

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



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Order Instituting Rulemaking on the  
Commission's Natural Gas and Electric  
Safety Citation Programs.

Rulemaking 14-05-013  
(Filed May 15, 2014)

**OPENING COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)  
AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) ON SAFETY AND  
ENFORCEMENT DIVISION'S JUNE 1, 2016 REPORT WITHIN ASSIGNED  
COMMISSIONER'S AMENDED SCOPING MEMO AND RULING FOR PHASE II**

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**I. INTRODUCTION**

As directed by the Assigned Commissioner’s Amended Scoping Memo and Ruling for Phase II (“Ruling”) issued on June 15, 2016 in the above-captioned proceeding, Southern California Gas Company (“SoCalGas”) and San Diego Gas & Electric Company (“SDG&E”) respectfully submit the following comments on Safety and Enforcement Division’s (“SED”) June 1, 2016 report titled, “Report of the Safety and Enforcement Division on Self-Identified Potential Violations” (“SED Report”). SoCalGas and SDG&E acknowledge the efforts of the Commission and SED to establish effective safety citation programs that align with legislative intent and attempt to resolve the conceptual and practical issues and concerns raised by parties in this rulemaking.

**II. SED’S SUPPORT FOR 30-DAY REPORTING PERIOD FOR BOTH GAS AND ELECTRIC SAFETY CITATION PROGRAMS**

SED agrees with the utilities’ recommendation that both gas and electric utilities be given 30 days to report self-identified potential violations. *See* SED Report at 24. The SED Report describes parties’ positions, including a discussion of the utilities’ reasons why harmonizing the reporting time requirement for both gas and electric utilities, at 30 days, is justified. *See Id.* SoCalGas and SDG&E welcome and appreciate SED’s support for a uniform 30-day period for the gas and electric safety citation programs, and agree that this reporting period does not signal or endorse a lax or extended utility response to implementing corrective actions to make utility

facilities safe as quickly as possible. *See Id.* Therefore, SoCalGas and SDG&E request the Commission to adopt a uniform 30-day reporting period for both citation programs.

### **III. REPORTING OF POTENTIAL VIOLATIONS**

#### **A. Voluntary Reporting Conforms to Legislative Intent**

The SED Report notes that Senate Bill (“SB”) 291’s plain language and underlying intent is to make the reporting of potential violations voluntary, and provides a thoughtful summary of the rationale for establishing a voluntary citation program for the electric utilities, even though SED does not make a recommendation. *See* SED Report at 16-17. In SED’s view, gas utilities are required to report self-identified potential violations, per ALJ-274. *See Id.* at 16 and 19. To achieve consistency, and to fulfill the letter and intent of SB 291, the citation programs for both gas and electric utilities should reflect voluntary reporting of potential violations. Commission Staff would still continue to have investigatory means by which to probe into self-reported potential violations, or to conduct audits over areas of critical safety operations. Further, voluntary reporting better empowers Commission Staff to weigh the severity of a potential violation, and any corresponding fine or penalty, such that a utility’s proactive and voluntary self-reporting can be counted as a mitigating factor. A mandatory reporting regime does not lend itself well to a firm yet collaborative framework in which to address safety issues on a utility’s system. While the roles of utility and regulators are distinct, a truly successful and dynamic safety program, citation included, is best achieved through partnership rather than mere policing.

The Commission’s electric safety citation program should be established as a voluntary self-reporting program, as that is the clear intent of the legislature in enacting SB 291. The Commission should also consider extending voluntary reporting to the current gas safety citation program under ALJ-274 to promote consistency between the programs and align both programs with SB 291. Enactment of SB 291 post-dates the adoption of ALJ-274 (December 1, 2011), and thus represents a more current (and now codified) expression of the type of reporting envisioned by the legislature in relation to safety enforcement program for gas and electric corporations.

The Commission can gain valuable insight by conforming its current gas citation program to SB 291’s clear intent for voluntary reporting of potential violations and voluntary removal or resolution efforts taken. *See* Pub. Util. Code Sec. 1702.5(a)(1). Commission Staff can collect comparative data on a number of key metrics over the next several years, under a voluntary self-

reporting application of ALJ-274, and analyze the program’s efficacy under both a voluntary self-reporting application and a required self-reporting application, for which approximately five years’ worth of data would presumably be available for the gas utilities. *See e.g.*, SED Report at 9 (“As of January 2016, 121 self-identified violations have been reported to GSRB, and citations in the amount of \$25.2 million were issued for nine self-identified violations.”).

