

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAFETY AND ENFORCEMENT DIVISION
Electric Safety and Reliability Branch

Agenda Item 32
ID # 12681
RESOLUTION ESRB-4(Rev.1)
February 5, 2014

RESOLUTION

Resolution ESRB-4. The Safety and Enforcement Division (SED) requests authority to issue Staff citations to owners and/or operators of electric supply and communications facilities. The Resolution also satisfies legislative requirements (Senate Bill 291–Hill) to establish a citation and appeals process as part of a safety and enforcement program.

PROPOSED OUTCOME: Staff citation authority permits SED to assess penalties for safety violations which previously required lengthy formal proceedings. A citation program will encourage electric supply and communications facilities owner/operators to proactively identify and repair violations to avoid penalties, and to self-report violations to avoid greater penalties.

SAFETY CONSIDERATIONS: Improves infrastructure, worker and public safety by deterring safety shortcuts, misbehavior and illegal conduct.

ESTIMATED COST: None.

SUMMARY

Resolution ESRB-4 (Resolution) delegates specified authority to Safety and Enforcement Division (SED) Staff, or such other Staff as may be designated by the Executive Director (together Staff), to issue citations to corporations owning

or operating electrical supply and/or communications facilities¹ in order to enforce compliance with General Orders 95, 128, 165, 166, 174, and other applicable electric and communication decisions, regulations and codes regarding electrical supply and communications facilities.

Citations may be issued for violations that have occurred both before and after the date of this Resolution.

The Commission delegates this authority to Staff to require the immediate cure of the cited violations and to levy penalties for violations in the maximum amount prescribed for penalties by Public Utilities Code §§ 2107 and 2108.² For calculating penalties, this Resolution grants Staff discretion to reduce the penalty levels from the maximum daily amount consistent with the factors set forth in Senate Bill 291 (2013) (SB 291),³ § 2104.5, and Commission decisions interpreting § 2104.5,⁴ including, among other things, consideration of self-reporting of the violation. This Resolution also establishes in Appendix A the appeal process for respondents to object to citations that have been issued pursuant to this Resolution.

This Resolution satisfies the requirement set forth in SB 291 for the Commission to establish a citation and appeals process as part of a safety enforcement program to correct and punish the safety violations of electrical corporations. However, this citation program expands on the requirement of SB 291 consistent with the Commission's existing authority to establish citation programs. Among other things, the citation program established by this Resolution includes communication facilities.

Delegating to Staff the authority to issue citations for violations of safety regulations related to electrical supply and/or communications facilities will permit SED to streamline enforcement procedures by assessing penalties for

¹ See, e.g. General Order 95, Rule 12 and *Polk v. City of Los Angeles*, 26 Cal. 519 (1945). This citation program extended to non-electric utilities consistent with the applicability of General Order 95. See, General Order 95, Rule 12.

² All further section references are to the California Public Utilities Code, unless otherwise noted.

³ SB 219 is Codified at Public Utilities Code §1702.5. Subsection (a)(1) of that statute provides:
When considering the issuance of citations and assessment of penalties, the staff shall take into account voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, the prior history of violations, the gravity of the violation, and the degree of culpability.

⁴ See, e.g., Commission Decision (D.) 98-12-075, and Resolution ALJ-277, issued April 20, 2012.

safety violations which previously required cumbersome proceedings before any enforcement could occur. Properly implemented, this citation program will encourage corporations owning or operating electrical supply and/or communications facilities to proactively identify and repair violations to avoid penalties, and where applicable to self-report violations, in order to avoid greater penalties.

DISCUSSION

Commission Authority to Establish This Citation Program

The Commission has broad regulatory authority, as set forth in Article XII of the California Constitution and Public Utilities Code § 701. Section 701 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.”

As mandated in § 702:

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 any way relating to 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.

Pursuant to § 451 each public utility in California must:

[F]urnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities,... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

Indeed, the Commission has stated that “[t]he duty to furnish and maintain safe equipment and facilities is paramount for all California public utilities.”⁵

⁵ D.11-06-017 at 16.

Pursuant to § 2101, the Commission is directed to:

... see that the provisions of the constitution and the statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected...”

