Decision **PROPOSED DECISION OF CMMR. PICKER (MAILED 8/29/16)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Natural Gas and Electric Safety Citation Programs.	Rulemaking 14-05-013 (Filed May 15, 2014)

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

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

Summary

This decision adopts necessary improvements and refinements to the gas and electric safety citation programs. Specifically, this decision refines the criteria for Staff to use in determining whether to issue a citation and the amount of the penalty; sets an administrative limit of $8 million per citation issued; adopts detailed criteria for the utilities to use to voluntarily self-report a potential violation and refines other issues in the program. This decision also merges the rules applicable to the gas and electric safety citation program into a single set of rules and adopts nonsubstantive changes to these programs so that the programs can be similar in structure and process where appropriate.

We believe that further knowledge regarding the operation of these programs will come as the California Public Utilities Commission (Commission) implements them, and the Commission may again review these programs at a later time if appropriate. We close this proceeding.

1. Background

On May 15, 2014, the California Public Utilities Commission (Commission) instituted this rulemaking to further the implementation of its natural gas and electric safety citation programs. As part of this rulemaking, the Commission is refining its gas safety citation program and establishing an electric safety citation program that would, among other things, comply with the requirements contained in Senate Bill (SB) 291. SB 291 added § 1702.5 to the Public Utilities

Code,[1] which requires the Commission to develop and implement safety enforcement programs for gas corporations and electrical corporations by July 1, 2014 and January 1, 2015, respectively.

Resolution ALJ-274 (issued December 7, 2011), which the Commission adopted before SB 291 was enacted, established a gas safety citation program for gas corporations that are in violation of the Commission's General Order (GO) 112-E[2] and the Code of Federal Regulations (CFR), Title 49, Parts 190, 191, 192, 193, and 199. In the Order Instituting Rulemaking (OIR) for this proceeding, the Commission determined that this existing program meets all of the requirements of § 1702.5(a) for a gas safety citation program. (OIR at 4-6.) Thus, the OIR determined that the first step of the proceeding was to implement an electric safety citation program in compliance with SB 291. On September 26, 2014, the Phase I scoping memo issued and outlined the scope and schedule for Phase I.

On December 8, 2014, the Commission concluded Phase I by issuing D. 14-12-001, as modified by D.15-05-054 (Phase I Decision).[3] The Phase I Decision adopted an electric safety citation program which satisfies the requirements of SB 291. The Phase I Decision also identified several issues for

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[1] All statutory references are to the California Public Utilities Code unless otherwise provided.

[2] In Decision (D.) 15-06-044, the Commission recently adopted revised GO 112-F. We modify the gas and electric citation programs to reference the latest versions of the GOs because utilities must comply with the latest version of them.

[3] The full title of D.15-05-054 is "Order Modifying Decision (D.) 14-12-001, For Purpose of Clarification, And Denying Rehearing, As Modified." Page references in this decision to the "Phase I Decision" are to D.14-12-001, unless otherwise noted.

possible consideration in Phase II and stated that in subsequent phases of this proceeding, the Commission will develop and implement improvements and refinements to the gas and electric safety citation programs, as well as address other related issues relevant to a robust safety enforcement program. (Phase I Decision at 3.)

This decision addresses the Phase II issues set forth in the Assigned Commissioner's October 1, 2015 Scoping Memo (Phase II Scoping Memo), and the Assigned Commissioner's June 15, 2016 Amended Scoping Memo (Amended Phase II Scoping Memo) as further discussed below.

2. Both Programs Should be Similar in Structure and Process

In the OIR, the Commission stated an intention for the gas and electric safety citation programs to be similar in structure and process:

> Accordingly, the initial electric safety citation program should be generally similar to the existing gas safety citation program. … 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. (OIR at 8-9.)

In this decision, we endeavor to keep both programs as similar as possible in structure and process as we adopt necessary improvements and refinements to the gas and electric safety citation programs. Because the rules are quite similar, we merge both programs into a single set of rules applicable to both gas and electric corporations.

3. Structure of the Current Citation Programs

As stated above, Resolution ALJ-274 delegated authority to Staff to issue citations to gas corporations for violations of GO 112-E (now GO 112-F), including the federal regulations incorporated by reference into the GO. The

Commission directed Staff to take into account the factors in § 2104.5 in issuing citations to gas corporations.[4] The Commission also directed Staff to assess penalties for each violation at the maximum amount set forth in § 2107, i.e., $50,000 for each offense, noting that each day of an ongoing violation may be penalized as an additional offense. Resolution ALJ-274 required that Staff consider self-identification and self-correction of violations, when no injury or damage has occurred, in determining whether a citation should be issued to a gas corporation.[5]

The Phase I Decision approved an electric safety citation program to enforce compliance with GOs 95, 128, 165, 166, 174, or other related applicable decisions, codes, or regulations. The Phase I Decision directed Staff, in issuing an electric citation, to determine penalties for each violation at the maximum set out in § 2107, but gave Staff the discretion to assess penalties on less than a daily basis, and thus to reduce the maximum penalties, based upon consideration of the factors set forth in § 1702.5(a)(1), § 2104.5, D.98-12-075, and Resolution ALJ-277. (Phase I Decision at 13, and Appendix A, I.A.)

The Phase I Decision also provided guidance regarding consideration of self-identified potential violations: "To the extent that an electrical corporation self-identifies and self-corrects violations, reports the violation to Commission Staff, and no injury or damage has occurred, Staff shall consider such facts … in determining whether a citation should be issued and the amount of the penalty if a citation is issued." (Phase I Decision, Appendix A, § I.F.)

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[4] Resolution ALJ-274 at Findings and Conclusions 12 and 19.

[5] Requirements regarding the reporting process and criteria for self-reporting of potential violations are addressed below.

The factors referenced in Resolution ALJ-274 and the Phase I Decision are summarized below.

§ 2104.5, enacted in 1970, requires that the Commission consider the following factors in determining the amount of any penalty for violations involving safety standards for pipeline facilities or the transportation of gas:

- The appropriateness of such penalty to the size of the business of the person charged,
- The gravity of the violation,
- The good faith of the person charged in attempting to achieve compliance, after notification of a violation.

§ 1702.5(a)(1), effective January 1, 2014, requires Commission Staff to take the following into account when considering the issuance of citations and assessment of penalties to gas corporations and electrical corporations:

- 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.

D.98-12-075 (84 CPUC 2d 155, Appendix A at 188-190) contains a detailed description of factors to be considered in setting fines for violations of affiliate transaction rules, which factors are more fully listed in § 6 below. The major categories include severity of the offense; conduct of the utility; financial resources of the utility; totality of the circumstances; and role of precedent. Some of these categories are further described in D.98-12-075 with illustrative factors.

Finally, in Resolution ALJ-277, the Commission denied an appeal filed by Pacific Gas and Electric Company (PG&E) of a citation for violations of gas safety requirements. In affirming the reasonableness of the citation, Resolution ALJ-277 relied and elaborated on the guidance from the statutes and orders described above.

4. The Phase II Scoping Memo and Subsequent Record Development

On October 1, 2015, President Picker issued the Phase II Scoping Memo requesting that parties comment on 18 issues concerning the gas and electric safety citation programs in order to determine what further proceedings, if any, are necessary before adopting necessary improvements and refinements of the gas and electric safety citation programs. On November 2, 2015, interested parties filed comments, and on December 2, 2015, interested parties filed reply comments addressing the Phase II Scoping Memo. The following parties filed comments and/or replies: the California Utility Employees (CUE), the Energy Producers and Users Coalition (EPUC), Certain Investor-Owned Utilities (Joint Parties),[6] the Office of Ratepayer Advocates (ORA), PG&E, Southern California Gas Company and San Diego Gas & Electric Company, jointly (SoCalGas/SDG&E), and Southwest Gas Corporation (Southwest Gas). These comments are summarized in detail in Appendix C to this decision, and are referred to as appropriate in the decision below.

