Corp.* (available March 12, 2019); *Franklin Resources, Inc.* (available Oct. 2, 2015), and *The PNC Financial Services Group* (available Feb. 13, 2013).

Only this week, moreover, the Administration ordered the U.S. Energy Department to delay consideration of what would be the largest liquefied natural gas export terminal in the country due to environmental concerns – a decision that may impact a similar proposed LNG project by Sempra. *See* "White House Said to Delay Decision on Enormous Natural Gas Export Terminal," *New York Times* (Jan. 24, 2024), available at *www.nytimes.com/2024/01/24/climate/biden-lng-*

2. Staff no-action letters cited by Sempra also do not support its claims.

Nor do the various Staff no-action determinations once again raised in Sempra's supplemental letter support the Company's arguments.

Sempra relies heavily upon *Chevron Corporation (Sisters of St. Francis of Philadelphia* (available March 30, 2021), for example, but Staff does not seem to have issued any letter that might explain its rationale for the determination, according to the Division's 2020-21 Shareholder Proposal No-Action Responses Chart.[3]

More importantly, a close review of the underlying material reveals that the shareholder proponents in *Chevron* never sought to defend their proposal based on the significant social policy issue exception, but instead relied solely on arguments that the pending lawsuits cited by Chevron did not relate sufficiently to the shareholder proposal to merit exclusion. Both factors make *Chevron* a doubtful candidate for Sempra to cite as persuasive authority.

In *Wal-Mart Stores, Inc.* (available April 13, 2018) – also cited by Sempra – Wal-Mart successfully argued that the proposal "does not focus upon a significant policy issue," but rather focused on ordinary business matters such as "recruiting and retaining female talent," employee communications concerning "wage information," and "employee relations generally." While certainly a shareholder proposal focusing on gender pay gap concerns could qualify as a significant social policy issue that transcends ordinary business operations, *Wal-Mart* merely represents a case where Staff concluded this particular proposal did not do so.

As we previously observed, these and similar no-action determinations cited by Sempra simply reflect Staff judgments in particular cases that the proposals did not focus so much on significant social policy issues, but rather on routine business matters.

Sempra's attempts to distinguish Staff no-action determinations that clearly reject the same arguments the Company makes here are equally unavailing.

For example, Sempra argues that the Staff determination in *American International Group* (available March 14, 2005) was based on a supposed concession by AIG that the proposal was only "'reasonably likely' to impact the company's litigation strategy."

The full quote by AIG – omitted by Sempra – asserted that "it is reasonably likely that the company's litigation strategy would be compromised in a variety of ways by the public disclosure

---

export-terminal-cp2.html. Clearly, environmental and climate change concerns remain paramount social policy issues in the nation.

[3] Available at *www.sec.gov/divisions/corpfin/cf-noaction/14a-8/shareholder-proposal-no-action-responses-2020-2021.htm.*

of both findings (which could result in the compelled disclosure of otherwise privileged information) or recommendations (which could be used against the Company as admissions of fault)." Staff rejected AIG's position, which was substantially identical to Sempra's arguments here.

Sempra's attempt to distinguish *Cabot Oil & Gas Corp.* (Jan. 28, 2010) – based on a claim that Cabot made a negligible concession that "certain information requested to be included in the report might not necessarily reveal the company's litigation strategy" – is similarly disingenuous.

As in the case of Sempra, Cabot Oil asserted that it was currently a party in litigation directly related to matters at issue in the requested report to shareholders, that compliance with the shareholder proposal "could improperly interfere with the company's legal strategy and increase the company's potential exposure to liability," and that the requested report could "potentially be used against the company in pending litigation." Staff rejected Cabot's no-action request in the face of the proponent's arguments that the proposal focused on significant social policy issues.

C. Sempra's supplemental letter continues to distort the text of the Proposal in its efforts to exclude the Proposal from consideration by shareholders.