Pursuant to § 768⁶ and other relevant authority, the Commission has adopted, and at various times amended General Order 95 (*Rules for Overhead Electric Line Construction*), General Order 128 (*Rules for Construction of Underground Electric Supply and Communication Systems*), General Order 165 (*Inspection Cycles for Electric Distribution Facilities*), General Order 166 (*Standards for Operation, Reliability and Safety During Emergencies and Disasters*), General Order 174 (*Rules for Electric Utility Substations*) and the precursors to these orders. Additionally, the Commission enforces the Public Utilities Code, and has enacted various decisions and resolutions related to electrical supply and communication facilities.

Public Utilities Code § 7 allows the Commission to delegate certain tasks to Commission staff. The Commission may lawfully delegate to its Staff the performance of certain functions, including the investigation of facts preliminary to agency action and the assessment of specific penalties for certain types of violations.⁷ The primary purpose of an effective enforcement program should be to deter misbehavior or illegal conduct by utilities and other entities subject to Commission jurisdiction thereby ensuring that both the employees of the corporation and the public it serves are properly protected from the inherent hazards of providing their services. To increase the effectiveness of the Commission’s safety program, it is reasonable to provide Staff with an additional enforcement procedure to ensure that corporations owning or operating

⁶ In relevant part, § 768 provides that the Commission “may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. . . The commission may establish uniform or other standards of construction or equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand.”

⁷ D.09-05-020 at 8.

electrical supply and/or communications facilities adhere to their statutory and service obligations.⁸

The delegated authority approved today is designed to allow SED Staff, or such other Staff as may be designated by the Executive Director, to issue citations as part of their duties to help ensure the safety of electric and communication facilities and operating practices. Such authority does not in any way diminish the corporations' owning or operating electrical supply and/or communications facilities primary responsibility to operate and maintain their facilities in a safe manner.

Assessment of Penalties

The citation program described herein delegates authority to Staff to draft and issue citations for violations of General Orders 95, 128, 165, 166, 174 and other applicable electric and communication decisions, regulations and codes regarding electrical supply and communications facilities. This citation authority extends to non-electric utilities, and Staff may issue citations for violations that have occurred both before and after the date of this Resolution. The Commission delegates this authority to Staff to require the immediate cure of the cited violations and requires Staff to levy penalties for violations in the maximum amount prescribed for penalties in §§ 2107 and 2108.

Pursuant to § 2108, each violation is a separate and distinct offense and ongoing violations are separate and distinct offenses which are not cured until a satisfactory repair is made. Thus, penalties shall be assessed on a daily basis pursuant to § 2108 until a satisfactory repair is made. However, the Commission grants Staff the discretion to assess the maximum penalties required by § 2107 on less than a daily basis based on consideration of the factors set forth in § 1702.5(a)(1), § 2104.5, Commission Decision (D.) 98-12-075, and Resolution ALJ-277, issued April 20, 2012.

⁸ The Commission's jurisdiction to create citation programs is well-established. The CPUC has adopted similar citation programs in several other areas. See Commission Resolutions E-4195 (resource adequacy), ROSB-002 (transportation), UEB-002 (telecommunications), USRB-001 (propane), ALJ-274 (gas), and W-4799 (water and sewer).

A corporation's schedule for repairs is irrelevant for purposes of violations; citations may be issued for violations, and penalties levied, regardless of the status of the corporation's schedule for repairs.

Penalty payments are the responsibility of shareholders of the corporations owning or operating electrical supply and/or communications facilities and are not to be charged to their ratepayers.

Appendix A to this Resolution sets forth the appeal process for respondents to appeal citations that have been issued pursuant to this Resolution. The respondent has thirty days to appeal the citation, the citation shall explain how an appeal is filed, and shall notify the respondent of its right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter. Penalties are stayed during the appeal process.

Overview of General Orders 95, 128, 165, 166 and 174

Pursuant to the requirements of Public Utilities Code §§ 451 and 768, General Order 95 was first adopted in 1941, in D.34884. It prescribes the rules governing the design, construction and maintenance of overhead electrical supply and communication facilities.