Concerning the category of issues of self-identified potential violations, in the Phase I Decision at 18, we stated that in "Phase II of this proceeding, we will address, review and approve additional self-reporting requirements by Commission decision, which shall encompass reporting process and criteria, after a record on this issue is developed." After reviewing the initial comments to the Phase II Scoping Memo, there remained an insufficient record for the Commission to determine clarity on the detailed issues regarding self-identified

[6] The Joint Parties include PacifiCorp, Southern California Edison Company (Edison), Bear Valley Electric Service and Liberty Utilities (CalPeco Electric) LLC.

potential violations. Therefore, on June 15, 2016, an Amended Phase II Scoping Memo issued, with an attached report by the Commission's Safety and Enforcement Division (SED) entitled "Report of the Safety and Enforcement Division on Self-Identified Potential Violations" (SED Report). The SED Report is attached to this decision as Appendix B. The Amended Phase II Scoping Memo amended the scope of the proceeding to encompass additional issues on self-identified potential violations set forth in the attached report and recommendations by SED, and sought comments thereon.

Interested parties filed comments on this report on July 15, 2016, and reply comments on August 5, 2016. The following parties filed opening comments: the Joint Parties, PG&E, SoCalGas/SDG&E and Southwest Gas. The following parties filed reply comments: PG&E and SoCalGas/SDG&E. These comments are summarized in Appendix D and are referred to as appropriate in this decision.

5. Further Workshops Are Not Necessary

As stated above, after the issuance of the Phase II Scoping Memo and the parties' comments thereto, the Amended Phase II Scoping Memo circulated for comment the SED Report on self-identified potential violations. Parties commented on this report and SED's recommendations.

Many utility parties call for various workshops to address a multitude of issues before issuing our decision. No party requested evidentiary hearings.

We believe no further record development or process is necessary for us to render today's decision. Specifically, we believe that workshops requested by some parties are unnecessary at this time.

The Commission issued the initial gas and electric safety citation programs after a notice and comment period; no hearings or workshops were necessary. In

the Phase I Decision, the Commission found this notice and comment period appropriate. (Phase I Decision at 29.) Similarly, we find no workshops or hearings are necessary in rendering today's decision which refines these two programs. We now turn to a specific discussion of the questions set forth in the Phase II Scoping Memo and Amended Phase II Scoping Memo. We further elaborate on our conclusion that workshops are unnecessary in the sections below, as appropriate.

6. Factors in Issuing Citations

Question 1 in the Phase II Scoping Memo asked:

> "In addition to the factors set forth in § 2104.5 and § 1702.5(a)(1), should other factors be considered by Staff in deciding whether to issue a citation?"[7]

A. The Existing Gas and Electric Safety Citation Programs

Currently, the gas safety citation program, as established by Resolution ALJ-274, requires Staff to consider the factors delineated in § 2104.5 (i.e. the size of the business, gravity of violation, good faith of business in attempting to achieve compliance, after notification of a violation) in whether to issue a citation, and gives Staff the discretion (based on weighing the enumerated factors) on whether or not to issue the citation. Additionally, Resolution ALJ-274 at Conclusions 12 and 19, directs that Staff take into account whether the violations are self-identified and self-corrected, and whether injury or damage resulted from the violations. The electric safety citation program

[7] The Scoping Memo contained a footnote to this question and indicated that self-reporting issues would be discussed in a separate section. We therefore address self-reporting issues separately in § 9 below.

requires Staff to consider the factors delineated in § 1702.5(a)(1), § 2104.5, D.98-12-075, and Resolution ALJ-277, in addition to violations that are self-identified, self-corrected, reported to Commission Staff, and from which no injury or damage results, in issuing citations.

B. Parties' Positions

PG&E cites to GO 95, Rule 18A and recommends that Staff consider factors additional to those listed in § 1702.5(a)(1) and § 2104.5, in whether to issue a citation. PG&E recommends that citations not issue where: (1) the violation or nonconformance has not resulted in any injury, property damage, or caused disruption in service; (2) the violation is scheduled to be addressed in a timely manner consistent with GO 95, Rule 18A and the utility's auditable maintenance program; and (3) the utility's auditable maintenance program complies with GO 95, Rule 18A. PG&E also recommends that the Commission hold workshops to develop additional guidance for both Staff and regulated utilities on how to apply the various factors in § 1702.5(a)(1) and § 2104.5. In particular, PG&E recommends that the Commission explore how to assess the gravity of a violation, perhaps using a risk-tiered approach along the lines of SED's September 20, 2013 Gas Safety Citation Program, Standard Operating Procedure Version 1.0. (Gas SOP.)

The Joint Parties state that the citation programs do not adequately define when non-conformances with specific, existing legal and regulatory requirements will be considered by the Commission to be violations, and when such violations will be ripe for a citation. The Joint Parties also recommend limiting the issuance of citations for violations or nonconformances with an immediate safety impact, citing to GO 95, Rule 18A, which has three levels of corrective action, depending on severity. The Joint Parties recommend that

citations are only appropriate at the most severe level (priority 1 under the GO). The Joint Parties also believe that no citations should issue for violations or nonconformances without an immediate safety impact that have been identified by the utility and scheduled for corrective action in the ordinary course of business. The Joint Parties recommend workshops on this issue to vet it more thoroughly. The Joint Parties also recommend, as a general rule, that no citation issue when the utility complies with applicable remedial requirements or cures a known violation or nonconformance within a reasonable period of time, except where the utility knows or should have known of the violation or nonconformance, but nonetheless failed to cure it within a reasonable period of time.

SoCalGas/SDG&E make similar recommendations. SoCalGas/SDG&E recommend that the gas and electric safety citation programs be limited to violations that pose a demonstrable and immediate threat to public safety, arguing that the gravity of the violation and degree of culpability of the utility are threshold factors in considering whether to issue a citation. SoCalGas/SDG&E recommend that Staff prioritize its consideration of factors to align with the risks to the public by considering the following major categories: the severity and gravity of the offense; the conduct of the utility; and the totality of the circumstances.[8] SoCalGas/SDG&E also recommend that the Commission refine the distinction between violations and nonconformances, stating that the Commission has regulations and decisions making this distinction, citing to GO, Rule 18 and 18A and D.12-01-032 at 14-15.

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[8] SoCalGas/SDG&E list many recommended subcatgories under these major categories. (*See* Summary of Comments, Appendix C at 14-15.)

SDG&E/SoCalGas support safety programs that afford utilities an opportunity to correct a variance without incurring a penalty.

Southwest Gas recommends that, in deciding whether to issue a citation, Staff should also consider actions taken to prevent a violation including, but not limited to, quality assurance (QA)/quality control (QC) measures, existing pipeline safety programs in place, and company standards that exceed minimum code requirements. Southwest Gas also recommends that when determining the appropriate penalty in light of the size of the business of the person charged, the Commission should only consider the size of the business in California.

ORA does not advocate major changes from the existing gas and electric safety citation programs. For instance, ORA does not recommend that additional factors other than those set forth in the programs be considered. This is so, according to ORA, because one of the risks of including excessive additional factors in the determination of a citation is the confusion that could arise from overlapping factors. In its reply comments, ORA states that it agrees with the Commission's assessment in the Phase I Decision that the Commission should not reinterpret each provision of each applicable law and GO. ORA argues that ultimately, compliance with Rule 18 A does not immunize a utility from violations of other GOs or statutes. ORA also recommends that the citation programs not be limited to situations where injury has occurred. ORA notes that this limitation would omit a "near miss" scenario, as well as record keeping violations, and may have the adverse effect of limiting these types of violations to an Order Instituting Investigation (OII), because Staff could not address them by citation.

