PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4550**
May 9, 2013

R E S O L U T I O N

Resolution E-4550.

PROPOSED OUTCOME: This Resolution initiates the California Environmental Quality Act (CEQA) Citation Program authorizing Commission Staff to fine public utilities for non-compliance with Permits to Construct (PTC) and Certificates of Public Convenience and Necessity (CPCN) issued for natural gas storage facilities; electric generating plants; electric transmission/power/distribution line facilities and substations.

SAFETY CONSIDERATIONS: This resolution will provide an efficient way for the Commission to issue non-compliance fines for violations related to conditions of approval of PTC and CPCN permits, which typically include numerous safety-related conditions covering issues such as construction safety, hazardous materials safety, air and water quality, fire safety, and traffic safety.

ESTIMATED COST: None.

This Resolution is made on the Commission's own motion.

SUMMARY

Commission Staff (Staff) is delegated authority to draft and issue citations and levy fines on public utilities (utilities) for non-compliance with a Permit to Construct (PTC) or Certificate of Public Convenience and Necessity (CPCN) issued for natural gas storage facilities, electric generating plants, electric transmission/ power/ distribution line facilities, and substations. Fines will be paid by shareholders. This Citation Program enables staff to quickly address and

prevent situations that may threaten human beings, public safety, or sensitive environmental resources.

Over the last several years the Commission has used its authority to establish Citation Programs in numerous areas, including gas safety; household good movers; charter party carriers; passenger stage corporations; maintenance and operation of power plants; slamming by telecommunications providers; and compliance with Resource Adequacy and Renewables Portfolio Standard requirements. This proposed resolution is consistent with other approved Citation Programs.

Nothing in this Resolution affects the Commission's existing Constitutional and statutory authority to pursue enforcement actions for non-compliance by public utilities with any Commission order, decision, rule, direction, or requirement.

BACKGROUND

The California Environmental Quality Act (CEQA) requires that state and local agencies:

- Inform themselves of the environmental impacts of their actions;
- Disclose those impacts to the public and provide an opportunity to comment on environmental issues; and
- Avoid or reduce significant impacts when feasible.

The Commission must comply with CEQA before issuing PTCs and CPCNs for natural gas storage facilities, electric generating plants, electric transmission/ power/ distribution line facilities, and substations. When an entity applies for a PTC or CPCN, the Commission conducts an Initial Study (IS) to determine the potential environmental impacts of the proposed project. A Mitigated Negative Declaration (MND) is prepared if the project could result in significant impacts, but the impacts can be avoided or reduced to a less-than-significant level with implementation of mitigation measures. An Environmental Impact Report (EIR) is prepared for projects that may cause significant impacts that cannot be avoided or fully mitigated. Mitigation measures developed during the CEQA process are contained in a Mitigation Monitoring, Reporting, and Compliance Program (MMRCP) and adopted as conditions of the PTC or CPCN. PTC, CPCN, and MMRCP requirements (Construction Requirements) will be enforced through the CEQA Citation Program. Table 1 provides examples of adopted mitigation measures:

Table 1

Impact Area	Impact	Mitigation Measure
Air Quality	Construction-related vehicle travel on unpaved roads would result in fugitive dust emissions that would result in a violation of PM10 standards.	All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizers/suppressants.
Biological Resources	Construction activities would have a direct adverse effect on the California tiger salamander.	A preconstruction survey will be conducted each day by an on-site monitor immediately preceding construction activity that occurs within or adjacent to suitable habitat.
Transportation and Traffic	Construction would temporarily disrupt pedestrian and/or bicycle circulation and safety.	Where construction will result in temporary closures of sidewalks and other pedestrian facilities, the project proponent shall provide temporary pedestrian access, through detours or safe areas along the construction zone. Where construction activity will result in bike route or bike path closures, appropriate detours and signs shall be provided.
Noise	Construction noise would substantially disturb sensitive receptors and violate local rules, standards, and/or ordinances.	Applicant will provide notice by mail to all property owners within 300 feet of the project at least one week prior to the start of construction activities. Construction activities would occur between 7 a.m. and 7 p.m. Monday through Friday unless otherwise approved by local government.