General Order 128 was first adopted in 1967, in D.73195 and D.73462. It prescribes the rules governing the design, construction and maintenance of underground and padmounted electrical supply and communication facilities.

General Order 165 was first adopted in 1997, in D.97-03-070. It prescribes the rules governing inspection cycles for electrical supply and communication facilities.

General Order 166 was first adopted in 1998, in D.98-07-097. It sets standards for operation during emergencies.

General Order 174 was first adopted in 2012, in D.12-10-029. It prescribes the rules governing the design, construction and maintenance of electric substations.

Over the years, these General Orders have been amended several times, and the Commission has promulgated other decisions and regulations related to electrical supply and communication facilities.

The Need to Expand Staff's Citation Authority

The Commission has recognized that it needs to expand Staff's citation authority – as proposed here – based on what has been learned as a result of the San Bruno gas transmission line explosion that occurred on September 9, 2010.

On September 23, 2010, in the wake of the explosion, the Commission established an Independent Review Panel to gather and review facts related to the causes of the San Bruno explosion and to make recommendations for the safe management of natural gas transmission lines going forward.⁹

In assessing the Commission's oversight authority, the Independent Review Panel recommended that "[t]he CPUC should seek to align its ... enforcement authority with that of the [Office of the] State Fire Marshal's [OSFM] by providing the SED staff with additional enforcement tools modeled on those of the OSFM and the best from other states."¹⁰ The Panel noted that the Pipeline Safety Division of the OSFM has the authority to initiate and conclude enforcement actions and to assess civil penalties without initiating the formal processes and procedures currently required at the Commission.¹¹

On August 30, 2011, the National Transportation Safety Board (NTSB) adopted its Pipeline Accident Report on the San Bruno explosion, which included findings on the probable causes of the explosion and made several recommendations regarding expanding the Commission's enforcement authority "including the assessment of fines and penalties, to correct noncompliance..."¹² Similar to the Independent Review Panel Report, the NTSB strongly

⁹ See Resolution L-403.

¹⁰ *Report of the Independent Review Panel – San Bruno Explosion*, Prepared for California Public Utilities Commission, Revised Copy, June 24, 2011, (IRP Report) at Recommendation 6.7.3.1 at 104. The IRP Report is available on the Commission's website at: <http://www.cpuc.ca.gov/NR/rdonlyres/85E17CDA-7CE2-4D2D-93BA-B95D25CF98B2/0/cpucfinalreportrevised62411.pdf>.

¹¹ Pursuant to Government Code §§ 51010 *et seq.*, the OSFM has safety and enforcement jurisdiction over intrastate hazardous *liquid* pipelines. In particular, Government Code §§ 51018.6 *et seq* mandates that the State Fire Marshal shall adopt regulations for conducting enforcement proceedings and provides that violations may result in civil penalties of \$10,000 per day that the violation exists, up to \$500,000 per occurrence.

¹² See *National Transportation Safety Board, Pipeline Accident Report, Pacific Gas and Electric Company, Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010, adopted August 30, 2011* (NTSB Report) at 123. The NTSB Report is available at <http://www.nts.gov/doclib/reports/2011/PAR1101.pdf>.

recommended that the Governor of the State of California expand the Commission's Pipeline Safety Division staff enforcement authority and ensure that Commission staff has the authority to issue penalties.¹³

In response to the recommendations in these reports, the Commission adopted resolution ALJ-274 on December 11, 2011, instituting a gas operator citation program.

Both reports recognized that the Commission's existing enforcement procedures, which require Staff to perform discovery and prepare a report and proposal for formal Commission investigation (referred to as Order Instituting Investigation or OII) were overly cumbersome and limited Staff's ability to quickly address safety violations.¹⁴ The same OII challenges plague enforcement actions regarding the safety violations committed by corporations owning or operating electrical supply and/or communications facilities.

The Resolution adopted today expands Staff's enforcement authority over corporations owning or operating electrical supply and/or communications facilities. This Resolution is consistent with a comprehensive application of both the NTSB's and the Independent Review Panel's recommendations. It recognizes that the safety oversight recommendations in those reports appropriately apply not only to gas system design, operation and maintenance, but also to the need for streamlined Staff enforcement authority related to potentially hazardous design, operation, and maintenance activities associated with electrical supply and communications facilities, including both overhead and underground facilities.

