

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

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

R. \_\_\_\_\_

**ORDER INSTITUTING RULEMAKING**

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## ORDER INSTITUTING RULEMAKING

### 1. Introduction

This Order Instituting Rulemaking furthers the implementation of the Commission's natural gas and electric safety enforcement programs. It sets forth a proposed electric safety citation program for comment and adoption by this Commission in compliance with Senate Bill 291, ~~makes a minor addition to the Commission's existing natural gas safety citation program,~~ and provides a forum for making improvements and refinements to the Commission's natural gas and electric safety citation programs.

### 2. Background

On September 23, 2010, the Commission established an Independent Review Panel (Panel) to gather and review facts related to the causes of the September 9, 2010 San Bruno explosion, and to make recommendations for the safe management of natural gas transmission lines going forward. Among other things, the Panel recommended that the Commission “should seek to align its ... enforcement authority with that of the State Fire Marshal’s [OSFM] by providing ... staff with additional enforcement tools modeled on those of the OSFM and the best from other states.”<sup>1</sup> The Panel noted that the Pipeline Safety Division of the OSFM had the authority to initiate and conclude enforcement actions and to assess civil penalties, without resorting to the formal procedures that were then the only option at the Commission.

On August 30, 2011, the National Transportation Safety Board (NTSB) adopted its Pipeline Accident Report on the San Bruno explosion, which also made recommendations regarding the Commission’s enforcement authority and procedures. Similar to the Independent Review Panel Report, the NTSB

<sup>1</sup> Independent Review Panel Report, Recommendation 6.7.3.1 at 104.

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 fines and penalties.

Both reports noted that the Commission's traditional enforcement procedures, under which staff would investigate and prepare a report and proposal for a formal Commission Order Instituting Investigation, were cumbersome and limited the Commission's ability to quickly address safety violations.

In response to the recommendations in these reports, the Commission adopted Resolution ALJ-274 on December 1, 2011, instituting a gas operator citation program. Resolution ALJ-274 delegated specified authority to the Commission's Safety and Enforcement Division (SED)<sup>2</sup> or other staff designated by the Executive Director to issue citations to all gas corporations to enforce compliance with the Commission's General Order (GO) 112-E, including federal regulations that the GO incorporates by reference.<sup>3</sup>

Under Resolution ALJ-274, staff is delegated the authority to require immediate correction of violations and to levy fines for violations in the amounts prescribed by Pub. Util. Code § 2107.<sup>4</sup> Each violation is a separate and distinct offense, and each day of an ongoing violation may be cited as a separate and distinct offense, consistent with § 2108. Resolution ALJ-274 also requires the gas corporations to notify local authorities when a citation is issued in their jurisdiction, and sets forth the process for appealing a citation.

<sup>2</sup> SED was then known as the Consumer Protection and Safety Division (CPSD).

<sup>3</sup> GO 112-E contains specific rules governing the design, construction, testing, maintenance, and operation of utility gas gathering, transmission, and distribution pipeline systems and supplements compliance with the federal standards set forth in the Code of Federal Regulations Title 49, Parts 190, 191, 192, 193, and 199.

<sup>4</sup> All statutory references are to the Public Utilities Code unless otherwise specified.

Draft Resolution ESRB-4, which was scheduled to appear on the agenda of the February 5, 2014 Commission meeting, proposed to institute a similar citation program for electric corporations, but was withdrawn by staff in anticipation of a possible rulemaking on implementation of Senate Bill (SB) 291.

SB 291 (Stats. 2013, Ch. 601)<sup>5</sup>,<sup>5</sup> signed by the Governor on October 5, 2013, added § 1702.5 to the Public Utilities Code. It requires the Commission to develop and implement a safety enforcement program for gas corporations and electrical corporations by July 1, 2014, and January 1, 2015, respectively:

The commission shall, in an existing or new proceeding, develop and implement a safety enforcement program applicable to gas corporations and electrical corporations which includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director. The enforcement program shall be designed to improve gas and electrical system safety through the enforcement of applicable law, or order or rule of the commission related to safety using a variety of enforcement mechanisms, including the issuance of corrective actions, orders, and citations by designated commission staff, and recommendations for action made to the commission by designated commission staff. (Section 1702.5(a).)