C. Modified Gas and Electric Safety Citation Program

We modify the gas and electric safety citation program so that both programs are consistent, and provide that Staff should consider the same factors in both the gas and electric programs in determining whether to issue a citation. First, it is important to mention that, in weighing the factors discussed below, Staff has the discretion of whether or not to issue a citation in the first instance. Because of overlap in the statutory and decisional factors that Staff must consider in the citation programs as to whether to issue a citation, our modified rules synthesize the overlap into one set of criteria.

Specifically, we require Staff to consider the following criteria in determining whether to issue a citation. These criteria are derived from D.98-12-075, Appendix A, § (b) (fines), 85 CPUC2d 155, 193-195, as modified below. The factors listed above from D.98-12-075 encompass all of the factors set forth in § 1702.5(a)(1)[9] and § 2104.5.[10] However, the exact wording of the two statutes does not appear in the criteria derived from D.98-12-075, so we modify these criteria to show precisely where the statutory mandates are included. Additionally, in determining whether to issue a citation and the amount of the penalty, it is important to ensure that utilities do not have incentives to make

[9] § 1702.5(a)(1) requires consideration of: voluntary reporting of potential violations (which we discuss in § 9 below and further define in Rule I.G. of the citation programs), voluntary removal or resolution efforts undertaken, the prior history of violations, the gravity of the violation and the degree of culpability.

[10] § 2104.5 requires consideration of the size of the business, gravity of violation, and good faith of the business in attempting to achieve compliance, after notification of a violation.

economic choices that cause or unduly risk violations. (*See* Phase II Amended Scoping Memo question 5 as well as the discussion at § 8 below.)[11]

We require Staff to consider the following criteria in determining whether to issue a citation:[12]

- Severity **or gravity** of the offense, including the following:
  - Economic harm to the victims
  - Unlawful benefits gained by the utility
  - Violations that physically harm people or property
  - Violations that threatened physical harm to people or property
  - Harm to the integrity of the regulatory processes, including disregarding a statutory or Commission directive
  - The number of violations
  - The number of consumers affected
- Conduct of the utility, including the following:
  - Degree of culpability
  - Actions taken to prevent a violation
  - Actions to detect a violation
  - Actions to disclose and rectify a violation, including voluntary reporting of potential violations (*see* also Rule I.G), voluntary removal or resolution efforts undertaken, and the good faith of the utility in attempting to achieve compliance, after notification
  - **Prior history of violations**
- Financial resources of the utility, **including the size of the business**

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[11] Attachment 1 to Appendix A of this decision includes a reproduction of Appendix A,§ (b) (fines) to D.98-12-075 which more specifically explains each factor above.

[12] The language in bold is where the criteria are modified from those listed in D.98-12-075. The bold does not appear in the Rules attached as Appendix A.

- Totality of the circumstances, including the following:
  - Establishing a fine that effectively deters further unlawful conduct
  - Consideration of facts that tend to mitigate the degree of wrongdoing or exacerbate the wrongdoing
  - Evaluation of harm from the perspective of the public interest
  - **Ensuring that a utility does not have incentives to make economic choices that cause or unduly risk a violation**
- The role of precedent, including the following:
  - Consideration of previously issued decisions that involve the most reasonably comparable factual circumstances

As stated above, we do not elaborate further here on each factor, nor on how each factor might apply in deciding whether a citation should issue, because we are without a factual basis to do so given the absence of a specific case or controversy. To reiterate, Staff is not required to issue a citation for each violation it discovers. In appropriate situations, Staff may meet and confer with the utility or take other steps to obtain a cure of the violation and determine that a citation is not necessary. However, regardless of whether a citation is issued, at a minimum, Staff shall continue its current practice of documenting each violation. This is a matter of Staff's discretion and we do not here weigh the various factors and determine how they might apply to potential factual situations. Such fact-dependent decisions are inappropriate in rulemaking, in which no specific case or controversy exists. However, in the event of an appeal, Staff will be required to explain how it weighed the various factors in reaching its decision on whether to issue the citation and in determining the amount of the penalty, discussed in § 7 below. As Staff issues more citations, there will be a

body of precedent from which to draw context and compare results, based on comparable factual outcomes and differences in outcomes that are explained.

As such, we disagree with the utility parties that workshops, largely comprised of multiple utility parties and ORA, would be useful or efficient to further delineate how Staff should weigh the above factors based in hypothetical situations. As we stated in the Phase I Decision at 24-25, when the parties raised very similar arguments:

> "We will not reinterpret each provision of each applicable law and GO in this decision. We decline here to entertain a facial constitutional challenge to all of these laws and GOs based on multiple hypothetical situations which have not yet arisen and thus are not ripe for adjudication. As we stated with respect to similar issues in Resolution ALJ-274 at 11, adopting the gas safety citation program:
>
> "In addition, the utilities' constitutional arguments on excessive fines, due process, and takings are too hypothetical and speculative in this facial challenge to the citation enforcement procedures adopted in this Resolution. The utilities presume that because the ….staff would have the authority to issue citations, that they would be imposing the citations for the maximum amount of penalties (and for the maximum days possible) without sufficient justification, and further that the Commission would, on appeal, uphold these amounts. However, as a facial challenge, the utilities, too, bear a heavy burden (which they have not met here) to challenge the citation enforcement procedures as unconstitutional, because in some future hypothetical situation constitutional problems may arise. *See Calif. Assn. of Private Special Education Schools v. Dep't of Education* (2006) 141 Cal.App.4th 360, 371-72 (and cases cited therein)."

Nor should Staff be limited to issuing citations for only certain categories of violations (e.g., those violations with an immediate safety impact). For example, recordkeeping violations may be severe enough to eventually cause

severe safety impacts, but we do not wish to wait for a severe safety impact before issuing a citation. We strive for a safe utility system and want recordkeeping violations, if they exist, to be remedied before any actual harm occurs. As we described in D.98-12-075, 84 CPUC2d at 193 and 194, when discussing the criterion "severity of the offense,"

> "Many potential penalty cases before the Commission do not involve any harm to consumers but are instead violations of reporting or compliance requirements. In these cases, the harm may not be to consumers but rather to the integrity of the regulatory processes. For example, compliance with Commission directives is required of all California public utilities:
>
> '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 or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.' Public Utilities Code Section 702.
>
> Such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity."

We reject the request of many utility parties, citing Rule 18 A of GO 95, that we adopt a blanket rule that issuing a citation should be limited to "violations" and not "nonconformances" as defined by that rule. We similarly disagree with the Joint Parties' argument that there should be no citation authority for violations or nonconformances without an immediate safety impact that have been identified by the utility and scheduled for corrective action in the

normal course of business, or if a violation is cured within a reasonable period of time after the utility became aware of the violation.

How the maintenance schedule in GO 95, Rule 18A interplays with the citation program is beyond the scope of this proceeding, in absence of a specific case or controversy. Furthermore, we do not wish in this decision to apply a limited rule (Rule 18A in GO 95) to all violations in all applicable GOs.

We further note that on May 9, 2016, SED filed an Amended Petition to Adopt, Amend or Repeal Rule 18 of General Order 95, Petition 16-05-004. The Commission will consider that Petition by separate decision and nothing in this decision prejudges the outcome of Petition 16-05-004. We only reiterate here that we will not address a myriad of hypothetical fact situations under Rule 18 and determine when a citation may issue. We do note, however, that prior to the adoption of the current version of Rule 18 A, D.04-04-065 at Conclusion of Law 5 at 63 acknowledged that "if a utility fails to comply with a GO, it is violating that GO." We reaffirm this principle.