Staff[1] ensure that projects comply with the specifications, mitigation measures, and conditions identified in the final decision and implemented through the MMRCP. Staff rely on the expertise of consultants and monitors, including specialists such as biologists, to ensure compliance. Typically, Staff participate in regularly scheduled conference calls with the utilities and consultants to remain current on construction progress, follow the implementation status of mitigation measures, and discuss compliance issues. In addition, consultants to Staff provide specialists to monitor work at the project sites to ensure mitigation measures are implemented correctly and to ensure the project is being built in accordance with Commission-approved specifications.

When compliance violations occur, they are identified and reported by monitors and then documented with identified corrective actions. The purpose of the Citation Program is to reduce the number of compliance violations that occur by imposing fines when utilities fail to comply.

Examples of non-compliance:

- Continuing construction after an authorized staff person has required construction to stop;
- Starting construction components that have not been approved through a Notice to Proceed;
- Violating nest buffer zones;
- Encroachment into an exclusion zone or sensitive resource area designated for avoidance;
- Grading, foundation, line work, or other ground disturbance without required biological pre-construction surveys or biological monitor on site;
- Use of new access roads, overland travel routes, staging areas, or extra work spaces that have not been approved;
- Failure to properly maintain an erosion or sediment control structure;
- Working outside of approved work hours; and
- Project personnel working without proof of training.

[1] The term "Staff" refers to the portion of the Commission's staff designated by the Executive Director to carry out the particular function involved.

Because utilities have many projects in the environmental review process or in construction, there are several different utility project managers with various levels of experience and knowledge of CPUC requirements. In addition, projects often have one or more subcontractors, who work in several different states, and may not be familiar with Commission requirements or CEQA requirements. It is important that violations be addressed immediately so that utility personnel and subcontractors will prevent future violations on their project and prevent environmental harm and improve public safety. A Citation Program will encourage utilities to adequately educate personnel on compliance requirements before and during construction.

DISCUSSION

Need for a Citation Program

A Citation Program will encourage compliance with Construction Requirements. Non-compliance with Construction Requirements can result in irreversible environmental damage or harm to human beings or protected environmental resources. Examples include:

- Take[2] of an endangered or threatened species;
- Wildfire ignition;
- Exposure of sensitive receptors, such as children and the elderly, to substantial air pollutant concentrations;
- Damage to significant archaeological resources;
- Release of hazardous materials into soils or waters; and
- Helicopters dropping external loads.

As stated in Attachment A, this Citation Program establishes a specified violation for:

[2] The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

- Non-compliance with Construction Requirements for natural gas storage facilities, electric generating plants, electric transmission/power/distribution line facilities, and substations.

Fines will be paid by shareholders and would incentivize utilities to prevent non-compliance issues from recurring or continuing.

Benefits of a Citation Program Compared to Existing Tools

Currently, Commission staff document non-compliance events in project progress reports and through non-compliance letters. Some non-compliance events require meetings with utility management to discuss corrective actions. The most serious non-compliance events may require assessing fines through an Order Instituting Investigation (OII) or halting construction through a Stop Work Order. Although the Commission currently uses these tools, non-compliance events continue to occur. For example, a dozen non-compliance events were recorded on the Sunrise Powerlink project and two Stop Work Orders were issued. The Devers Palo Verde 2 project also resulted in a dozen non-compliance events. Several concurrent non-compliance events for the Seventh Standard Substation resulted in a two year investigation and a $100,000 fine and $50,000 donation. A Citation Program will provide Staff with an additional expedited and necessary tool to address compliance issues while project construction is underway and will conserve limited staff resources.

OIIs can take eighteen months or longer to complete, and utilities usually complete construction of a project before an OII can be completed. An OII may redress harm that has already occurred, but is not suitable to quickly address issues that occur during project construction or prevent additional violations on the project.