**B. The SED Report’s Recommendation of Extending Self-Reporting to Instances of Fraud, Sabotage, and Deceptive Actions Should Not Be Adopted Because It Does Not Directly Impact Safety In Every Instance, and Implicates Complex Legal Issues**

The SED Report recommends the following be self-reported, to the extent not already reported via other means:

4. Any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation’s [an electrical corporation’s] personnel, contractors, or subcontractors, regardless of the outcome. *See* SED Report at 21-22.

The SED Report’s fourth recommendation does not appear to be in the scope of the statute. The legislature directed the Commission to develop and implement a “safety enforcement program” designed to “improve gas and electrical system safety.” The utilities can only change what they control. Instances of intentional acts committed by contractors and their subcontractors are something that happens outside the legal control of the utilities.

Furthermore, although there is no explanation of how intentional acts of fraud, sabotage or intentional falsification of records impact safety, one can contemplate limited circumstances where such falsifications could impact safety. A fraudulent invoice, for example, submitted to a utility may lead to overpayment but it does not lead to a safety issue. Intentional falsification of timesheets leads to overpayment but not a safety issue. Intentional falsifications of leak surveys, however, could lead to a safety issue. If such acts ultimately lead to a safety issue, such as that described, then the utilities should be obligated to report such limited instances.

While certain limited instances of fraudulent activities, sabotage and falsification of records may be reportable because it impacts safety, it is not appropriate to consider fines for a utility when there have been intentional acts by third parties. The only exception to this should be if there was a reckless lack of oversight of third parties by the utilities. The reason this

exception should be considered is because part of the purpose of the safety enforcement program is to encourage appropriate behavior. If there is reckless oversight, then that is something that can be improved upon by the utilities. The utilities cannot control, however, when a third party decides to abscond with property, to fraudulently bill them or makes poor decisions. It can only control its own decisions and actions.

**C. Description of Potential Violations for Electric Utilities May Be Interpreted in a Vague and Overbroad Manner**

The SED Report recommends as one of its four criteria for electric utilities:

2. The potential violation caused or could have caused system-wide impacts to the electric grid, caused or could have caused unplanned power outages of over one hour to over 5 percent of an electrical corporation's customers or unplanned outages of over 24 hours to over 100 electrical corporation customers, or caused or could have caused the electrical corporation to activate its emergency response program. *See* SED Report at 22.

The intention of describing a potential violation as something that *could have caused* a particular impact seems evident, as safety is not only about remedying an undesirable impact after-the-fact, but to also take preventative measures. However, in the context of a citation program, where significant monetary fines and other corrective actions are at stake, attempting to apply such a vague and overbroad standard is problematic because it is open to too much subjectivity and arbitrary judgment, which in turn creates uncertainty and potential dispute and conflict. A causal link has to be more evident and defined to be practical and to have the desired effect of enhancing a safety culture that is both demanding yet fair, reflective of due process, and not overly punitive where no actual harm or dangerous condition transpired. If the intent of a safety citation program is as the SED Report describes it, to limit reporting of potential violations to conditions that pose imminent danger to the public (*see* SED Report at 20), then this intent should be reflected in any criteria attempting to define or describe the scope of what constitutes a potential violation.

SoCalGas and SDG&E view the SED Report's first criterion as attempting to apply this scope when it states that "[t]he potential violation created a condition that posed a significant, immediate safety threat to the public and/or utility staff, contractors or sub-contractors." *See*

SED Report at 21. As stated by SED, “[t]he intention of this criterion is to include any self-identified potential violation that presents such an obvious, immediate, and significant threat to life or limb of the public or utility workers that industry best practice dictates that any responsible utility would correct the condition immediately or as soon as possible.” *See Id.* at 21-22, FN. 8. One possible means of addressing the concerns over a vague and overbroad application of SED’s recommended four criteria is to merge criteria 1 through 3 into one criterion, since they are all interrelated and include factors to aid in the identification of a condition posing a significant, immediate safety threat:

1. The potential violation created a condition that posed a significant, immediate safety threat to the public and/or utility staff, contractors or sub-contractors. **A condition that posed a significant, immediate safety threat” includes ones that caused any of the following:**
  - a. **system-wide impacts to the electric grid;**
  - b. **unplanned power outages of over one hour to over 5 percent of an electrical corporation’s customers or unplanned power outages of over 24 hours to over 100 electrical corporation customers;**
  - c. **the electrical corporation to activate its emergency response program;**  
**or**
  - d. **directly caused damage to property of the utility or others estimated to exceed \$50,000.**

In addition, the term “condition” is a relevant and operative term that should be further defined or described in contextual text, should this modified criterion be adopted. SDG&E recommends looking to G.O. 95, Rule 18 for that clarity and consistency. Factors that the electric utility should consider in determining whether a condition poses a significant, immediate safety threat would include: type of facility or equipment; location including whether the safety hazard is located in an extreme or very high fire threat zone; accessibility; climate; direct or potential impact on operations, customers, electrical company or communication workers, and the general public.