In addition to these considerations, on October 5, 2013, the Governor signed SB 291 into law. SB 291, codified at Public Utilities Code § 1702.5, directs the Commission to develop and implement a safety enforcement program applicable to electrical corporations which includes, among other things, procedures for the issuance of citations and a citation appeals process. This Resolution addresses

¹³ See also IRP Report at 21-22 and 101-102.

¹⁴ See, e.g., NTSB Report at 123 ("Although the CPUC and PHMSA have authority to enforce pipeline safety regulation, the organizational failures of PG&E seen in this accident suggest that some operators are able to ignore certain standards without concern for meaningful enforcement action."); and IRP Report at 21 ("Because the OII is a formal adjudicatory process that may involve administrative law judges, hearings, and pleadings, it is unwieldy for any but the most severe violations. As a result, the Staff has little flexibility to address significant violations that do not warrant an OII or judicial process.").

those requirements of § 1702.5, and further extends the citation program to communication facilities consistent with the Commission's existing authority to establish citation programs.

The potentially hazardous nature of electrical supply and communications facilities, and in particular, communications facilities attached to electrical supply facilities, is not speculative. There have been a number of incidents in the past decade involving electrical supply and communication facility failures, including:

- The Southern California Witch, Rice, and Guejito Fires of 2007 caused by two overhead electrical conductors that came into contact with each other and communication lashing wires contacting overhead electrical conductors (I.08-11-006 and I.08-11-007);
- The Malibu Canyon Fire of 2007 which was caused by overloaded electrical supply and communication facilities which collapsed during windy conditions (I.09-01-018);
- The 2011 Acacia Avenue incident in San Bernardino County in which a broken overhead electrical conductor resulted in three fatalities;
- The 2011 North Fork incident near Yosemite in which two overhead electrical conductors came into contact because of inadequate clearance, injuring a utility employee who was working on them;
- The 2012 Templeton incident near the Central Coast in which a utility compliance inspector was injured when he made contact with energized facilities;
- The 2012 Ridgecrest incident in Southern California in which a bird caused an overhead conductor to fail, resulting in a child suffering burns;
- The 2012 Whittier incident in which a power line broke due to a tree growing between the primary lines, resulting in a fatality; and
- The 2012 San Mateo incident in which an overhead conductor failed due to animal contact, resulting in a fatality.

Delegation of Citation Authority to Commission Staff

The Commission finds it is reasonable and necessary to delegate to Staff the ability to issue citations to any corporation owning or operating electrical supply and/or communications facilities for violations of General Orders 95, 128, 165, 166, 174 or other related decisions, codes, or regulations applicable to electrical supply and communication facilities. Such authority will significantly expand the enforcement tools available to Staff and should help to ensure prompt correction of potential safety violations.

This Resolution gives Staff the authority to issue a written citation to any corporation owning or operating electrical supply and/or communications facilities for violations that have occurred both before and after the date of this Resolution. In issuing a citation SED staff is required to state the specific violation, the number of offenses, and the amount of the penalty, and to provide information about how to appeal the citation, consistent with the procedures set forth in Appendix A. This Resolution grants Staff the authority to issue such written citations to help implement its existing authority to require that the violation be corrected at, or soon after, the time Staff identifies a violation, notwithstanding any existing utility schedule for repairs. Each day of an ongoing violation may be penalized as an additional offense.

The Respondent may either pay the penalty or submit a Notice of Appeal. The procedures for issuing citations and for filing a Notice of Appeal are set forth in Appendix A hereto.

Each citation may assess the maximum penalty amount provided for by § 2107. Pursuant to § 2108, each violation is a separate and distinct offense and to the extent that a violation is ongoing, each day's continuance is a separate and distinct citable offense. Thus, Staff shall originally assess penalties on a daily basis. However, Staff then has the discretion to reduce the maximum penalties based upon consideration of the factors set forth in Public Utilities Code § 1702.5(a) (1), § 2104.5, Commission Decision 98-12-075, and Resolution ALJ-277, issued April 20, 2012.