Substantial time and resources are required to complete an OII, and the Commission has limited staff resources. An Administrative Law Judge is assigned to each OII and hears the matter in accordance with the Commission's Rules of Practice and Procedure. This usually requires a pre-hearing conference, rulings, defining the scope and schedule, submittal of testimony and rebuttal testimony, hearings, briefings, and the issuance of a proposed decision. A Citation Program standardizes the process, so that a lengthy investigative process is unnecessary.

In addition to opening an OII, Staff may issue a Stop Work Order in response to a non-compliance incident. Stop Work Orders halt construction and are issued when a compliance violation continues over an extended period of time, is repeated several times, or when a violation could cause harm to a resource. Construction personnel may be retrained on the environmental compliance requirements of the project while work is stopped. Stop Work Orders are an effective, but limited tool. Stop Work Orders are useful when a compliance violation can be addressed adequately through retraining, but may not always be practical. Stop Work Orders may delay construction and increase costs to ratepayers and may only improve compliance on the specific issue rather than compliance with all requirements. It is important to provide Staff with an additional tool to increase compliance with all Construction Requirements.

A Citation Program will often times be a more useful enforcement tool than opening an OII or issuing a Stop Work Order. Violations can be determined quickly because the decisions authorizing them contain specific conditions. Non-compliance violations are fact-based and can be determined without lengthy investigation. Staff have extensive experience identifying and documenting non-compliance issues. Staff already identify and document non-compliance issues for projects, therefore, a Citation Program can be implemented with little additional time.

A Citation Program will create a financial incentive for the utilities to remain in compliance. With minimal additional Staff effort, compliance with Construction Requirements could be greatly improved, and may save Staff and utilities from future lengthy and costly investigations.

Authority to Establish a Citation Program

The Commission has broad regulatory authority, as set forth in Article XII of the California Constitution and §701 of the Public Utilities Code (PU Code) which authorizes the Commission to "supervise and regulate every public utility in the State . . . and do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

PU Code §702 mandates that "Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in anyway relating to or

affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees."

Public utilities are subject to enforcement action and fines pursuant to PU Code §§2102-2015, 2017, 2108, and 2114.

California law, including PU Code §7, authorizes the Commission to delegate certain powers to Staff, including the investigation of facts preliminary to agency action, and the assessment of specific fines for certain violations. A Citation Program administered by Staff for a specified violation will allow prompt action by the Commission. Over the last several years the Commission has used this authority in numerous areas, including gas safety; household good movers; charter party carriers; passenger stage corporations; maintenance and operation of power plants; slamming by telecommunications providers; and compliance with Resource Adequacy and Renewables Portfolio Standard requirements. This proposed resolution is consistent with other approved Citation Programs.

The issuance of a citation for a specified violation is not mandatory. In the alternative, the Commission may initiate any authorized formal proceeding or pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. Finally, the Commission's enforcement of this Resolution by informal proceedings, formal proceedings, or otherwise, does not bar or affect the remedies otherwise available to other persons or government agencies.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SCG), and Southern California Edison (SCE) requested an extension of thirty days to submit comments and an increase in the page limit from five pages to twenty pages. The Energy Division Director granted the extension of time and increased the comment page limit to fifteen pages. PG&E, SDG&E, SCG, and SCE filed timely comments on March 18, 2013.

Utility Arguments Against a Citation Program

All of the utilities argue against the creation of a Citation Program. Their arguments are summarized below.

PG&E argues that non-compliance already involves significant consequences, including project delays, cost increases, and possible reliability impacts resulting from Stop Work Orders. SCG states that the resolution ignores the effectiveness that Stop Work Orders have on utilities. The Commission recognizes the very serious consequences of issuing a Stop Work Order and agrees it can be an effective tool. Because of the serious consequences of a Stop Work Order, it may not be feasible. In those cases, a monetary fine would provide a better way of addressing the problem.