This modified criterion, along with the elaboration of determining factors, sets forth a more concrete and understandable standard that reduces the potential for arbitrary or overbroad interpretations, both on the part of electric utilities and Commission Staff.

For electric utilities in particular, system issues such as “wire downs” and rotted poles are potential safety issues which are monitored and reported after-the-fact, unless there is some immediate safety impact, such as a fire. However, a significant number of these issues are more routine in nature, such that it would be impractical and redundant to self-report every wire down or rotted pole under an adopted electric safety citation program. The SED Report seems to acknowledge this at the onset of its description of an electric safety citation program: “SED recommends that the citation program provide for the reporting by electrical corporations of only self-identified potential violations that . . . were not already reported via other means (e.g., an Incident Report or General Order 165, 166, or 174 Reports), and had not come to SED’s attention based on audits or data requests.” *See* SED Report at 21. The modified criterion, as proposed herein, supports and does not conflict with this stated qualifier.

#### **IV. NOTIFICATON TO CITY AND COUNTY OFFICIALS**

The Commission should reconsider the requirement that gas utilities notify city and county officials of any self-identified violations, and should not adopt such a requirement for its electric safety citation program.

##### **A. Experience from ALJ-274**

SoCalGas and SDG&E have been under this reporting requirement under Commission Staff’s administration of the gas safety citation program under ALJ-274. In SoCalGas’ experience, city and county officials are less interested in receiving notifications of non-compliance or every self-reported potential violation, and are more interested in knowing about significant incidents while they are occurring (*i.e.*, real time). Further, in almost every such instance, SoCalGas crews are in contact with first responders and other emergency services, thereby establishing an on-going relationship, both at the scene, and afterwards.

SED’s Report recommends that only the most serious potential violations be reported to city and county officials, under the premise that the quantity of reports should be reduced from current levels. *See* SED Report at 25. SoCalGas supports the overall goal of reducing reporting to only those most critical and useful to city and county officials. In furtherance of that goal, and

in recognition that real-time communication and collaboration with first responders and emergency services is the most urgent and desired need (which is already happening), SoCalGas and SDG&E recommend that this after-the-fact reporting requirement be limited to actual violations for which a utility has incurred a fine or penalty. Ultimately, the company supports a reporting requirement that best serves the public interest.

**B. Electric Safety Citation Program Should Not Establish a Reporting Requirement Until that Need Is Raised by Local Governments**

SDG&E expects the same concerns and problems will exist with its city and county officials if a similar reporting requirement is adopted by the Commission for its electric safety citation program. SDG&E wants to avoid excessive, confusing, and potentially alarming reporting to its local governments, for instance, reporting each and every instance of a wire down that is not posing an imminent safety hazard. SDG&E likewise values and fosters its relationships with first responders and emergency service providers in its service territory. In SDG&E's experience, they are concerned about immediate public threats, and less concerned with receiving notification of self-reported potential violations or instances of non-conformance, particularly when that report may occur several days or weeks after the incident.

As the Commission establishes the electric safety citation program, SDG&E would largely echo SoCalGas in that any such requirement for reporting potential violations should be adopted after the Commission obtains direct feedback from city and county officials as to what, if any, reporting would be most relevant and useful to them and the communities they serve.

**V. WORKSHOPS**

SoCalGas and SDG&E see the need for workshops only to the extent the Commission pursues an electric safety citation program that makes reporting of potential violations as mandatory versus voluntary. A mandatory reporting regime requires more careful and labor intensive discussion and vetting of issues. SoCalGas and SDG&E are optimistic that their input, as provided herein, will be given serious consideration, and will be used to improve the overall structure and effectiveness of the electric safety citation program, as well as the current gas safety citation program administered under ALJ-274. Notwithstanding, if there are outstanding issues or competing views from other commenters, workshops may be the best forum in which to discuss and resolve them. SoCalGas and SDG&E are therefore open to workshops, but do not

have enough information to make an affirmative request for workshops at this time.

## **VI. CONCLUSION**

SoCalGas and SDG&E thank the Commission for seeking input on the design and implementation of the electric safety citation program, and refinements to the gas safety citation program, and respectfully request adoption of the proposed modifications to both programs discussed in these comments.

Respectfully submitted,

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