### 2.1. Gas Safety Citation Program

The Commission's current gas safety enforcement program pursuant to Resolution ALJ-274 appears to satisfy the requirements of SB 291. ~~We will make one minor addition to the provisions of Resolution ALJ-274, relating to an "administrative limit" on the amount of penalties that can be imposed under the citation program to resolve a potential ambiguity.~~ SB 291 requires the gas safety program to include (a) procedures for monitoring, data tracking and analysis and investigations; and (b) a staff citation program, under the direction of the

<sup>5</sup> ~~A copy of SB 291 is attached to this rulemaking as Attachment A.~~

<sup>5</sup> [A copy of SB 291 is attached to this rulemaking as Attachment A.](#)

Commission's Executive Director. (Section 1702.5(a).) The Commission's current gas safety enforcement program meets both of these criteria. In its ongoing implementation of GO 112-E,<sup>6</sup> the Commission has procedures for monitoring, data tracking and analysis, and investigation of gas safety. Resolution ALJ-274 established a citation program to enable designated Commission staff to draft and issue citations to gas corporations for violations of GO 112-E and the Code of Federal Regulations, Title 49, Parts 190, 191, 192, 193, and 199.

SB 291 also requires that the Commission use a variety of enforcement mechanisms to improve gas safety, including the issuance of corrective actions, orders and citations by designated Commission staff, and recommendations for action made to the Commission by designated Commission staff. (Section 1702.5(a).) Again, under Resolution ALJ-274, designated staff has the authority to require immediate correction of the violations, and to levy fines for violations in the amounts prescribed for penalties by § 2107. Accordingly, staff already has the authority not only to issue citations for penalties, but also for corrective orders as required by SB 291. Furthermore, staff can make other recommendations for action to the Commission (e.g., issuing an expedited order to show cause or an order instituting investigation) when necessary, such as when an underlying violation is unresolved or becomes part of a pattern and practice of violations. (See, Resolution ALJ-274 at 8.)

SB 291 requires the Commission to do a number of other things that have already been implemented by Resolution ALJ-274, such as: when considering the issuance of citations and assessment of penalties, to take into account voluntary reporting of potential violations, voluntary removal or resolution efforts

<sup>6</sup> As stated above, GO 112-E contains specific rules governing the design, construction, testing, maintenance, and operation of utility gas gathering, transmission, and distribution pipeline systems and supplements compliance with the federal standards set forth in the Code of Regulations, Title 49, Parts 190, 191, 192, 193, and 199.

undertaken, the prior history of violations, the gravity of the violation, and the degree of culpability (Section 1702.5(a)(1)); provide notice of violation within a reasonable period of time after discovery of the violation (Section 1702.5(a)(2)); develop and implement an appeals process (Section 1702(b)); conclude a safety enforcement action within a reasonable period of time (Section 1702.5(c)); and adopt an administrative limit on the amount of monetary penalty that may be set by Commission staff (Section 1702.5(a)(3)).

Resolution ALJ-274 has met all of the above requirements. Regarding the last provision, requiring that the Commission adopt an “administrative limit on the amount of monetary penalty that may be set by Commission staff,” Resolution ALJ-274 set a limit per violation, based on the statutory maximum in § 2107. Because there can be more than one violation per citation, this per-violation limit does not limit the total amount of penalty that could be imposed by a Commission staff-issued citation. ~~It is not clear that SB 291 may not require~~requires a per-citation limit ~~as well as a per-violation limit, but while we consider that issue, we will adopt an interim per-citation limit of \$20 million.<sup>7</sup>—~~ ~~Because previously there was no per-citation limit, this is a reduction in the total size of the penalty that may be imposed by citation, so the existing per-violation limit appears to comply with the statute. We will, however, consider as a policy mater in this proceeding whether a per-citation limit should also be~~ implemented.

## 2.2. Electric Safety Citation Program

The Commission does not currently have in place an electric safety citation program equivalent to what it has for natural gas. As noted above, Commission

<sup>7</sup>~~—This amount is based upon the highest citation penalty imposed to date on a gas pipeline operator, which was a citation issued to Pacific Gas and Electric Company (PG&E) on January 27, 2012, with a penalty of \$16.8 million. The Commission affirmed this citation on appeal by Resolution ALJ 277 on April 19, 2012.~~

staff had prepared a draft resolution for the Commission's consideration, which if adopted by the Commission, would have implemented an electric safety citation program. (Draft Resolution ESRB-4, Commission meeting agenda of February 5, 2014.) That draft resolution was withdrawn in anticipation of this rulemaking.

In order to comply with SB 291, the Commission must adopt an electric safety citation program by January 1, 2015. A revised version of Draft Resolution ESRB-4<sup>87</sup> is attached to this Order Instituting Rulemaking (OIR) as Attachment B, and will provide a general starting point for the parties and the Commission work from.