PG&E argues that the Commission's existing compliance process works well in the vast majority of cases and that there is no basis for addressing non-compliance through fines. The Commission already issues fines through the OII process, and the idea of issuing fines for non-compliance is not a new proposal. On the contrary, this resolution allows Staff to efficiently issue fines when needed to quickly address non-compliance issues that are occurring in the field.

SDG&E states that fines will only prevent future violations that are intentional and that accidental violations are not prevented by fines. SCG makes a similar argument. These arguments are not persuasive. It is the utility's responsibility to comply with permit requirements. Pursuant to CEQA, projects are considered with the environmental requirements and are required to be built with the specifications in the permit. The Commission agrees that violations are often accidental, but they are also, in most cases, preventable through better quality

controls, project management, or communication by the utility. One of the goals of the Citation Program is to address violations caused by negligence.

SDG&E and SCE argue that the draft resolution will likely increase administrative burdens and cost on staff and utilities and SCG, SDG&E, and SCE argue that it will lengthen the CEQA review and implementation process. SCG describes Construction Requirements as aspirational and necessarily flexible and adaptable. SCG also suggests that, at times, it comments on flaws in mitigation measures during the MMCRP development process rather than during the comment period on the draft environmental document and that a Citation Program will slow down the process because they will have to address flaws during the draft document stage. In its comments, SDG&E correctly asserts that CEQA requires that mitigation measures "must be fully enforceable, and the lead agency must adopt a program to ensure compliance with those measures during project implementation." CEQA is a public disclosure law. SCG should be commenting on flaws in mitigation measures during the draft document process, not after the fact. The Citation Program will not slow down the process. The Citation Program will work within the Commission's robust compliance framework and will not increase the overall time spent addressing non-compliance issues. The time spent processing non-compliance determinations through a Citation Program is small in comparison to the time spent conducting an OII. It is also small in comparison to the time staff currently spends on project construction oversight.

SDG&E argues that without a public process to identify systemic problems with environmental compliance and evaluate the cost and benefits of any new potential remedies, the Citation Program is not justified or defensible. SCG makes a similar argument and SCE goes a step further by requesting a rulemaking and establishment of a working group to discuss compliance issues. Their arguments are unpersuasive. As stated in the resolution, pursuant to the PU Code, utilities must comply with all Commission orders, including a Commission order authorizing a PTC or CPCN, and the Commission may assess fines for not complying with a Commission order. Establishing a Citation Program is within the Commission's broad regulatory authority. The Citation Program is just one more tool for the Commission to use within its existing enforcement authority. The examples of utility non-compliance with

Construction Requirements that have been documented by Staff and set forth in this Resolution demonstrate the need for the Citation Program.

SCG argues that the draft resolution unlawfully delegates discretionary authority to Commission staff because staff must exercise discretion when determining what constitutes a violation and what constitutes harm to a human being or resource. SCE argues that the two penalty levels violate due process. The resolution has been modified to address these comments and limits citations to only one type of specified violation. In contrast, PG&E and SCE request that staff be able to exercise more discretion when determining the amount of a fine, based on several different factors. We decline to adopt this suggestion. The Citation Program already states that a fine is not required for every violation and an appeal process allows utilities to contest a fine.

SCG argues that the draft resolution will create an adversarial environment. SCE argues that adoption of the draft resolution requires CEQA review because it is a discretionary action. SCE states that the draft resolution is contrary to law because the Commission has not determined that CEQA does not apply. SCE goes on to state that a fair argument can be made that the draft resolution may cause significant environmental impacts and is not exempt from CEQA. SCE states that the draft resolution may have a significant effect on the environment by changing the way mitigation measures are written and enforced.
SCG also argues that over time, a Citation Program could result in less rigorous environmental standards.