Nor do we concur in utility arguments that the utility should be allowed to cure a violation without citation within a reasonable period of time, and should be subject to citation only after that time has elapsed. As we stated in rejecting the same argument in the Phase I Decision establishing an electric safety citation program at 22-23:

> "Although staff has the discretion to meet and confer with the utility prior to issuing a citation and may do so in appropriate circumstances, we do not adopt a rule for the electric safety citation program that staff be required to do so. The utility is charged with knowing the statutes, GOs, and other rules establishing safe electrical facilities and the citation program is established as another enforcement tool for the enforcement of these rules. Our priority is a safe electrical system. Therefore, we do not intend to layer onto the electric safety citation

> process a complex mandatory pre-citation program. For similar reasons, we do not provide for a mandatory cure period before a citation can issue. We note that under the electric safety citation program, payment of a citation or filing an appeal does not excuse the electrical corporation owning or operating the electrical supply facilities from promptly curing cited violations."

In the modified gas and electric safety citation programs, SED has the discretion to determine whether to issue a citation in the first instance, by weighing the factors listed above. Thus, there may be appropriate instances where a cure in lieu of citation is appropriate.

But we do not adopt that outcome as a general rule. As we also stated in Resolution ALJ-274 at 12 when faced with a similar argument:

> "Moreover, we do not concur with Sempra's proposed enforcement approach, modeled after PHMSA's. As the Center for Accessible Technology cautions, the lengthy and drawn-out compliance process proposed by utilities would fail to advance the concern expressed by the Independent Review Panel and the National Transportation Safety Board. Such a lengthy process would not restore public confidence in the safety of gas utilities transmission and distribution facilities and it would not instill confidence in the Commission's own ability to provide effective oversight of the natural gas system."

Finally, Southwest Gas recommends that, when weighing the size of the businesses, Staff only be able to consider the size of the business in California. We cannot definitively address this recommendation absent a specific case or controversy. We leave it to Staff to justify its citation issuance under the specific facts presented at the time it issues a citation.

7. Staff Discretion in Determining the Penalty and Penalty Amounts

Questions 2, 3 and 4 in the Phase II Scoping Memo asked:

2. Should the structure of the citation program in Resolution ALJ-274 (gas) and D.14-12-001 (electric) that Staff shall determine the penalty for each violation at the § 2107 maximum, with discretion to assess penalties on less than a daily basis (again at the statutory maximum), be continued and/or should it be modified? Some suggested scenarios for comment include but are not limited to: Should Staff have the discretion to issue a penalty for the first day of each violation at an amount other than (and below) the § 2107 maximum? Should Staff have the discretion to issue a penalty for subsequent days of a continuing violation other than (and below) the § 2107 maximum? If so, what factors should Staff weigh in exercising this discretion?

3. Should the factors listed in Section 2.1.1 above continue to be considered in determining penalty amounts for the electric and gas citation programs?

4. In addition to the factors listed in Section 2.1.1, should other factors be considered in determining penalty amounts? If so, specify the factor(s) and explain their relevance.

A. The Existing Gas and Electric Safety Citation Programs

The current gas and electric citation programs authorized, respectively, by Resolution ALJ-274 and by the Phase I Decision provide that Staff shall exercise its discretion (based on enumerated factors) in issuing a citation and shall then determine penalties for each violation at the maximum amount set out in § 2107, i.e., $50,000 for each offense. Furthermore, Staff has the discretion to assess penalties at the maximum amount set out in § 2107 ($50,000) on something less than a daily basis, again, based on enumerated factors.

B. Parties' Positions

The Joint Parties recommend that Staff have the discretion to issue a penalty for the first day and each subsequent day of each violation in an amount below the maximum amount of $50,000 set forth in § 2017, subject to a

pre-determined tiered approach and an overall administrative cap. The Joint Parties recommend this pre-determined tiered approach be developed in workshops, where penalty severity levels should include a specific penalty range within the overall statutory range of $500 to $50,000 per day/per violation, and the specific range for each severity level be pre-established based on risk. These parties also state that in addition to an administrative cap, a cumulative annual cap on penalties may be appropriate.

The Joint Parties recommend that, within the framework of tiered, risk-based pre-established penalty levels, Staff should exercise discretion in determining penalty amounts, subject to (a) considerations of §§ 2014.5 and 1702(a)(1), (b) any other aggravating or mitigating factors developed in workshops, and (c) the self-reporting guidelines discussed below. The Joint Parties also recommend that, if there is a cure period or remedial action for any violation, a citation not issue unless the utility fails to comply with the cure within the requisite period or the violation caused injury or property damage. If this recommendation is not adopted, the Joint Parties believe that daily penalties should not accrue as long as a utility has a scheduled cure consistent with existing requirements.

PG&E recommends that both the electric and gas safety citation programs be modified to permit Staff to assess penalties in an amount below the statutory maximum of $50,000 per day, but pursuant to Commission approved guidelines with tiered penalty levels developed through workshops. PG&E states the factors listed on pages 5-6 of the Scoping Memo and those listed in § 6.2 of the Gas SOP are excellent factors to be considered, but that both SED and the utilities would benefit from increased clarity and understanding as to how these factors

should and will be applied. PG&E states that other successful safety enforcement and citation programs do not start with a maximum fine.

SoCalGas/SDG&E recommend that the safety citation programs be modified to provide Staff with discretion to assess penalties on less than a daily basis and at less than the maximum statutory level. SoCalGas/SDG&E recommend that Staff weigh certain factors (*see* footnote 8 above) in determining the amount of the penalty, and state that this approach is consistent with § 1702.5(a)(1) and § 2104.5. These utilities also recommend a graduated enforcement approach outlined below and believe that Staff should explain how the penalty amount is determined, including the use of the prioritization factors, so that the utility can better understand why that particular penalty is being imposed.

SoCalGas/SDG&E recommend that Staff consider the factors listed in § 2.1.1 of the Phase II Scoping Memo, as prioritized by SoCalGas/SDG&E, in determining penalty amounts. SDG&E/SoCalGas again recommend that penalties not be imposed for nonconformances or technical variances, absent a pattern of behavior by the utility indicating a disregard of the rules. SoCalGas/SDG&E state the Commission has acknowledged that it is impossible for a utility to keep its distribution system in perfect compliance with safety GOs, and that there may be multiple violations on a utility's system at any given time. SoCalGas/SDG&E cite to a prior Commission approach that incorporated notice and an opportunity to correct violations before issuing penalties, citing D.04-04-065 (a Safety OII dealing with Edison). These utilities state that the Independent Review Panel's report issued in response to the San Bruno explosion recognized this graduated enforcement scheme, and recommended that Staff have citation authority to provide for a more graduated system of

enforcement, with an OII reserved for the most severe violation. SoCalGas/SDG&E recommend a graduated enforcement process modeled after Pipeline and Hazardous Materials Safety Administration (PHMSA) enforcement regulations and containing the following elements: (1) the issuance of a warning letter prior to citation; (2) an opportunity to correct the violation before a citation and penalty; and (3) a meaningful opportunity to be heard.

Southwest Gas recommends that the Commission should give Staff the flexibility to determine the citation penalty at less than the § 2107 maximum and should allow for the assessment of penalties on less than a daily basis. Southwest Gas argues that the failure to consider assessment of penalties at less than the statutory maximum of $50,000 per day conflicts with § 2104.5 which requires evaluation of certain mitigating factors when determining the amount of a penalty, and § 2107, which contemplates a penalty range.

ORA does not recommend any changes to the existing rules in this area.

C. Modified Gas & Electric Safety Citation Program

We retain the structure of the citation program in Resolution ALJ-274 (gas) and D.14-12-001 (electric) that Staff shall determine the penalty for each violation at the § 2107 maximum, with discretion to assess penalties on less than a daily basis (again at the statutory maximum). We require Staff to weigh the criteria set forth in § 6 above in determining the penalty amounts consistent with the above framework.

We do not believe it useful to further tier penalty levels in workshops, especially when most of the utility participants propose an administrative limit to the overall citation penalty of no more than $500,000 for a related series of

violations.[13] As stated above, we do not think a lengthy workshop inquiry into the various penalty levels for many potential GO violations is useful now. This type of inquiry is better addressed as a factual inquiry, in a particular case or controversy, in light of our adopted citation programs. As Staff issues more citations, there will be a body of precedent from which to draw context and compare results, based on comparable factual outcomes and differences in outcomes that are explained.