Payment of a citation or filing an appeal does not excuse the corporation from curing the violation, nor does it prevent Staff or the Commission from taking other remedial measures, including, but not limited to, (i) issuing corrective

orders and other compliance orders, such as an expedited order to show cause; and/or (ii) proposing or issuing an OII.¹⁵

The Commission has a mandate to ensure that utilities provide safe and reliable service at reasonable rates; authorizing Staff to issue citations is necessary to fulfill that mandate. Consistent with that mandate, the Commission requires that the cited corporations correct any violations as soon as feasible, consistent with maintaining a safe and reliable system while prioritizing the safety of the public and electrical and communication corporation employees. If the violations cannot be corrected within thirty calendar days, then the Respondent shall submit a detailed Compliance Plan to the Director of SED reflecting the soonest that the corporation can correct the violations. In addition, notwithstanding a Compliance Plan or a repair schedule, penalties may continue to accrue for each day of an ongoing violation until the violation is corrected.

SED is authorized to assess penalties up to the maximum level provided by § 2107 to protect the public interest, as well as to ensure compliance with the Commission's orders and the Public Utilities Code. Staff is directed to take account of the factors listed in § 1702.5(a) (1), § 2104.5, D.98-12-075, and Resolution ALJ-277 in issuing citations and assessing the penalty and the number of offenses.

To ensure transparency, Staff shall publish citations and appeals on the Commission's website.

Nothing in the citation program approved today interferes with a corporation's obligation to maintain and operate its systems safely, or SED's ability to enforce those requirements, including invoking any necessary emergency response procedures to address immediate safety hazards, or any other procedures necessary to ensure that immediate safety hazards are promptly corrected. To the extent that Staff discovers violations that constitute immediate safety hazards, Staff has existing authority to ensure that those violations are promptly corrected. Further, nothing herein interferes with the Commission's ability to institute a formal proceeding regarding the alleged violation(s), and pursuing additional enforcement action, regardless of any enforcement action taken at Staff level.¹⁶ The citation program approved today is cumulative to all other

¹⁵ See, e.g., § 1702.5(c).

¹⁶ See, e.g., § 1702.5(c).

applicable provisions of state and federal law that provide for sanctions against violators, including but not limited to §§ 2112 and 2113, and does not affect or limit the tort liability of the electrical supply or communications facilities owner or operator.

The citation program provided for above and in Appendix A hereto applies to corporations owning or operating electrical supply and/or communications facilities.

Development of Additional Components of the Safety Enforcement Program

The Commission directs Staff to establish Self-Identified reporting requirements, which shall list those violations to be self-reported. These requirements shall be established by Staff after holding workshops with interested parties shall be posted on the Commission's website, and shall be subject to review and approval by the Commission.

NOTICE AND COMMENT

A draft of this Resolution was provided to Commission-jurisdictional electrical supply and communication corporations and other interested parties, including those corporations and individuals on the service list of R.08-11-005 (regarding the fire safety of overhead electrical supply and communication facilities) in accordance with § 311. Comments were allowed under Rule 14.5 of the Commission's Rules of Practice and Procedure.

FINDINGS AND CONCLUSIONS

1. Public Utilities Code § 701 authorizes the Commission to supervise and regulate every public utility in the State.
2. Public Utilities Code § 702 mandates every public utility to obey and promptly comply with every Commission order, decision, direction, or rule.
3. Public Utilities Code § 2101 directs the Commission to see that the provisions of the State constitution and statutes dealing with public utilities are addressed and obeyed.