Both SCE and SCG fail to make fair arguments that the adoption of the Citation Program would have significant adverse effects on the environment. Logic also fails to support their arguments that another tool to enforce existing CEQA requirements will result in less rigorous environmental standards. The Citation Program will only apply to projects that have already been adopted in compliance with CEQA. It will not change the Commission's obligations under CEQA. The Citation Program is designed to further incentivize strict compliance with Construction Requirements. Thus, it can be seen with certainty that the adoption of the Citation Program will not have a significant effect on the environment.

SCG states that the resolution enforces aspirational guidelines that are subject to several reasonable interpretations. The Commission's Construction Requirements are not aspirational. This comment alone supports the need for the Citation Program to make it clear to the utilities that the Commission is serious about both creating enforceable Construction Requirements and enforcing them. CEQA requires as much.

SCG and SCE argue that the Citation Program cannot satisfy due process. SCG and SCE both state that the prescribed conduct is not sufficiently defined to provide adequate notice. PG&E argues that the draft resolution does not provide an adequate evidentiary record. SCG also argues that the draft resolution is based on findings that are not supported by substantial evidence, in light of the whole record, as required by PU Code §1757(a)(4) and that the resolution is not supported by any record. The utilities already have notice that the violation of a Commission Order is a crime. The Citation Program is intended to quickly halt violations of Construction Requirements that were developed and adopted during often lengthy Commission proceedings. The utilities have sufficient process to understand their obligations as contained in the Construction Requirements. Due process is satisfied through the appeal process for citations that is consistent with the other Citation Programs adopted by the Commission. The PU Code Section that PG&E cites is inapplicable as it pertains to the standards by which a court may review Commission Decisions. That statute does not apply to the Commission's adoption of its own rules to enforce its existing authority.

SCG also states that the draft resolution contains a provision that encourages retaliation by staff against a utility for exercising its due process right to a pre-deprivation hearing before a neutral Administrative Law Judge. SCG misunderstands this particular provision. If an appeal is made, the Commission will ultimately determine the amount of the fine that is appropriate. The Commission may decide that no fine is appropriate or that the violation is of such a serious nature that an investigation should be ordered. This Resolution does nothing to restrict the Commission's existing enforcement authority. Staff cannot predetermine how the Commission will decide to exercise its enforcement authority on appeal.

SCG also argues that the resolution violates PU Code §2104.5 because the draft resolution does not provide any guidance or checks on staff's exercise of discretion to impose fines. SCG states that staff do not conduct the analysis required in PU Code §2104.5 which states "[i]n determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered." PU Code §2104.5 applies to penalties for violations involving "safety standards for pipeline facilities or the transportation of gas [within California]…" The Citation Program applies to Construction Requirements which are fundamentally different from gas pipeline safety standards.

SCG also argues that the Commission does not have authority to issue fines for perceived non-compliance with laws or regulations where the authority to interpret and enforce those laws relies exclusively with another agency. SDG&E argues that another agency's specific jurisdiction may preempt Energy Division's[3] claimed authority to levy fines based on a violation of another agency's requirements. SCE argues that duplicative penalization for the same underlying conduct is generally impermissible under California Law. The Commission, as a lead agency under CEQA, has a duty to ensure that the projects that we approve are safely constructed. We take any violations of our Construction Requirements seriously and will not delegate enforcement of our own rules and orders to another agency. This would be a violation of State law. If a utility believes that it should not be fined by the Commission because it simultaneously violated both a Construction Requirement and a regulation of another State Agency, it may make that argument on appeal. The Citation Program does not create any new penalties, rather it is a process by which the Commission is exercising its existing authority.

[3] We note here that the Executive Director may delegate to Commission Staff and this program does not specify that Energy Division staff will be issuing violations.

All of the utilities argue that the Citation Program is not needed. The utilities fail to recognize the Citation Program as a valid alternative to the lengthy, labor intensive OII process. The utilities' arguments that a Citation Program is not needed are not persuasive.

Proposed Changes to the Citation Program

The utilities propose several changes to the Citation Program if adopted by the Commission. PG&E, SCG, and SDG&E request an opportunity to meet and confer with staff prior to any decision to issue a fine. The Commission agrees that meeting with staff to discuss a potential compliance violation is beneficial. The resolution has been amended to require staff to meet and confer with the utilities prior to making a final decision on issuing a citation.