### 3. Preliminary Scoping Memo

The scope of this proceeding is to: 1) implement a new electric safety citation program in compliance with SB 291; 2) improve and refine the Commission's gas and electric safety citation programs; and 3) consider the timing and process for possible future modifications of the Commission's gas and electric safety citation programs.

Because SB 291 sets a relatively short deadline for the Commission to implement an electric safety citation program, the first priority of this proceeding is to develop and implement that program, consistent with the requirements of SB 291, which includes various requirements, including that the citation program: 1) take into consideration voluntary utility reporting and resolution of violations, as well as the gravity of the violation and the prior history of violations; 2) provide reasonable notice of violations; 3) include an administrative limit on the

<sup>87</sup> The revised version of ESRB-4 attached to this OIR no longer contains references to communications facilities or corporations, as those issues are outside the scope of this proceeding.

amount of monetary penalties; 4) have an appeals process, and 5) conclude safety enforcement actions within a reasonable amount of time.<sup>98</sup>

We recommend that the assigned Administrative Law Judge (ALJ) and Commissioner ensure that these statutory requirements are met before the statutory deadline of January 1, 2015. To ensure this occurs, the assigned ALJ and Commissioner should focus on the above issues. To the extent that broader issues relating to citation programs (set forth below) can be addressed without jeopardizing compliance with SB 291, those issues may be addressed in the initial development and implementation of the electric safety citation program. Consistent with our goal of meeting the statutory deadline, and consistent with our previously approved gas safety citation program, staff will have the same scope of delegated authority for implementing and applying the electric safety citation program with the gas safety citation program.

Once the basic SB 291-compliant electric safety citation program is implemented, issues relating to the improvement and refinement of the gas and electric safety citation programs may be addressed.

### 3.1. Policy Direction

In developing and implementing the electric safety citation program and in improving and refining both the electric and gas safety citation program, we intend for these programs to be similar in structure and process. We acknowledge that there are differences between gas and electric systems and their operation, potential hazards and regulatory regimes, all of which may need to be taken into consideration in the formulation of an effective safety citation program. At the same time, making the safety citation programs similar

<sup>98</sup> Because the existing ALJ-274 gas safety citation program is already in compliance with SB 291, we do not need to address development and implementation of an SB 291-compliant gas safety citation program.

simplifies the practical implementation and application of those programs, and should be helpful to both regulated entities and the Commission's safety enforcement staff.

Accordingly, the initial electric safety citation program should be generally similar to the existing gas safety citation program. Improvements derived from our experience with our gas safety citation program can be incorporated, along with elements unique to the electric system, but the overall structure and processes should not be radically different from those applicable to gas.<sup>409</sup> Once the initial electric safety citation program is in place, as required by SB 291, further improvements and refinements to both the electric and gas safety citation programs will be considered.

We anticipate that further improvements and refinements to the electric and gas safety citation programs will be incremental, and will reflect the experience and input of the Commission staff responsible for implementing and applying those citation programs, along with input from regulated entities and other interested parties

### 3.2. Issues

Issues to be addressed in this proceeding include the general categories of issues set forth below; this proceeding may also consider related issues or more detailed issues within these categories as necessary to improve the Commission's citation processes or to comply with statutory requirements.

1. Criteria used by the Staff in issuing citations and determining penalty amounts;
2. Administrative limits on penalty amounts;

<sup>409</sup> As noted above, the scope of authority delegated to staff will be the same for the electric safety citation program as it is for the gas safety citation program.

3. Procedures for Staff drafting, approval and issuance of citations;
4. Application of risk assessment analysis;
5. Requirements for regulated entities to self-report potential violations;
6. Treatment of self-reported potential violations as compared to violations established by other means;
7. Appeal process;
8. Notification to local jurisdictions and other state and federal agencies;
9. Procedures for monitoring, data tracking, analysis and reporting of violations; and
10. Other models or approaches.

The Scoping Memo in this proceeding will provide more detail on these issues, and may include specific questions for the parties to address. The assigned Commissioner or ALJ may also add, by written ruling, other issues that may be relevant to the implementation of the electric safety citation program or the improvement and refinement of the gas and electric safety citation program.

### 3.3. Preliminary Schedule

Because of the constraints of SB 291, our schedule will need to have several steps or phases. The first step, ~~taken today, is to establish the per-citation administrative limit on penalties in the gas safety citation program. That limit is set, on an interim basis, at \$20 million.~~<sup>41</sup> The second step is to develop and implement an electric safety citation program in compliance with SB 291. Accordingly, attached to this OIR is a revised version of the former Draft Resolution ESRB-4 (Attachment B) as a general starting point for a proposed electric safety citation program. Parties may file and serve concurrent opening

<sup>41</sup> ~~This limit may be revisited when other improvements and refinements are considered.~~

comments on this proposed program 30 days from the issuance of this OIR, and concurrent reply comments 15 days later. Parties should focus their comments on the issues that need to be addressed in order to have an electric safety citation program in place by the statutory deadline, consistent with the policy direction set forth above.