8. Administrative Limit

Questions 5 and 6 in the Phase II Scoping Memo asked:

> 5. Should the administrative limit on the amount of the electric and gas citation penalty that may be set by Commission Staff be modified from the current statutory maximum set forth in § 2107? If so, specify the amount recommended and the justification for the recommendations. Parties may address various scenarios, including but not limited to whether there should be a per-citation or per-violation limit, etc. For any other limits suggested, parties should explain, among other things, how the recommended limit is sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations.
>
> 6. With respect to the administrative limit discussed in question 5 above, should the Commission adopt a limit similar to that used by the Pipeline and Hazardous Materials Safety Administration of $2 million for any related series of violations? (*See* CFR §190.223.)

[13] We address the issue of an administrative limit in § 8 below.

A. The Existing Gas and Electric Safety Citation Programs

§ 1702.5(a)(3) states that the Commission "shall adopt an administrative limit on the amount of monetary penalty that may be set by commission staff." In the Phase I Decision, the Commission reiterated that the administrative limit in the gas safety citation program established by Resolution ALJ-274 is based on the statutory maximum under § 2107, which currently is $50,000 for each offense. (Phase I Decision at 28.)[14] The Commission also stated that Staff had the discretion in determining violations, and that, pursuant to § 2018, each violation is a separate and distinct offense. (*Id.*) For the electric safety citation program, the Commission adopted the same administrative limit set forth in Resolution ALJ-274 based on the statutory maximum in § 2017. (*Id.*)

In the Phase I Decision we provided further explanation that Staff has discretion to determine violations under the safety citation programs and explained as follows:

> "We delegate to staff the authority to assess the maximum penalties required by § 2107 on less than a daily basis, by considering the factors set forth in § 1702.5(a)(1), § 2104.5, D.98-12-075, and Resolution ALJ-277, issued April 20, 2012. Staff may further consider if the violation was timely self-reported in deciding whether to issue a citation, and if so, on the penalty calculation. Furthermore, in Phase II of this proceeding, we will further examine this issue when we refine both the gas and electric safety citation programs. As stated in the OIR, we will consider as a policy matter whether to also implement a per-citation limit." (*Id.*)[15]

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[14] Resolution ALJ-274 established the Gas Safety Citation Program prior to the enactment of § 1702.5.

[15] On rehearing, PG&E argued that the Phase I Decision failed to adopt any administrative limit, because according to PG&E, the administrative limit should be less than the statutory

Footnote continued on next page

B. Parties' Positions

Most of the parties commenting on the questions concerning administrative limits did so in the overall context of their comments on all questions. As stated above, many of the utility comments called for detailed workshops on many issues, and recommended limiting the safety citation programs to only certain violations with an immediate safety impact. Furthermore, utility comments also recommended that the safety citation programs be further circumscribed by a pre-determined tiered approach of penalties as well as an administrative cap. The pre-determined tiered approach is discussed in § 7 above.

For example, as stated above, the Joint Parties recommend that Staff has the discretion to issue a penalty for the first day and each subsequent day of each violation in an amount below the maximum amount of $50,000 set forth in § 2017, subject to a pre-determined tiered approach and an overall administrative cap. These parties also state that in addition to an administrative cap, a cumulative annual cap on penalties may be appropriate. In terms of monetary caps, although the Joint Parties recommend workshops to set the amounts, these parties note that Edison previously suggested an administrative limit of $250,000 for any related series of violations to apply to the large utilities. The Joint Parties recommend a lower limit ($25,000 for the first of a series of related violations in an annual period coupled with $50,000 for each set of related violations thereafter) for smaller utilities or utilities with smaller service territories in California.

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maximum. The Commission's decision on rehearing, D.15-05-054 at 9-12, found PG&E's allegations without merit.

PG&E recommends an administrative limit per citation and per incident for a violation or related series of violations and that this limit should be consistent with other citation programs. PG&E supports workshops on this issue to develop detailed criteria for different penalty ranges and different administrative limits, depending on the severity of the violations and various aggravating or mitigating factors. PG&E also believes that an appropriate administrative limit could be analogous to the $200,000 limit in the propane gas citation program, and that the Commission can always open an OII for more serious violations. PG&E does not agree that the administrative limit should be $2 million, similar to PHMSA. According to PG&E, the $2 million limit is the maximum administrative civil penalty for any related series of violations for the PHMSA, while here, the Commission retains the right to issue an OII with appropriate penalties.

SoCalGas/SDG&E recommend that the Commission set an administrative limit different from the maximum penalty set forth in § 2107 for citations issued by Staff under the gas and electric safety citation programs. According to SoCalGas/SDG&E, this administrative limit should be discussed and agreed to in workshops.

Southwest Gas also believes the Commission should place an administrative limit on Staff of no greater than $500,000 for any related series of violations. The $500,000 limit, according to Southwest Gas, would equal the highest non-daily limit afforded Staff for any related series of violations in other citation programs and would amount to 25 percent of the $2 million limit which PHMSA employs. Southwest Gas believes that $500,000 is sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations because the limit is both substantial and the fines

are not recovered through ratepayers. Southwest Gas recommends that the limit on any penalty issued under Resolution ALJ-274 for any related series of violations should be capped at $2 million, consistent with the PHMSA's intent for penalties associated with noncompliance in 49 CFR § 190.223. Southwest Gas states this limit would promote consistent assessment of penalties for most of the violations and is a relatively recent amount, having been revised in 2013.

ORA believes that there is sufficient flexibility for Staff under the current penalty parameters, and recommends that these parameters are appropriate and should be continued. ORA states that the parties to a citation can settle for amounts less than the citation's initial issue amount, and ultimately, that the Commission retains the discretion to adjust penalties. ORA therefore recommends that the administrative limit on the amount of penalties that may be set by Commission Staff (the statutory maximum) remain unmodified. ORA believes that the Commission should not adopt a $2 million limit used by PHMSA for any series of violations because the PHMSA regulation in question is broad, covers a broad range of conduct and penalties, and it is inappropriate to select one figure from one subpart of the PHMSA regulation as the new Commission administrative limit. ORA also states that the $2 million figure may be insufficient in years to come when taking into account inflation, and that use of the statutory mandate in § 2107 is appropriate as it links to the public utilities regulation experience in California. In response to PG&E's proposed $200,000 administrative limit, ORA points out that in some cases (such as a recent $10.85 million fine against PG&E concerning a Carmel house explosion), a $200,000 fine would have been an insufficient deterrent.

C. Modified Gas and Electric Safety Citation Program

We adopt an administrative limit of no more than $8 million for each citation issued under the gas and electric safety citation programs. We arrive at this figure in exercising our discretion with the goal of establishing a robust citation program which ensures that utilities do not have incentives to make economic choices that cause or unduly risk violations, while providing that the most egregious violations should be presented to the Commission in an OII. The Staff has the discretion to either address each violation in a distinct citation or to include multiple violations in a single citation regardless of whether the violations occurred in the same incident or are of a similar nature. If necessary, we can reexamine this limit once the Commission gains experience with it.

As stated above, we do not believe that further workshops are necessary on this issue to assign in advance a specific monetary value to the multitude of potential violations under the many GOs, especially since the highest maximum administrative limit suggested by any utility party is $500,000 for a related series of violations.[16]

Under both safety citation programs, Staff must weigh many factors in determining whether to issue a citation and in determining the amount of the penalty in for a continuing violation. A utility has the right to appeal if it believes the penalty is unjust, and then the Commission can examine the matter on appeal on a case by case basis. Contrary to Southwest Gas' arguments,

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[16] We similarly reject PG&E's inapposite analogy to the propane gas citation program because the civil penalty in that instance is limited by statute not to exceed $200,000 for a single violation or related series of violations (*see* § 4457(a)), whereas, here, the Legislature did not establish a precise monetary administrative limit.

we do not believe a separate administrative limit is necessary for large and small utilities, because the size of the utility is one of the factors Staff weighs in deciding whether to issue a citation in the first instance and also in determining the amount of the penalty.