4. California law, including Public Utilities Code § 7, authorizes the Commission to delegate certain powers to its Staff, including the investigation of acts preliminary to agency action, and the issuance of citations for certain types of categories of violations up to specified amounts.
5. The citation program for corporations owning or operating electrical supply and/or communications facilities, as provided for above and in Appendix A hereto, is necessary to ensure, effective, prompt, and efficient enforcement of Commission decisions and orders to ensure the public safety.
6. The citation program, as provided for above and in Appendix A hereto, is similar to citation programs previously adopted by the Commission for other industries.
7. The citation program, as provided for above and in Appendix A hereto, is reasonable, and will facilitate improved compliance with Commission decisions and orders to protect public safety and will help to deter future violations.
8. It is reasonable to grant Staff authority to issue citations for violations that have occurred both before and after the date of this Resolution.
9. It is reasonable to assess penalties for each violation at the maximum amount set forth in Public Utilities Code § 2107; this approach is consistent with the Commission's broad regulatory powers to protect public safety and to ensure compliance with the Commission's orders and the Public Utilities Code.
10. As set forth in Public Utilities Code § 2108, each violation is a separate and distinct offense; to the extent that a violation is ongoing, each day's continuance is a separate and citable offense.
11. Given Public Utilities Code § 2108, Staff has the authority to assess penalties on a daily basis, but Staff shall have the discretion to assess penalties on something less than a daily basis based upon consideration of the factors set forth in Public Utilities Code §§ 1702.5(a)(1) and 2104.5 and Commission Decision 98-12-075 and Resolution ALJ-277, issued April 20, 2012.

12. The Commission needs the flexibility for its Executive Director to designate SED Staff or such other Staff who may be most appropriate to carry out the various functions involved in the citation program described in this Resolution.
13. The electrical supply and communication facilities citation program should allow a Respondent to appeal Staff-issued citations.
14. Payment of a citation or filing an appeal does not excuse the corporation owning or operating the electrical supply and/or communications facilities from promptly curing cited violations, and does not preclude the Commission from taking other remedial measures.
15. Penalty payments are the responsibility of shareholders of the corporations owning or operating electrical supply and/or communications facilities and shall not be charged to ratepayers.
16. To the extent that violations are self-identified and self-corrected, and no injury or damage has resulted from these violations, Staff should take these factors into account in deciding whether to cite such violations.
17. Staff shall create Self-Identified reporting requirements, which shall encompass what violations shall be self-reported.
18. Nothing in the citation program approved today interferes with the existing requirements that corporations owning or operating electrical supply and/or communications facilities must maintain and operate their systems safely, including invoking any necessary emergency response procedures to address immediate safety hazards, or any other procedures necessary to ensure that immediate safety hazards are promptly corrected.
19. To the extent that Staff discovers violations that constitute immediate safety hazards, Staff has existing authority to ensure that violations are promptly corrected.

THEREFORE, IT IS ORDERED THAT:

1. The Commission delegates authority to the Safety and Enforcement Division Staff, or such other Staff as may be designated by the Executive Director, to issue citations to and to levy penalties against corporations owning or operating electrical supply and/or communications facilities to

enforce compliance with General Orders 95, 128, 165, 166, 174 and other related applicable decisions, codes, or regulations.

2. Staff shall have the authority to issue citations for violations that have occurred both before and after the date of this Resolution.
3. The Citation Procedures and Appeals Process set forth in Appendix A hereto are adopted to govern the issuance and appeal of citations for violation of statutes, orders, or rules relating to electric and communication systems.
4. Penalty payments are the responsibility of shareholders of the corporations owning or operating electrical supply and/or communications facilities and shall not be charged to ratepayers.
5. Corporations owning or operating electrical supply and/or communications facilities shall cure any cited violation as soon as feasible, pursuant to the procedures described in Appendix A hereto.
6. Payment of the penalty or submitting a Notice of Appeal does not exempt the utility from curing any cited violation.
7. Violations that constitute immediate safety hazards shall be corrected immediately. If the violations cannot be corrected within thirty calendar days, then the Respondent shall submit a detailed Compliance Plan to the Director of SED.
8. Notwithstanding a Compliance Plan or a repair schedule, penalties may continue to accrue for each day of an ongoing violation until the violation is corrected.
9. This Resolution is effective today.