The ~~third~~second step is to develop and implement improvements and refinements to the electric and gas safety citation programs. Because that will occur after the implementation of the electric safety citation program, we will not set a schedule for this step here. The assigned Commissioner and ALJ will determine the schedule for this step after hearing from the parties.

Because of the expedited comment schedule on the electric safety citation program, there will only be one round of comments on this OIR, rather than two, and we will not require prehearing conference statements at this time.<sup>1210</sup> Accordingly, the preliminary schedule is:

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<sup>1210</sup> The assigned Commissioner or ALJ may request prehearing conference statements if desired.

Day 1	OIR issued
Day 8	Deadline for requests to Process Office to be on service list
Day 14	Comments on OIR filed and served
Day 30	Opening Comments on Proposed Electric Safety Citation Program (Attachment B) filed and served
Day 45	Reply Comments on Proposed Electric Safety Citation Program (Attachment B) filed and served
Before Day 75	Prehearing conference
To be determined	Scoping Memo issued
To be determined	Proposed decision implementing Electric Safety Citation Program

The assigned Commissioner through the scoping memo and subsequent rulings, and the assigned ALJ by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of the proceeding. In any event, we anticipate this proceeding will be completed within 18 months of the issuance of the scoping memo.

### 3.3.1. **Comments on Order Instituting Rulemaking**

Comments on this OIR may be filed and served within 14 days of the date this OIR is issued. Comments shall state any objections to the preliminary scoping memo regarding category, need for hearing, issues to be considered, or schedule. (Rule 6.2.) Any comments recommending changes to the proposed schedule must be consistent with the proposed category, and must be consistent with the January 1, 2015 deadline for implementing an electric safety citation program, and resolving the proceeding within 18 months of the issuance of the Scoping Memo. All comments which contain factual assertions must be verified.

Unverified factual assertions will be given only the weight of argument. (Rule 6.2.)

If desired, the assigned Commissioner and ALJ may direct staff to hold workshops to refine the issues before the final scoping memo is issued. Parties are encouraged to address in their comments on the OIR if a workshop would be useful and why.

### **3.3.2. Prehearing Conference**

The assigned Commissioner or ALJ should set a prehearing conference (PHC) no later than 75 days from today, or as soon as practicable. The ruling setting the PHC may also request and set a date for PHC statements. (Rule 7.2.) If the ruling requests PHC statements, it will also set forth what should be contained in those PHC statements.

At the PHC, in addition to any topics identified by the assigned Commissioner or ALJ, parties may address the scope and schedule for any and all phases of this proceeding, including recommendations for future processes, and may also respond to other parties' comments on the OIR.

### **3.4. Category**

We preliminarily determine the category for this proceeding is quasi-legislative. We make this determination given that our primary focus is to adopt and refine standards, requirements, and rules for electric and gas utilities. This determination closely matches our definition of quasi-legislative proceedings:

'Quasi-legislative' proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry. (Rule 1.3(d).)

While the adopted results may affect utility costs and individual company rates, this proceeding will not specifically set rates, or establish a mechanism that in turn sets rates.

### **3.5. Need for Hearing**

We anticipate the issues in this proceeding can be addressed without the need for hearings. However, there may be disputed issues of material fact. Therefore, we preliminarily determine that hearings will be needed. The assigned Commissioner's Scoping Memo and Ruling, after considering the comments and recommendations of parties, will determine the need for hearing.

The assigned Commissioner will issue a ruling which determines the category, need for hearing, and schedule for this rulemaking, and designates the presiding officer (Rule 13.2). The ruling, only as to category, may be appealed under the procedures in Rule 7.6.

Any person filing comments on an OIR shall state any objections to the preliminary scoping memo regarding the category, need for hearing, issues to be considered or schedule. (Rule 6.2.)

## **4. Service List, Filing and Service of Documents, Subscription Service**

The initial temporary service list applies for approximately the first seven days. It will be replaced by an official service list as soon as the official list is published on the Commission's webpage. The temporary service list is contained in Attachment C.