PG&E, SCG, and SCE argue that the citations issued through this program should be subjected to a specified cap. PG&E argues for a cap of $100,000 for any single violation, and proposes that any penalty above that amount require a vote of the Commissioners through the OII process. The Commission agrees and adopts a $100,000 cap on each single violation.

PG&E, SCG, and SCE also request a cure period. Because Construction Requirements are put in place to reduce or eliminate impacts, not complying with those requirements will often result in an immediate impact and cannot be cured. For example, if the utility works outside of approved work hours, or clears an environmentally sensitive area, the damage has already occurred and cannot be cured. In addition, even if a violation has not led to an immediate impact, it's likely that it could at any moment. For example, failure to comply with wildfire prevention measures may result in fire ignition at any time. Providing a cure period for any amount of time could jeopardize public safety. Because of the nature of the anticipated violations and the further risk to resources if the violation is not immediately halted, it is infeasible to provide a period to cure. In addition, this resolution does not require the Commission to issue a citation if a violation has occurred, so a cure period is unnecessary.

PG&E requests that the Commission adopt a transparent internal process under which the assigned Energy Division Project Manager must conclude that a violation has occurred, and that the Director of Energy Division must approve

the citation before it is issued. Similarly, SCE requests that authority to issue citations be limited to the Energy Division Director or Safety and Enforcement Division Director. We decline to adopt such prescriptive language. Pursuant to PU Code §308, the Executive Director is responsible for the Commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the Commission. Although the statute sets forth an Executive Director with specified duties, the statute does not define an Energy Division Director, Safety and Enforcement Director, or Energy Division Project Manager. Depending on the organization and priorities of the Commission, the division or divisions in charge of approving the citations may change over time, and should not be defined in this resolution. Typical Commission practice for issuing citations includes review by several management level employees, including a division director. In order to provide more flexibility, we will require that all citations are approved by a division director, or equivalent, as determined by the Executive Director.

SCG expresses concerns about arbitrary and discriminatory enforcement by Staff. The resolution already includes an appeal process where a utility may present its case to an Administrative Law Judge and no change to the resolution is required.

SCG requests clarification that Staff bears the burden of proof on appeal. This is already stated in Section 2.7.7 of Appendix A.

SCE requests that the draft resolution be modified to specify that a violation does not have to result in a fine. The resolution already includes this language in the discussion section and in an ordering paragraph and does not need to be modified.

SCE requests that a fine not be imposed if the utility files a timely appeal of citation, unless an Administrative Law Judge (ALJ) finds a violation existed, and the Commission agrees with the findings of the ALJ. The resolution has been clarified with the previous statement. SCE also requests that the resolution clarify if interest accrues on a fine when a utility has filed an appeal. The resolution has been clarified to state than no interest accrues if the utility has filed a timely notice of appeal.

SCE requests that the draft resolution specify that the Citation Program will only apply to future projects. SCE provides no reasoning for this request, and we decline to adopt the requested change.

FINDINGS

1. The California Environmental Quality Act requires state and local agencies to inform themselves of the environmental impacts of their actions; disclose those impacts to the public and provide an opportunity to comment on environmental issues; and to avoid or reduce significant impacts when feasible.

2. The Commission must comply with the California Environmental Quality Act when issuing Permits to Construct and Certificates of Public Convenience and Necessity.

3. Public Utilities Code Section 702 mandates every public utility to obey and comply with every Commission order, decision, direction, or rule.

4. Utilities must comply with the requirements in Permits to Construct; Certificates of Public Convenience and Necessity; and Mitigation Monitoring, Reporting, and Compliance Programs (Construction Requirements).

5. The Commission has the power to act as an enforcement agency and to ensure that penalties are promptly prosecuted and collected pursuant to Public Utilities Code Section 2101.