I hereby certify that the foregoing Resolution was duly introduced, passed, and adopted by the Public Utilities Commission of the State of California at its regular business meeting held on February 5, 2014, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Appendix A

**Citation Procedures and Appeal Process
Applicable to Electrical Supply and Communication Facility Violations**

I. Citation Procedures

A. Contents of Citation

1. A specification of each alleged violation, including citation to the portion of General Orders 95, 128, 165, 166, 174, or other decision, code or regulation allegedly violated;
2. A statement of the facts upon which each alleged violation is based;
 - (a) While the citation need not include all supporting evidence, Staff will make the evidence available for timely inspection upon request by the Respondent;
3. The number of offenses, which may be counted on a daily basis, or something less, depending upon application of the factors set forth in California Public Utilities Code §§ 1702.5 and 2104.5, Commission Decision 98-12-075 and Resolution ALJ-277;
4. The penalty assessed for each offense;
5. The total amount of the penalty;
6. A statement that the Respondent shall, within thirty calendar days of the date of service of the citation, either pay the amount of the penalty set forth in the citation or appeal the citation. The citation shall also inform the Respondent that the violation must be corrected as soon as feasible and that unless the violation is corrected within thirty days, the Respondent must submit a Compliance Plan to the Director of SED within thirty days of the date of service of the citation. An immediate safety hazard will require immediate correction. The citation shall also state that the Respondent will forfeit the right to appeal the citation by failing to do one of these things within thirty calendar days. The citation shall also inform the Respondent

that the amount of the penalty may continue to accrue through the appeal process, until the violation is corrected;

7. A Citation Payment Form;
8. An explanation of how to file an appeal, including the Respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter; and
9. A form for submitting the appeal, which will be called a "Notice of Appeal".

B. Service of Citation

1. Service of the citation shall be effected either personally in the field or to an officer of the Respondent by electronic mail or by first-class mail.
2. Citations served by first class mail may be sent to the Respondent's business address, or the address for the service of process the Respondent has on file with the Secretary of State of California.
3. On the same date that Staff serves a citation in the field, Staff must also serve a copy of citations issued in the field to an officer of the Respondent at the Respondent's business address.
4. Service is effective upon the date the citation is served personally in the field or on the Respondent by electronic mail or first-class mail.

C. Response to Citation

1. Any immediate safety hazard requires immediate correction, as directed by Staff. For other violations, the Respondent shall inform the Director of SED when the violation is corrected. Unless the violation is corrected within thirty calendar days after the date of service of the citation, Respondent shall, within thirty calendar days after the citation is served, submit a Compliance Plan to the Director of SED that provides a detailed description of when the violation will be corrected, the methodology to be utilized, and a statement supported by an

declaration from the respondent's Chief Executive Officer or appropriate designee (CEO Declaration stating that in the respondent's best judgment, the time that will be taken to correct the violation will not affect the safety or integrity of the operating system or endanger public safety.

2. If the citation is for a continuing violation, the amount of the penalty may continue to accrue on a daily basis until the violation is corrected, notwithstanding the existence of a Compliance Plan, CEO Declaration, or existing repair schedule.
3. Any CEO Declaration shall include:
 - a. The name of the person and that person's position that the Chief Executive Officer relied upon for this declaration, and
 - b. An explanation of why the time taken to correct the violation will not affect the safety or integrity of the operating system or endanger public safety.
4. Unless otherwise specified, a requirement to notify Staff or serve Staff or the Director of SED means to send a written communication by first-class mail or an express mail service to the address specified in the citation.
 - a. Such written communications are not filed with the Commission's Docket Office.
 - b. Staff may specify an e-mail address in order to allow electronic submissions in addition to, or instead of communications by mail service.

D. Payment of Penalty or Default

1. All cited violations must be cured, as set forth in Section I.C.1. Payment of penalties 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 California Public Utilities Commission.
 - a. The respondent shall include the citation number and shall include a completed Citation Payment Form.

- b. Upon payment, the penalty will be deposited in the State Treasury to the credit of the State General Fund.
 2. If Respondent pays the full amount of the penalty within the time allowed, the citation shall become final.
 3. Failure to pay the full amount of the penalty or to file a Notice of Appeal will place Respondent in default, the citation shall become final, and the Respondent will have forfeited its right to appeal the citation.
 4. A late payment is subject to a penalty of 10 percent per year, compounded daily and to be assessed beginning the calendar day following the payment-due date.