The temporary service list is composed of gas corporations and electric corporations who are respondents and shall be served with this order. In the interest of broad notice, it also includes persons and entities on the service lists

for some of the recent large or related gas and electric rate or safety-related cases as follows:

Rulemaking (R.) 08-11-005 (To Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities);

R.13-11-006 (To Develop a Risk-Based Decision-Making Framework to Evaluate Safety and Reliability Improvements and Revise the General Rate Case Plan for Energy Utilities);

R.11-02-019 (To Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms);

Investigation (I.) 11-02-016 (Into the Operations and Practices of PG&E with Respect to Facilities Records for its Natural Gas Transmission System Pipelines);

I.11-11-009 (Into the Operations and Practices of PG&E's Natural Gas Transmission Pipeline System in Locations with Higher Population Density);

I.12-01-007 (Into the Operations and Practices of PG&E to Determine Violations of Law in Connection with the San Bruno Explosion and Fire on September 9, 2010);

I.14-03-004 (Into the Operations and Practices of Southern California Edison Company (Edison) Regarding the Acacia Avenue Triple Electrocution Incident in San Bernardino County and the Windstorm of 2011);

Application (A.) 13-11-003 (Edison's 2015 General Rate Case);

A.12-11-009/I.13-03-007 (PG&E's 2014 General Rate Case);

A.11-11-002 (San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) for Authority To Revise Their Rates Effective January 1, 2013, in Their Triennial Cost Allocation Proceeding); and

A.10-12-005/006 (SDG&E and SoCalGas's 2012 General Rate Case).

The service list for Resolution ALJ-274 and SED's informal service list used for the follow-up workshops for Resolution ALJ-274.

We invite participation here on the issues scoped for this proceeding.

#### **4.1. Official Service List**

The temporary service list will be replaced by the official service list. A person or entity seeking inclusion on the official service list must follow the instructions below.

##### **4.1.1. During the First Seven Days**

In order to be placed on the official service list you should ask to be added to the official service list as either a party or a non-party. You must do this whether or not you are listed on the temporary service list, and no matter the category in which you are listed on the temporary service list. Gas and electric corporations are respondents and subject to Commission orders in this proceeding but must ask to be placed in the party category in the same manner as any other person or entity, as described below.

The request should be made within seven days and must be sent to the Process Office by e-mail ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). A copy of the request should be sent to the Chief ALJ. Please include the following information:

- Docket Number of this rulemaking;
- Name and entity or person represented (e.g., entity name; self);
- United States Postal Service Address;
- Telephone Number;
- E-mail Address;

- Desired Status,<sup>4311</sup>
  - Party;
  - Non-party (either state service or information only);
- Expected participation (e.g., actively at hearing; actively through filed pleadings; monitoring only); and
- Brief statement of interest (e.g., gas, electric or telecommunication corporation; state agency; consumer advocate; safety concerns; interest in enforcement).

Commission practice is to allow only one person to formally represent each party. (See Commission's form for "Addition/Change to Service List."<sup>4412</sup>) To assist with efficient execution of this practice, we ask that requests for party status clearly identify the lead person to be placed in party status, plus the names with other necessary information (e.g., e-mail addresses) for anyone else to be placed into another category.<sup>4513</sup>

You may participate actively in this rulemaking (as a party) or merely monitor it (as a non-party). In either case, by acting within seven days of the date this OIR is issued, you will be added to the official service list, thereby ensuring that you will receive all documents served in the proceeding. Eight days after this OIR is issued, or as soon as feasible thereafter, the Commission's Process

<sup>4311</sup> If you intend to file comments or otherwise actively participate, choose "Party" status. Individuals seeking only to monitor the proceeding (i.e., not participate as an active party) may request to be added to the service list as "Information Only." Another option for monitoring without being on the service list is "Subscription Service" discussed later in this OIR.<sup>1</sup>

<sup>4412</sup> See [http://docs.cpuc.ca.gov/published/service\\_lists/sl\\_index.htm](http://docs.cpuc.ca.gov/published/service_lists/sl_index.htm).

<sup>4513</sup> This also applies to requests to be placed in the state service category. That is, for example, one person representing the Commission's Office of Ratepayer Advocates (ORA) may be identified for inclusion in the party category, with other ORA staff listed in the state service category. If another state agency elects to seek party status, one person from the agency should be named as party representative, and others should be in the state service category.

Office will publish the official service list on our website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)), and will update the list as necessary.

#### **4.1.2. After the First Seven Days**

If you are not on the official service list but want to participate after the first seven days, you may do so as a party or a non-party. If you want to become a party, you may do this by filing and serving timely comments in the rulemaking, by filing and serving a written motion, by making an oral motion at the PHC, or as directed by the ALJ. (Rule 1.4(a).) If you make a written or oral motion, you must also comply with Rule 1.4(b). These rules are in the Commission's Rules of Practice and Procedure, which you can read at the Commission's website.