6. Public utilities are subject to Commission enforcement action and penalties pursuant to Public Utilities Code Sections 2102-2105, 2017, 2108 and 2114.

7. Under California law, including Public Utilities Code Section 7, the Commission may delegate authority to its Staff to perform certain functions.

8. Delegation of authority to a division director, or equivalent, as determined by the Executive Director, to issue citations and levy Scheduled Fines for Specified Violations will encourage compliance with Construction Requirements.

9. A Citation Program will provide the timely remedy necessary to correct ongoing compliance issues while project construction is underway and will conserve limited staff resources.

10. A Citation Program will incentivize utilities to prevent non-compliance issues from recurring or continuing.

11. The Scheduled Fines set forth in Appendix A are reasonable and will encourage compliance with Construction Requirements.

12. The proposed procedures set forth in Appendix A for the Citation Program ensure due process, fairness, and efficiency in the application of the Citation Program.

THEREFORE IT IS ORDERED THAT:

1. The Citation Program and the Scheduled Fines for the Specified Violations as described in Appendix A, are hereby adopted.

2. Authority is delegated to a division director, or equivalent, as determined by the Executive Director, to issue citations and levy Scheduled Fines for the Specified Violations set forth in Appendix A to enforce compliance with Permits to Construct; Certificates of Public Convenience and Necessity; and Mitigation Monitoring, Reporting, and Compliance Programs (Construction Requirements).

3. Fines will be paid by shareholders.

4. The issuance of a citation for a Specified Violation is not mandatory, and, in the alternative, the Commission may initiate any formal proceeding authorized by the California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission's Rules of Practice and Procedure, or prior

Commission orders, decisions, rules, directions, demands or requirements, and pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity.

5. Nothing in this Resolution bars or affects the rights or remedies otherwise available to other persons or government agencies.

6. Resolution E-4550 is enacted.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 9, 2013; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners

APPENDIX A

California Environmental Quality Act Citation Program

1.0 Specified Violations and Scheduled Fines

1.1 "Specified Violation" means the failure to comply with Construction Requirements[4] for natural gas storage facilities; electric generating plants; electric transmission/ power/ distribution line facilities or substations. This includes failure to implement the mitigation measures in the project's environmental document (e.g. Environmental Impact Report, Mitigated Negative Declaration), adopted as part of the final decision, or making unauthorized project changes (e.g. moving work areas without Commission approval).

1.2 "Scheduled Fines" for Specified Violations are set forth in Appendix A.

1.3 Modification of Scheduled Fines. Scheduled Fines may be modified by Resolution.

2.0 Procedures for the Citation Program

2.1 Citations for Specified Violations. Prior to issuing a citation, the utility will be given an opportunity to meet with a CPUC staff person, in person or by phone, and discuss the potential violation. After appropriate informal investigation and verification that a Specified Violation defined in this Resolution has occurred, the division director, or equivalent, as determined by the Executive Director, is authorized to issue a citation. The Specified Violations and the corresponding Scheduled Fine that may be levied are described in this Appendix.

2.2 Service of Citations. Citations shall be sent by Commission Staff by first class mail to the Respondent at the address of the agent for service of process.

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[4] Requirements in a Permit to Construct; Certificate of Public Convenience and Necessity; or Mitigation Monitoring, Reporting, and Compliance Program.

2.3 Content of Citations. Citations shall state the alleged violation, the evidence supporting the alleged violation, and the proposed Scheduled Fine. The citation may summarize the evidence and Commission Staff shall make the evidence available for timely inspection upon request by the Respondent. Citations also shall include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative present at the hearing, and to request a transcript.

2.4 Response to Citation. A Respondent may either: (1) accept the citation and the Scheduled Fine; or (2) appeal the citation.

2.5 Filing with Commission Staff. Unless otherwise specified, "notify Commission Staff," "filing," or "file" means to send a written communication by the U.S. Mail or an express mail service to the address specified in the order or citation that requires the filing or notification. These written communications are not filed with the Commission's Docket Office. In addition to or instead of communications by mail service, Commission Staff may allow electronic submissions.