E. Self-Identified and Self-Corrected Violations

Staff shall establish Self-Identified reporting requirements, which shall encompass what violations shall be self-reported. Those requirements shall be established by staff after holding workshops with interested parties and shall be posted on the Commission's website. To the extent that an electrical or communication infrastructure provider corporation self-identifies and self-corrects violations and no injury or damage has occurred, Staff shall consider such facts, in addition to those factors set forth in California Public Utilities Code § 2104.5 and Commission Decision No. 98-12-075, in determining whether a citation should be issued and the amount of the penalty if a citation is issued. The electrical or communication infrastructure provider corporation shall provide notification of such violations to Commission Staff within thirty days of self-identification of the violation.

II. Appeal

A. Notice of Appeal

1. If Respondent wishes to appeal a citation, Respondent shall submit a Notice of Appeal to the Director of SED within thirty calendar days from the date service of the citation is effected, and shall serve the Commission's Executive Director, the Chief

Administrative Law Judge (ALJ), the General Counsel, and the Director of the Office of Ratepayer Advocates.

2. The Director of SED shall promptly notify the Chief ALJ of a Notice of Appeal.
3. Submitting a Notice of Appeal does not excuse the Respondent from curing the violation described in the citation. The Notice of Appeal must explain with specificity each and every ground for the appeal.

B. Designation of ALJ and Hearing Procedures

1. Upon being notified of the Notice of Appeal by the Director of SED, the Chief ALJ shall promptly designate an ALJ to hear the appeal.
2. The assigned ALJ shall set the matter for hearing promptly. The Respondent/Appellant and Staff will be notified at least ten days in advance of the time, date and place for the hearing. The ALJ may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
3. Any appeal of a citation shall be heard in the Commission's courtroom in San Francisco or Los Angeles, at the discretion of the Commission.
4. Upon a good faith showing of language difficulty, the Respondent will be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned ALJ and the Public Advisor's Office not less than three business days prior to the date of the hearing.
5. The Respondent/Appellant may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's usual procedures.
6. Staff has the burden to prove a prima facie case supporting its issuance of the citation for the alleged violation; the burden then shifts to Respondent/Appellant to demonstrate that a

violation did not occur and the citation should not issue or that the amount of the penalty is inappropriate.¹⁷

7. Respondent may be represented at the hearing by an attorney or other representative, but such representation shall be at the Respondent's sole expense. Rule 13.6 (Evidence) of the Commission's Rules of Practice and Procedure is applicable.
8. Ordinarily, the appeal will be submitted at the close of the hearing. Upon a showing of good cause, the ALJ may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.

C. Draft Resolution

Within 60 days after the appeal is submitted, the ALJ will issue a draft resolution resolving the appeal. The draft resolution will be placed on the first available agenda, consistent with the Commission's applicable rules. Parties may file comments on the draft resolution pursuant to Rule 14.5 of the Commission's Rules of Practice and Procedure.

D. Rehearing

A resolution approved by the Commission is subject to rehearing pursuant to Public Utilities Code Section 1731 and to judicial review pursuant to Public Utilities Code Section 1756.

III. Prohibition on *Ex Parte* Communications

1. Consistent with the *ex parte* rules regarding adjudicatory proceedings in Rule 8.2 of the Commission's Rules of Practice and Procedure, during the period described herein, none of the following may communicate regarding the citation or appeal, orally or in writing, with a Commissioner, Commissioner's advisor, Chief ALJ, Assistant Chief ALJ, or assigned ALJ: the Respondent, the Staff that issued or is enforcing the citation, or

¹⁷ As most recently stated in D.11-09-006, "[t]he duty to furnish and maintain safe equipment and facilities falls squarely on California public utilities, including PG&E. The burden of proving that particular facilities are safe also rests with PG&E." (D.11-09-006 at 6.)

any agent or other person on behalf of the Respondent or such Staff.

2. This prohibition applies from the date of service of the citation and extends to and includes the date when the period to apply for rehearing of the Commission resolution on the appeal has expired and no application for rehearing has been filed, or if an application for rehearing is filed, the date when the period to seek judicial review of the decision finally resolving the application for rehearing has passed without any party seeking judicial review; or if judicial review is sought, the date any court cases are resolved.
3. Inquiries strictly limited to procedural matters are permitted.

(END OF APPENDIX A)