If, after the first seven days, you want to be added to the official service list as a non-party (i.e., State Service or Information Only), send an e-mail or letter to the Process Office. Please include the docket number, name and entity represented, US postal service address, telephone number, e-mail address, and desired status.

#### **4.1.3. Updating Information**

Once you are on the official service list in any category, you must ensure that the information you have provided is up-to-date. (Rule 1.9(f).) To change your US postal service address, telephone number, e-mail address, or the name of your representative, send the change to the Process Office by letter or e-mail, and send a copy to everyone on the official service list. A person or entity may ask to be removed from the state service or information only portions of the service list at any time by request to the Process Office.

#### 4.2. Filing and Serving Documents

The Commission encourages electronic filing and service.<sup>1614</sup> All pleadings in this proceeding will be served on the service list as described below.

E-mail service of documents must occur no later than 5:00 p.m. (Pacific time) on the date that service is scheduled to occur using the most current service list published on the Commission's web site for this proceeding. Rule 1.10 provides for electronic service of documents, in a searchable format, unless the person on the service list did not provide an e-mail address. If no e-mail address was provided, service must be made by US mail. We require concurrent e-mail service in this proceeding to all persons on the service list for whom an e-mail address is available, including those listed under "Information Only." Paper service is not required on those in the information only category without an e-mail address. Parties, however, must provide paper copies of served documents upon reasonable request of another party or person in any category (including information only). A paper copy, in addition to an electronic copy, shall be served on the assigned Commissioner (unless later waived by the assigned Commissioner). A paper copy, in addition to an electronic copy, shall be served on the ALJ. (Rule 1.10(e).)

E-mail communication during this rulemaking should include the following information on the subject line of the e-mail: R.xx-xx-xxx (on gas and electric safety citation programs) – [brief item description]. For example, when serving comments on the OIR (due 14 days from the date this Order Instituting Rulemaking is mailed), the e-mail subject line should read: R.xx-xx-xxx (on gas and electric safety citation programs) – Comments on OIR by [party name]. When serving a PHC statement, the e-mail subject line should read: R.xx-xx-xxx

<sup>1614</sup> See Commission Rules 1.10 and 1.13, available on our website at <http://www.cpuc.ca.gov/PUC/documents>.

(on gas and electric safety citation programs) – PHC Statement of [party name];  
or R.xx-xx-xxx (on gas and electric safety citation programs) – Joint PHC  
Statement of [group reference].

Questions about the Commission’s filing and service procedures should be directed to the Commission’s Docket Office by telephone at (415) 703-2121, by e-mail at [efile-help@cpuc.ca.gov](mailto:efile-help@cpuc.ca.gov), or by letter to Docket Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.

#### **4.3. Subscription Service**

The Commission has a new process for monitoring a proceeding without being in the information only portion of the service this. That is, you can monitor this rulemaking by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

#### **5. Public Advisor**

Any person or entity interested in participating in this investigation who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor in San Francisco by telephone at (415) 703-2074 or (866) 849-8390, or by e-mail at [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov). Written communication may be sent to Public Advisor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.

#### **6. Intervenor Compensation**

Any party that expects to claim intervenor compensation for its participation in this investigation shall file its notice of intent to claim intervenor compensation no later than 30 days after the PHC. (*See* Rule 17.1(a)(1).) Parties

are strongly encouraged to use the standardized form attached to the Intervenor Compensation Program Guide, which may be found at:

<http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/index3.htm>. Questions may be directed to the Commission's Public Advisor.

## 7. *Ex Parte* Communications

Communications with decision makers and advisors in this rulemaking are governed by Article 8 of the Rules of Practice and Procedure.

(Rule 8.1, *et seq.*) *Ex parte* communications are allowed without restriction or reporting requirement in a quasi-legislative proceeding. (Rule 8.3(a).) No *ex parte* restrictions or reporting requirements apply in this proceeding.

### IT IS ORDERED that:

1. This Order Instituting Rulemaking is adopted pursuant to, *inter alia*, Article XII of the California Constitution and Public Utilities Code Sections 701 and 1702.5 (Senate Bill 291) and Rule 6.1 of the Commission's Rules of Practice and Procedure.

2. The preliminary categorization is quasi-legislative.

3. The preliminary determination is that hearing is needed.

4. The preliminary scope of issues is as stated in the body of this order.

5. Unless changed by the assigned Commissioner or Administrative Law Judge, the schedule stated in the body of this order is adopted. It is the Commission's intent to resolve some issues by January 1, 2015, and to resolve the proceeding within 18 months of the date the Scoping Memo is issued.