In question 5, we solicited comments on an administrative limit "sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations." In SCE's 2015 general rate case (GRC), the Commission authorized a test year 2015 revenue requirement for SCE of $5.182 billion, with post-test year increases of $209 million for 2016 and $272 million for 2017. As of 2015, SCE had about 5,035,863 customers. (*See* D.15-11-021 at 2-3 and 380.) In PG&E's 2014 GRC, the Commission authorized a 2014 revenue requirement of $7.094 billion. Of that amount, the revenue requirement for electric distribution was $3.775 billion, for gas distribution was $1.559 billion, and for electric generation was $1.761 billion. (*See* D.14-08-032, Appendix C.) In early 2016, PG&E had a total of 5.4 million electric customer accounts and 4.3 million natural gas customer accounts.[17] In SoCalGas/SDG&E's last general rate case, the Commission authorized a $1.959 billion revenue requirement for SoCalGas for test year 2012, plus post-test year adjustments for 2013-2015 of 2.65 percent for 2013, 2.75 percent for 2014, and 2.75 percent for 2015. With the post-test year adjustments, at the end of 2015, SoCalGas' authorized revenue requirement is about $2.097 billion. (*See* D.13-05-010 at 2 and 1011 and passim.) As of 2015, SoCalGas served about 5.8 million customers. (*Id.*) In that same GRC, the Commission authorized a combined electric and gas

[17] https://www.pge.com/en/about/company/profile/index.page

revenue requirement for SDG&E for test-year 2012 of $1.733 billion. The electric side revenue requirement was $1.441 billion (increasing to $1.479 billion by the end of 2015) and the gas side revenue requirement was $292 million, increasing to $310 million by the end of 2015. (*Id*.) SDG&E served about 1.4 million electric customers and about 850,000 gas customers as of 2015. (*Id*. at 963-964.)

According to the Joint Parties, an "administrative schedule with pre-determined penalty ranges based on the severity of the offense, coupled with a pre-determined administrative limit, allows the Commission to meet its safety objectives while enabling utilities doing business in California to manage their risk."[18] However, we do not want potential citation penalties to be factored into the utility business model as a mere cost of doing business. (*See* D.02-10-059 at 55; OII concerning Quest Communications.) Given the above revenue requirements of the major gas and electric utilities, the administrative limit we set today is reasonable and achieves the goal of being sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations which may lead to a citation. We may also initiate an OII for more egregious violations. We understand that there are smaller energy utilities as well; however, under our citation programs, SED has the discretion on whether to issue a citation in the first instance and whether to fine for multiple days, by considering various criteria, including the size of the utility. Thus, the safety citation programs contain appropriate flexibility for SED in issuing citations.

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[18] Joint Parties' November 2, 2015, comments at 8.

9. Self-Reporting Requirements

Questions 7, 8, and 9 in the Phase II Scoping memo asked:

> 7. How should the requirements for self-reporting of violations in Resolution ALJ-274 and the Phase I Decision be reconciled?[19]
>
> 8. What additional self-identified reporting requirements, including reporting processes and criteria, should be established? (*See* e.g. Phase I Decision at 18-19 and 37-38.)
>
> 9. Should the requirements adopted in Resolution ALJ-274 (gas) and D.14-12-001 (electric) that Staff shall consider whether a utility timely self-identifies potential violations where no injury or damage has resulted in deciding whether to cite such violations, and the amount of the penalty if a citation issues, be modified? If so, state the suggested modifications and the rationale for them.

A. The Existing Gas and Electric Safety Citation Programs

§ 1702.5(a)(1) provides as follows:

> 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, and prior history of violations, the gravity of the violation, and the degree of culpability.

Resolution ALJ-274 (issued December 7, 2011), adopted prior to the enactment of § 1702.5(a)(1), established a gas safety citation program for gas

[19] The Phase I Decision at 18 states that the Commission does not intend to revisit the 30-day reporting requirement for self-identified violations. However, the two citation programs differ as to the number of days after self-identification that a utility must report such violations to the Commission. This ruling inquires from the parties their position on the limited question of whether these time frames should be uniform or not and why.

corporations. Resolution ALJ-274 contains the following provision regarding self-identified and self-corrected violations:

> F. Self-identified and self-corrected violations
>
> 1. To the extent that a gas corporation self-identifies and self-corrects violations and no injury or damage has occurred, Staff shall consider such facts in determining whether a citation should be issued. The gas corporation shall provide notification of such violations shall be provided (sic) to Commission Staff and to local authorities, as described above, within ten days of self-identification of the violation. (Resolution ALJ-274, Appendix A, I.F.1.)

Resolution ALJ-274 also requires that gas corporations provide notification of any self-identified and self-corrected violations to Commission Staff and to local authorities within ten calendar days of self-identification of the violation.

D.14-12-001 (Phase I Decision) adopted an electric citation program and contains the following provisions regarding self-identified and self-corrected violations:

> E. Self-Identified and Self-Corrected Violations
> Phase II of Rulemaking 14-05-013 will establish additional Self-Identified reporting requirements, which shall encompass reporting process and criteria. Those requirements shall be developed in Phase II pursuant to further direction by the Assigned Commissioner and ALJ. To the extent that an electrical corporation self-identifies and self-corrects violations, reports the violation to Commission Staff, and no injury or damage has occurred, Staff shall consider such facts, in addition to those factors set forth in California Public Utilities Code § 1702.5 (a)(1), § 2104.5, D. 98-12-075, and Resolution ALJ-277, in determining whether a citation should be issued and the amount of the penalty if a citation is issued. The electrical corporation shall provide notification of such violations to Commission Staff within 30 days of self-identification of the violation. The electrical corporation's notification of the self-identified violation shall also state

> when the violation will be corrected, consistent with the time period in GO 95. (D.14-12-001, Appendix A, Citation Procedures and Appeal Process, Rule I.E.)

B. Parties' Initial Positions

The parties' more detailed comments to the Phase II Scoping Memo on self-reporting are summarized in Appendix C as well as in the SED Report which is attached hereto as Appendix B. What follows is a brief summary of the comments. Almost all commenting utility parties recommend workshops on this issue. ORA does not believe further process is necessary.

The Joint Parties recommend that the time period to self-report a violation after discovery be harmonized so that both programs have the 30-day requirement. The Joint Parties recommend that categories of violations that are subject to the self-reporting requirements be identified by a tiered, risk-based approach. The Joint Parties believe that self-reporting should be encouraged with avoided citations or eliminated/reduced penalties.

CUE recommends that the citation program provide an incentive for self-reporting so that the utilities are more willing to come forward with violations. CUE recommends that the Commission examine other successful regulatory safety enforcement programs such as the Federal Aviation Administration (FAA), which uses anonymous "aggregate, protected data from industry and government voluntary reporting programs, to proactively find safety issues, identify safety enhancements and measure the effectiveness of solutions." (CUE Opening Comments at 3.) CUE recommends that the Commission consider using a neutral third party, like the FAA uses the National Aeronautics and Space Administration, to evaluate confidential safety reports.

PG&E believes the 30-day self-reporting period for the electric safety citation program, rather than the 10-day period for gas, is the more reasonable

approach, as it allows the utilities time to consult with SED and to develop a thoughtful and thorough solution to the problem. PG&E believes the current self-reporting process for both programs is very unclear and inconsistent and it is difficult for the utilities to know what the Commission wants self-reported.

