

**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 THE PHASE TWO
PROPOSED DECISION ADOPTING NECESSARY IMPROVEMENTS AND
REFINEMENTS TO THE GAS AND ELECTRIC SAFETY CITATION PROGRAMS**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedures, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) respectfully submit Opening Comments on the *Phase Two Proposed Decision Adopting Necessary Improvements and Refinements to the Gas and Electric Safety Citation Programs* (PD), issued on August 29, 2016.

The PD correctly concludes, among other things, that:

- 1) Gas and electric utilities should voluntarily report self-identified violations;¹
- 2) The electric safety citation 30-day response time and compliance plan requirements should be extended to the gas program;²
- 3) Utilities may have up to 30 days to report self-identified potential violations after discovery.³
- 4) Utilities should not be required to notify city and county officials of self-identified potential violations unless Commission Staff requires such notification;⁴ and
- 5) Both gas and electric safety citation programs should use the burden of proof by preponderance.⁵

¹ PD at pp. 43-44 Conclusion of Law 9.

² PD at p. 69, Conclusion of Law 19.

³ PD at p. 57, Conclusion of Law 19.

⁴ PD at pp. 60-61, Conclusion of Law 21.

The PD is incorrect, however, in its conclusion that the administrative limit per citation issued should be \$8 million.⁶ Likewise, the PD errs in failing to establish a statute of limitation with respect to issuing a citation based on a self-identified potential violation.⁷ In addition, the PD erroneously holds electric utilities responsible for reporting potential violations incurred due to the third-party actions of a communications infrastructure provider (CIP).⁸ SoCalGas and SDG&E submit the following proposed modifications to correct these three errors.

II. THE PD SHOULD ADOPT A REASONABLE CITATION PENALTY AMOUNT THAT IS BASED ON RECORD EVIDENCE

The PD adopts an administrative limit of no more than \$8 million for each citation issued under the gas and electric safety citation programs. As support, the PD rationalizes that “given the [] revenue requirements of the major gas and electric utilities, the administrative limit we set today is reasonable and achieves the goal of being sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations which may lead to a citation.” SoCalGas and SDG&E strongly disagree. The proposed \$8 million administrative limit is not reasonable because it is arbitrarily based on revenue allocated to the four investor-owned utilities (IOU). The IOUs’ revenue requirements bear no reasonable relation to the potential safety violations. Moreover, the proposed \$8 million administrative limit is wholly lacking in foundation as there is nothing in the record that supports this figure. The PD provides no basis in fact or law to support an \$8 million administrative limit. For these reasons, the \$8 million administrative limit should be rejected.

In the alternative, SoCalGas and SDG&E support adoption of a limit similar to that used by the Pipeline and Hazardous Materials Safety Administration (PHMSA) of \$2 million for any

⁵ PD at p. 70, Conclusion of Law 32.

⁶ PD at pp. 28-29, Conclusion of Law 8.

⁷ PD at pp. 62-63, Conclusion of Law 23.

⁸ PD at pp. 43-44.

related series of violations.⁹ As stated by Southwest Gas, the limit on any safety citation for any related series of violations should be capped at \$2 million because such a requirement would promote consistent assessment of penalties and use of the \$2 million limit is consistent with PHMSA's intent for penalties associated with non-compliance.¹⁰

III. THE COMMISSION SHOULD ADOPT A REASONABLE STATUTE OF LIMITATIONS

SoCalGas and SDG&E recommend that the Commission adopt a reasonable statute of limitations that requires the Commission to issue timely citations. Currently, and contrary to long-established legal precedent, there is no limitation in time of when the Commission may issue a citation for a self-reported violation. However, it is among the oldest and most respected principles of procedural fairness that causes of action must be brought timely and should be barred if stale. As the Supreme Court held in one of its earliest sessions, a cause of action “brought at any distance of time [would be] utterly repugnant to the genius of our laws.”¹¹ A reasonable statute of limitations is needed to protect against claims made after disputes have become stale, evidence has been lost, memories have faded, or witnesses have disappeared. Moreover, adoption of a reasonable statute of limitations would be instructive as to the reasonableness of any penalties that might be assessed by the Commission through the gas and electric safety citation programs.

⁹ See 49 CFR §190.223.

¹⁰ Response of Southwest Gas Corporation (U 905 G) to the Assigned Commissioner's Scoping Memo and Ruling for Phase II at pp. 4-5.

¹¹ *Adams v Woods*, 2 Cranch 336, 342 (1805). More recently, the Supreme Court explained, “Just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost. In compelling circumstances, even wrongdoers are entitled to assume that their sins may be forgotten.” *Wilson v Garcia*, 471 U.S. 261, 263 (1985).

In the alternative, SoCalGas and SDG&E support Southwest Gas' recommendation that "no citations should be issued more than two years after a violation is self-reported."¹²

SoCalGas and SDG&E agree that two years would provide the Commission adequate time and opportunity to investigate and act on any self-reported violations.¹³ Likewise, SoCalGas and SDG&E agree that any issuance of a citation past two years would be prejudicial, as witnesses may no longer be available and as memories fade.

Furthermore, SoCalGas and SDG&E submit that, as with all statutes of limitations, it would be consistent with procedural fairness for the statute of limitation to be equitably tolled in the event (a) the violation could not reasonably have been discovered within the statute of limitations period or (b) if the evidence indicated the gas or electric utility or the utility's agents had concealed or otherwise prevented the discovery of the violation within the one-year period.

IV. UTILITIES SHOULD NOT BE HELD RESPONSIBLE FOR CIP-CAUSED VIOLATIONS ON UTILITIES' POLES.

The PD states "if a communications infrastructure provider causes an electrical corporation's facilities not to meet GO 95 clearance requirements (e.g., between the electric conductors and the communications infrastructure provider's facilities), the electrical corporation (in addition to the communications infrastructure provider) is responsible for complying with these clearance requirements." SoCalGas and SDG&E vehemently disagree that the utilities should be held responsible for reporting CIP-caused violations on CIP's facilities that cause violations on IOU's poles. It is inherently unfair for the Commission to use the utilities as a sort of enforcement proxy because the CIPs are not held to the Safety Citation Program requirements and thus will not be cited by the Commission.

¹² Response of Southwest Gas Corporation (U 905 G) to the Assigned Commissioner's Scoping Memo and Ruling for Phase II at p. 8.

¹³ *Id.*