6. Each California gas corporation and electric corporation under the Commission's jurisdiction is a respondent to this Rulemaking, and is placed on notice that it shall be subject to Commission orders in this matter.

7. The Executive Director shall perform service of this order on each person on the initial temporary service list contained in Attachment C. This includes all California gas corporations and electric corporations as well as all persons on the service lists of the following proceedings: Rulemaking (R.) 08-11-005; R. 13-11-006; R.11-02-019; Investigation (I.) 11-02-016; I.11-11-009; I.12-01-007; I.14-03-004; Application (A.) 13-11-003; A.12-11-009/I.13-03-007; A.11-11-002; A.10-12-005/006; and the service list for Resolution ALJ-274, and the Safety and Enforcement Division's informal service list for the workshops following the issuance of Resolution ALJ-274.

8. Each entity or person must take action as described in the body of this order to be included on the official service list. The official service list shall be created as described therein, and will be posted on the Commission's web page for this proceeding eight days from the date this order is issued, or shortly thereafter.

9. Parties shall file and serve documents as described in the body of this order.

10. A person expecting to file an intervenor compensation claim for participation in this proceeding shall file a notice of intent to claim intervenor compensation no later than 30 days after the date of the prehearing conference.

11. *Ex parte* communications in this proceeding are permitted without restriction or reporting requirements.

12. The assigned Commissioner through the scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of this proceeding.

~~13. Resolution ALJ-274 is modified on an interim basis to establish a per-citation administrative limit on penalties of \$20 million.~~

This order is effective today.

Dated \_\_\_\_\_ at San Francisco, California.

**ATTACHMENT A**  
**SENATE BILL 291**

**Senate Bill No. 291**  
CHAPTER 601

An act to add Section 1702.5 to the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor October 5, 2013. Filed with  
Secretary of State October 5, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 291, Hill. Public Utilities Commission: safety enforcement: gas and electrical corporations.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including gas corporations and electrical corporations, as defined. The Public Utilities Act requires the commission to investigate the cause of all accidents occurring upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and authorizes the commission to make any order or recommendation with respect to the investigation that it determines to be just and reasonable. The act additionally authorizes the commission to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed by specified public utilities, including electrical and gas corporations. Existing law authorizes the commission to issue and serve citations in the enforcement of certain pipeline safety laws applicable to mobilehome park gas delivery systems and propane operators.

This bill would require the commission, in an existing or new proceeding, to develop and implement a safety enforcement program that includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of

the executive director of the commission, to gas corporations and electrical corporations for correction and punishment of safety violations. The bill would require the commission to develop and implement an appeals process to govern issuance and appeal of citations, or resolution of corrective action orders. The bill would require the commission to implement the safety enforcement program for gas safety by July 1, 2014, and for electrical safety by January 1, 2015.

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*The people of the State of California do enact as follows:*

SECTION 1. Section 1702.5 is added to the Public Utilities Code, to read:

1702.5. (a) The commission shall, in an existing or new proceeding, develop and implement a safety enforcement program applicable to gas corporations and electrical corporations which includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director. The enforcement program shall be designed to improve gas and electrical system safety through the enforcement of applicable law, or order or rule of the commission related to safety using a variety of enforcement mechanisms, including the issuance of corrective actions, orders, and citations by designated commission staff, and recommendations for action made to the commission by designated commission staff.

(1) When considering the issuance of citations and assessment of penalties, the commission 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.

(2) The procedures shall include, but are not limited to, providing notice

of violation within a reasonable period of time after the discovery of the violation.

(3) The commission shall adopt an administrative limit on the amount of monetary penalty that may be set by commission staff.

(b) The commission shall develop and implement an appeals process to govern the issuance and appeal of citations or resolution of corrective action orders issued by the commission staff. The appeals process shall provide the respondent a reasonable period of time, upon receiving a citation, to file a notice of appeal, shall afford an opportunity for a hearing, and shall require the hearing officer to expeditiously provide a draft disposition.

(c) The commission shall, within a reasonable time set by the commission, conclude a safety enforcement action with a finding of violation, a corrective action order, a citation, a determination of no violation, approval of the corrective actions undertaken by the gas corporation or electrical corporation, or other action. The commission may institute a formal proceeding regarding the alleged violation, potentially resulting in additional enforcement action, regardless of any enforcement action taken at the commission staff level.

(d) The commission shall implement the safety enforcement program for gas safety by July 1, 2014, and implement the safety enforcement program for electrical safety no later than January 1, 2015.