SoCalGas/SDG&E recommend a 30-day self-reporting period for both programs as well. SoCalGas/SDG&E recommend that the self-reporting requirements be aligned with established reporting requirements (citing the Commission's and PHMSA's incident report process, the GO 165 reporting process, and pre-audit reports), to be effective but not overly burdensome.

SoCalGas/SDG&E believe that the reporting process should focus on high-risk items where a hazardous condition or incident occurs, and that routine nonconformances should be reported to SED but not necessarily through a formal process that also requires reporting information to city and county officials. They assert that a violation should not have to be self-reported if it is on the utility's auditable maintenance plan or pre-audit exception list, in the utility's GO 165 report, or reported pursuant to an incident report. SoCalGas/SDG&E recommend that Staff be required to take into account efforts by the utility to self-report potential violations and also instances where there is no harm resulting from a violation or nonconformance, in deciding whether to cite such violations and in determining the amount of the penalty. In its reply, SoCalGas/SDG&E agree with Southwest Gas' recommendation that there should be a two-year statute of limitations on issuing a citation based on a self-reported violation.

Southwest Gas recommends that there be two layers of self-reporting: safety-related and non-safety-related violations. In Southwest Gas' view, a non-compliance with GO 112 or 49 CFR Parts 190, 192, 193, and 19 which results

in an injury to people or property damage in excess of $50,000 should have a 30-day reporting requirement, with non-safety-related violations disclosed to SED only on a pre-audit exceptions list.

Southwest Gas also recommends that the Commission establish a two-year statute of limitations on issuing a citation based on a self-reported violation.

C. SED Report and Recommendations

1. Summary of Gas Utilities' Current Reporting of Self-identified Violations

As stated above, on June 15, 2016, the Amended Phase II Scoping Memo attached the SED Report for the parties' comment. The SED Report, among other things, summarized the gas utilities' current reporting of self-identified potential violations pursuant to Resolution ALJ-274. (Pending Phase II, electrical corporations were not required to report self-identified potential violations to SED.) According to the SED Report at 9, each gas corporation has developed its own criteria for self-reporting:

> **For PG&E:**
>
> "PG&E currently self-reports all probable violations of GO 112-F, Reference Title 49 CFR Parts 190, 191, 192, 193, and 199 and violations of its own procedures, excluding the following:
>
> 1. Internal audit findings that are submitted during regular audits/inspections by GSRB [Gas Safety and Reliability Branch],
> 2. QA/QC issues that are corrected promptly, and
> 3. Violations that are covered in an on-going proceeding, e.g., an Order Instituting Investigation (OII) proceeding."

For SoCalGas/SDG&E:

"SoCalGas and SDG&E currently self-report only instances that meet the criteria of Safety Related Conditions as per Title 49 CFR, Part 191, Section 191.23.

SoCalGas and SDG&E originally submitted exception reports (internal-audit findings) during GSRB regular audits of each inspection unit. SoCalGas and SDG&E now submit the exception reports, covering the entire system, on a quarterly basis."

For Southwest Gas:

"Southwest Gas currently reports only instances that meet the criteria of Safety Related Conditions as per Title 49 CFR, Part 191, Section 191.23."

2. Current Reporting Requirements and Practices for Gas and Electrical Corporations

The SED Report also sets forth the current reporting requirements and practices for gas and electrical corporations outside of the safety citation program's self-reporting requirements. For gas corporations, the current reporting requirements are summarized into four general categories. (*See* SED Report at 10-12.) These categories include:

- incident reports as required by GO 112-F § 122.2(a), which reports the utilities must make to the Commission within two hours during normal working hours;
- gas safety-related conditions which the utilities must report within 10 working days as required by GO 112-F § 124 or 49 CFR Part 191, §§ 191.23 and 191.25;
- quarterly summary reports required by GO 112-F § 122.2(d), which include a summary of all Commission reportable and non-reportable gas incidents as listed; and

- voluntary[20] notification of GO 112-F violations via Internal Finding Reports (a.k.a. Exception Reports) during regular inspections and audits.

For electrical corporations, the current reporting requirements outside of the safety citation program's self-reporting requirements are summarized into four general categories. (*See* SED Report at 12-14.) These categories include:

- notification of major outages within one hour of a major outage, as required by GO 166, Standard 6;
- incident reports as required by D.06-04-055, Appendix B , as amended by Resolution E-4184, which reports the utilities must make to the Commission within two hours during normal working hours;
- annual reports of missed or late substation inspections (GO 174), emergency plans (GO 166), annual outage and reliability statistics, (D.16-01-008) and all missed overhead and underground inspections (GO 165); and
- data submitted or available during inspections and audits.

3. SED Report Recommendations

a. Criteria For Reporting Self-identified Potential Violation

In light of the data already reported, SED states it does not see value in reporting potential violations already reported on a timely basis under other requirements. SED states it wants to limit reporting to potential violations related to conditions that pose imminent danger to the public, risks to large portions of the gas or electrical system, or unsafe conditions that are difficult, if not impossible, to discover on a timely basis during routine audits and

[20] The SED Report recognizes that the large gas corporations (PG&E, SoCalGas, SDG&E, and Southwest Gas) currently provide this notification, even though there is no requirement to do so.

investigations (i.e., forging inspection records, faking signatures on maintenance records, using wrong numbers in design, etc.) The Report therefore recommends reporting criteria which focus on potential violations with possible repercussions to safety and system reliability. (SED Report at 20.)

SED further states that it agrees with the Joint Parties that it would not be useful for the Commission to receive and review reports for every self-identified potential non-conformance with general orders identified during regular inspection and maintenance programs. This is because SED has access to such information, reviews the documentation during audits, and can request access the information at any time, e.g., as part of audits and incident investigations. (*Id.*)

Therefore, the SED Report recommends the following criteria for reporting of self-identified potential violations. These criteria are similar in concept for both gas corporations and for electrical corporations, yet their details differ because of the differing characteristics of the respective systems.

i. SED Recommended Criteria for reporting of self-identified potential violations for gas corporations:

"SED recommends that the citation program provide for the reporting by gas corporations of only self-identified potential violations that meet any of the following four criteria, were not already reported via other means (i.e., an Incident Report, Safety Related Condition Report, or Quarterly Summary Report), and had not come to SED's attention based on audits or data requests. For instance if a reportable incident occurs and is reported to SED, the gas corporation should not later report any related self-identified potential violations because SED will conduct an investigation and make that determination. The four recommended criteria are as follow:

1. GO 112-F violations that pose a significant safety threat to the public and/or utility staff, contractors, or subcontractors.

2. GO 112-F violations that caused a system wide impact or affected a large geographic region.

3. GO 112-F violations that resulted in pipeline failure or damage.

4. Any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's personnel, contractors, or subcontractors, regardless of the outcome." (SED Report at 21.)

ii. SED Recommended Criteria for reporting of self-identified potential violations for electrical corporations:

"SED recommends that the citation program provide for the reporting by electrical corporations of only self-identified potential violations that meet any of the following four criteria, were not already reported via other means (e.g., an Incident Report or General Order 165, 166, or 174 Reports), and had not come to SED's attention based on audits or data requests. For instance if a reportable incident occurs and is reported to SED, the electrical corporation should not later report any self-identified potential violations related to that incident. The four recommended criteria are as follow:

1. The potential violation created a condition that posed a significant, immediate safety threat to the public and/or utility staff, contractors or sub-contractors.[21]

[21] The intention of this criterion is to include any self-identified potential violation that presents such an obvious, immediate, and significant threat to life or limb of the public or utility workers that industry best practice dictates that any responsible utility would correct the condition immediately or as soon as possible.

> 2. The potential violation caused or could have caused system-wide impacts to the electric grid, caused or could have caused unplanned power outages of over one hour to over 5 percent of an electrical corporation's customers or unplanned power outages of over 24 hours to over 100 electrical corporation customers, or caused or could have caused the electrical corporation to activate its emergency response program.
>
> 3. A potential violation that clearly could have directly caused damage to property of the utility or others estimated to exceed $50,000.[22]
>
> 4. An instance of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors or subcontractors, regardless of the outcome." (SED Report at 21-22.)