2.6 Acceptance of Scheduled Fine. In the event the proposed Scheduled Fine is accepted, the Respondent shall notify Commission Staff in writing and shall pay the Fine in full as set forth in subsection 2.8, below within thirty (30) days of the service date of the citation.

2.7 Appeal of Citation. In lieu of accepting the Scheduled Fine, a Respondent may appeal the citation and request a hearing. In the event of an appeal, any remedy available may be imposed, and the remedy shall not be mandated by or limited to the Scheduled Fine.

2.7. 1. Notice of Appeal. To appeal a citation, the Respondent must file a written Notice of Appeal. The Notice of Appeal must state the grounds for appeal and be filed with Commission Staff within thirty (30) days of the date of the citation.

2.7.2. Referral to Administrative Law Judge. Upon receipt of a timely Notice of Appeal, Commission Staff shall promptly provide a copy of the Notice of Appeal to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall promptly designate an Administrative Law Judge to hear the appeal.

2.7.3 Time of Hearing. No less than ten (10) days after the Notice of Appeal is filed, the assigned Administrative Law Judge shall set the matter for hearing promptly. The Administrative Law Judge, may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.

2.7.4 Location of Hearing. Appeals of citations shall be heard in the Commission's San Francisco courtroom on regularly scheduled days.

2.7.5 Transcripts. The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's specified procedures.

2.7.6 Representation at Hearing. The Respondent may be represented at the hearing by an attorney or other representative, but any such representation shall be at the Respondent's expense.

2.7.7. Evidentiary Hearing. At an evidentiary hearing, Commission Staff bears the burden of proof and, accordingly, shall open and close. The Administrative Law Judge may, in his or her discretion to better ascertain the truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received at the discretion of the Administrative Law Judge.

2.7.8 Submission. Ordinarily, the matter shall be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.

2.7.9 Decision. The Administrative Law Judge shall issue a draft decision resolving the appeal not later than thirty (30) days after the appeal is submitted in accordance with subsection 2.7.8, and the draft decision shall be placed on the first available agenda, consistent with the Commission's applicable rules.

2.7.10 Communications. From the date that a citation is issued to and including the date when the final decision is issued, neither the Respondent nor Commission Staff, or any agent or other person on behalf of the Respondent or Commission Staff, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or Administrative Law Judge.

2.8 Payment of Scheduled Fines. Payment of Scheduled Fines shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the Public Utilities Commission for the credit of the State General Fund.

2.9 Default. If the Respondent: (a) notifies Commission Staff of acceptance of a Scheduled Fine and fails to pay the full amount of the Scheduled Fine within thirty (30) days of the date of the written acceptance of the Scheduled Fine; or (b) fails to notify Commission Staff of acceptance of a Scheduled Fine or fails to file a written Notice of Appeal in the manner and time required, then the citation and fine shall become final and the Respondent is in default.[5] Upon default, any unpaid balance of a Scheduled Fine shall accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

2.10 Reporting. Commission Staff shall regularly report to the Commission summarizing actions taken pursuant to this Resolution. The report shall include a summary of the citations and penalties imposed, fines paid, and the disposition of any appeals.

[5] If the utility files a timely notice of appeal, a fine is not due unless an Administrative Law Judge (ALJ) finds a violation existed, and the Commission agrees with the findings of the ALJ. Interest does not accrue on a fine if a timely notice of appeal is filed.

SPECIFIED VIOLATIONS AND SCHEDULED FINES

SPECIFIED VIOLATION	SCHEDULED FINE
Non-compliance with Construction Requirements for natural gas storage facilities, electric generating plants, electric transmission/ power/ distribution line facilities, and substations.	$500 per day for the first ten days the non-compliance occurred and $1,000 for each day thereafter. The total fine issued through this Citation Program for a single violation will not exceed $100,000.