(e) This section does not apply to an exempt wholesale generator, a qualifying small power producer, or qualifying cogenerator, as defined in Section 796 of Title 16 of the United States Code and the regulations enacted pursuant thereto. Nothing in this section affects the commission's authority pursuant to Section 761.3.

**(END OF ATTACHMENT A)**

**ATTACHMENT B**  
**REVISED VERSION OF DRAFT RESOLUTION ESRB-4**

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

**SAFETY AND ENFORCEMENT DIVISION**

**Electric Safety and Reliability Branch**

**RESOLUTION ESRB-4 (Revised)**

**May [x], 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 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 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 facilities<sup>471</sup> in order to enforce compliance with General Orders 95, 128, 165, 166, 174, and other applicable electric decisions, regulations and codes regarding electrical supply 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.<sup>482</sup> 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),<sup>493</sup> § 2104.5, and Commission decisions interpreting § 2104.5,<sup>204</sup> 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.

<sup>471</sup> 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.

<sup>482</sup> All further section references are to the California Public Utilities Code, unless otherwise noted.

<sup>493</sup> SB 291 is Codified at Public Utilities Code §1702.5. Subsection (a)(1) of that statute provides:<sup>1</sup>

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.

<sup>204</sup> See, e.g., Commission Decision (D.) 98-12-075, and Resolution ALJ-277, issued April 20, 2012.

Delegating to Staff the authority to issue citations for violations of safety regulations related to electrical supply facilities will permit SED to streamline enforcement procedures by assessing penalties for 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 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.”<sup>[245](#)</sup>

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<sup>[245](#)</sup> 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 § 768<sup>226</sup> 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 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.<sup>227</sup> 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

<sup>226</sup> 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.”

<sup>227</sup> D.09-05-020 at 8.

enforcement procedure to ensure that corporations owning or operating electrical supply facilities adhere to their statutory and service obligations.<sup>248</sup>

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 facilities and operating practices. Such authority does not in any way diminish the corporations' owning or operating electrical supply 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 decisions, regulations and codes regarding electrical supply 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.

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.

<sup>248</sup> 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).

Penalty payments are the responsibility of shareholders of the corporations owning or operating electrical supply 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 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 facilities.

General Order 165 was first adopted in 1997, in D.97-03-070. It prescribes the rules governing inspection cycles for electrical supply 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 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.<sup>259</sup>

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."<sup>2610</sup> 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.<sup>2711</sup>

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..."<sup>2812</sup> Similar to the Independent Review Panel Report, the NTSB strongly recommended that the Governor of the State of California expand the Commission's Pipeline Safety

<sup>259</sup> See Resolution L-403.

<sup>2610</sup> *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>.

<sup>2711</sup> 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.

<sup>2812</sup> 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>.

Division staff enforcement authority and ensure that Commission staff has the authority to issue penalties.<sup>2913</sup>

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.<sup>3014</sup> The same OII challenges plague enforcement actions regarding the safety violations committed by corporations owning or operating electrical supply facilities.

The Resolution adopted today expands Staff's enforcement authority over corporations owning or operating electrical supply 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 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 those requirements of § 1702.5, consistent with the Commission's existing authority to establish citation programs.

<sup>2913</sup> See also IRP Report at 21-22 and 101-102.

<sup>3014</sup> 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.").

The potentially hazardous nature of electrical supply facilities is not speculative. There have been a number of incidents in the past decade involving electrical supply 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 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 facilities for violations of General Orders 95, 128, 165, 166, 174 or other related decisions, codes, or regulations applicable to electrical supply 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 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.<sup>3+15</sup>

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 corporation employees. If the violations cannot be corrected within thirty calendar days, then the Respondent shall submit a detailed Compliance

<sup>3+15</sup> See, e.g., § 1702.5(c).

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.<sup>3216</sup>

The citation program approved today is cumulative to all other 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 facilities owner or operator.

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

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<sup>3216</sup> See, e.g., § 1702.5(c).

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 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 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 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 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 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 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 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 systems.
4. Penalty payments are the responsibility of shareholders of the corporations owning or operating electrical supply facilities and shall not be charged to ratepayers.
5. Corporations owning or operating electrical supply 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:

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PAUL CLANON  
Executive Director

## Appendix A

### **Citation Procedures and Appeal Process Applicable to Electrical Supply 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.
1. If Respondent pays the full amount of the penalty within the time allowed, the citation shall become final.

2. 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.
3. 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 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 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.<sup>331</sup>
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

<sup>331</sup> 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.)

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 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)

**(END OF ATTACHMENT B)**

**ATTACHMENT C**  
**TEMPORARY INITIAL SERVICE LIST**

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