In its supplemental letter, Sempra erroneously claims that we have mischaracterized our Proposal. Remarkably, Sempra misrepresents the text of the Proposal as part of its mistaken effort to claim that the Proposal "presupposes" that significant environmental and safety incidents that we request the Board of Directors should review were within Sempra's control.

For example, Sempra misrepresents that the Proposal "calls for the Company to discuss 'the steps [the Company] has taken' to reduce the occurrence of events like the Cited Incidents, which presupposes that these 'underlying causes' were within the Company's control." And yet a review of the actual text of our Proposal demonstrates that this claim is demonstrably false.

Thus, the first sentence of the Proposal requests that the directors report to shareholders "on the steps Sempra has taken to reduce the risks of significant environmental hazards or life-threatening safety incidents" involving the Company's operations. Sempra cannot credibly claim that its operations do not pose such risks,[4] and a request that the directors report on what steps the Company has taken to help reduce these risks is clearly not the same thing as presupposing that the underlying causes of particular incidents were necessarily within Sempra's control.

[4] Sempra discloses these precise risks in the risk factors included in its SEC reports. *See*, for example, Sempra SEC Form 10K (filed Feb. 18, 2022), at page 44 ("our businesses face climate change concerns and have environmental compliance and clean energy transition costs, which could have a material adverse effect on us"); at page 47 ("natural gas and natural gas storage have increasingly been the subject of political and public scrutiny . . ."); at page 49 (discussion of the risks associated with potential Company non-compliance with state regulatory standards regarding safety and environmental compliance); and at page 50 ("SoCalGas has incurred and may continue to incur significant costs, expenses and other liabilities related to the [Aliso Canyon] Leak").

The next sentence of the Proposal asks the directors to "include an analysis of the underlying causes of any significant environmental incidents endangering public safety or life-threatening safety incidents during the preceding ten years." Nothing in this sentence presupposes that such causes were necessarily within the Company's control, as Sempra misleadingly asserts.

Notwithstanding Sempra's inaccurate quotation of the text, the Proposal is indeed entirely neutral in this regard. Nothing in the Proposal precludes the directors from concluding that the underlying causes of particular incidents were outside of the Company's control, or from reporting this in the requested report.

Nor does the Proposal require Sempra to disclose any information that could harm the Company's litigation strategies. If Sempra contends in litigation that a particular incident was completely outside its control, for example, we perceive no reason the Board could not report the same to shareholders. Nor would anything in the Proposal even preclude the Board from reporting in any particular incident that it is unable to comment due to pending or threatened litigation – especially given the wide discretion the Proposal accords to the directors in fashioning the report and the express exclusion of proprietary or confidential information.

Moreover, the Proposal is indeed forward-looking, in the sense that it seeks to "help reduce [the] risks of recurrence" of significant environmental and safety mishaps, as the last paragraph of our supporting statement argues. Seeking to understand the underlying causes of past incidents is surely a critical step in helping reduce the risks of recurrence, and this is true whether or not any particular incident was within Sempra's control. Important lessons can be learned in either case.

Indeed, Staff has expressly recognized the crucial importance to shareholders of the role of the board of directors in the oversight a company's management of risk, and that this in itself constitutes a significant policy matter:

> "[W]e note that *there is widespread recognition that the board's role in the oversight of a company's management of risk is a significant policy matter regarding the governance of the corporation.* In light of this recognition, a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote."

Staff Legal Bulletin No. 14E (Oct. 27, 2009) (emphasis supplied).

CONCLUSION

For these reasons, the Company has failed to meet its burden of establishing that the Proposal may be omitted as ordinary business under Rule 14a-8(i)(7). We therefore urge the Staff to decline the Company's request for a no-action determination.

Thank you for your attention in this matter, and please let me know if I can provide additional information concerning the UWUA's position.

Sincerely,

Mark Brooks

Mark Brooks
Special Counsel to UWUA National President

521 Central Avenue,
Nashville, TN 37211
(615)259-1186
markbrooks@uwua.net

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP
James M. Spira, Associate General Counsel, Sempra