SED further recommends that these self-identification and reporting provisions should in no way change or affect any existing reporting requirements. Each utility should continue to make records of all potential violations available for review by SED staff during regular audits or at any time upon the request of SED. Additionally, self-identification and reporting of any potential violation or safety-related condition in no way should relieve a utility of its existing responsibilities to correct such violations and safety-related conditions. (*Id*. at 22.)

b. SED's Additional Recommendations

The SED Report discusses a number of other issues including: (1) the proper terminology to define this issue; (2) that there is no need for workshops

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[22] Electrical incidents that actually caused damage over $50,000 are already reportable under Incident Reporting Requirements.

on this issue; (3) the rationale for whether utility reporting of self-identified potential violations should be voluntary or mandatory (without making a recommendation on which method to adopt); (4) correction of self-identified potential violations; (5) that there be a 30-day reporting period for self-identified potential violations; (6) the ministerial process for bringing self-identified potential violations to the Commission's attention; (7) the requirement of notification of city and county officials of such violations; and (8) that the Commission should not impose a two year statute of limitations on self-identified potential violations. We further discuss the SED Report's recommendations on these issues in our discussion below.

D. Parties' Comments on SED Report

The following parties filed opening comments on the Phase II Amended Scoping Memo and attached SED Report: Joint Parties, PG&E, SoCalGas/SDG&E, and Southwest Gas. PG&E and SoCalGas/SDG&E filed reply comments. We summarize these comments in Appendix D to this decision and also discuss them in more detail in our discussion below.

E. Modified Gas & Electric Safety Citation Program

1. Proper Terminology

The SED Report initially recommends that the proper terminology to use in discussing this issue is "self-identified potential violations," notwithstanding that both the Phase I Decision and Resolution ALJ-274 discuss the reporting of "self-identified violations." The SED Report's rationale is that the terminology used in § 1702.5 is most appropriate. § 1702.5(a)(1) states, in part, that the Commission "staff shall take into account voluntary reporting of potential violations." According to the Report, because determining what constitutes a

violation is only made through a Commission process, SED believes the term "potential violation" is more appropriate. (SED Report at 1-2.)

Most of the commenting parties that addressed this issue agree with the SED Report's recommended terminology. However, the Joint Parties recommend that the reporting criteria be modified to remove, or clarify through workshops, the term "potential violations," because the utilities would have to engage in speculation and such reporting is also complicated because potential violations may be caused by third parties (such as communications infrastructure providers) and not by the utilities.

We agree with the SED Report's rationale that the appropriate term to define this topic is "self-identified potential violations," because this term reflects the statutory language[23] and also because, as the Report points out, the Commission, not the parties, determines what is in fact a violation. We are not persuaded by the Joint Parties that this term is ambiguous, because it is the Commission and not the parties that determine an actual violation. We therefore modify both citation programs to reflect the appropriate terminology.

Several of the utilities generally state that some of the criteria on reporting self-identified potential violations are overbroad or ambiguous. We address these arguments in the specific context below. For further clarity, we also define

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[23] The statutory language is persuasive, but not determinative here. As noted in Resolution ALJ-274 establishing the gas safety citation program and the Phase I Decision establishing the electric safety citation program, authority to implement these programs is much broader than § 1702.5. In fact, the Commission implemented Resolution ALJ-274 before the enactment of § 1702.5, and pursuant to the Commission's broad authority cited in that Resolution. Similarly, in the Phase I Decision, the Commission implemented the electric safety citation program pursuant to the Commission's broad authority cited in that decision, as well as pursuant to § 1702.5.

a "potential violation" as a potential violation under each program; that is, for the gas program, utilities may voluntarily self-report potential violations of GO 112-F and related federal code sections, or other related applicable decisions, codes or regulations applicable to gas supply facilities,[24] and for the electric program, utilities may voluntarily self-report potential violations of GO 95, 128, 165, 166, 174, or other related decisions, codes or regulations applicable to electric supply facilities, as further limited by the reporting criteria below.

2. The Need for Workshops on this Issue

Many commenting utility parties call for workshops on SED's proposal to refine or clarify the criteria for self-reporting. PG&E also advocates for workshops to clarify a set of guidelines or principles for Commission approval regarding when Staff should and should not issue a citation notwithstanding a utility's self-report.

We agree with the SED Report's rationale that further workshops are not needed on these issues. As the SED Report points out, workshops can be helpful when there are significant differences of opinion or different levels of knowledge among parties regarding factual issues, and to help the parties find common ground and reach consensus or compromise on relevant issues.

Here, the interested parties on this issue are all utilities (as opposed to a mixture of utilities and consumer groups, etc.). There is no significant difference of opinion among the interested parties, who have all been afforded the opportunity to file written comments and replies. We therefore agree with the SED Report that workshops are not necessary on this issue.

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[24] *See* also the discussion in § 15 below.

In terms of how the Commission will weigh a utility's self-reporting of potential violations, see the discussion on voluntary versus mandatory reporting of self-identified potential violations below and also the discussion at § 7 above. As stated elsewhere in this decision, we do not believe further workshops are needed on these other issues.

3. Voluntary versus Mandatory Requirement to Report Self-Identified Potential Violations

The SED Report recommends that the Commission needs to specify whether reporting self-identified potential violations will be voluntary or mandatory. The Report sets out the rationale for each option but does not make a recommendation as to which option the Commission should adopt. (SED Report at 15-19.) All commenting parties agree that reporting self-identified potential violations should be voluntary.

Resolution ALJ-274 established a mandatory reporting requirement of self-identified potential violations for gas corporations. However, § 1702.5(a)(1) states that the Commission "staff shall take into account voluntary reporting of potential violations …." The Phase I Decision, Appendix A, I.E. addresses self-identified and self-corrected violations and states in part: "Phase II of Rulemaking 14-05-013 will establish additional Self-Identified reporting requirements, which shall encompass reporting process and criteria." By the use of the term "requirements," the Phase I Decision appears to consider this a mandatory requirement.

We modify both the gas and electric safety citation program to make utility reporting of self-identified violations voluntary. The citation programs will take into account such voluntary reporting as a factor in both issuing a citation in the first instance and in the amount of penalties. If such reporting is mandatory, rather than voluntary, such reports might not properly be considered a

mitigating factor in whether to issue a citation and in determining an appropriate penalty. Additionally, our gas and electric safety citation programs establish and refine rules and procedures for issuance of such citations, but do not establish new rules, the violation of which can cause additional citations to issue.

In addition to being consistent with the specific language in § 1702.5, a voluntary self-reporting requirement is also consistent with the practices of several other regulatory agencies, including the Federal Energy Regulatory Commission (FERC) and the FAA. As pointed out in the SED Report at 16, "a commonly-described objective of such voluntary reporting programs is that offering regulated entities an incentive of reduced or waived penalties if they voluntarily identify, correct, and report possible regulatory violations will induce those entities to be more proactive in their audit and inspection regimes, and will improve their compliance with the agency's regulations."

The SED Report more specifically sets forth the federal agencies' rationale:

> "FERC has stated that it "will maintain our practice of awarding penalty credit for parties that promptly self-report violations, assuming such conduct is not negated by a poor compliance culture."[25] A study by NERC[26] found that in 2012 approximately ninety percent of the violations of its regulations for critical infrastructure were self-identified and reported to NERC through its voluntary reporting procedures.[27] The FAA has described the reasoning behind its voluntary disclosure reporting program as follows:

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[25] Federal Energy Regulatory Commission, *Revised Policy Statement on Enforcement*, Docket No. PL08-3-000, May 15, 2008, para. 62.

[26] North American Electric Reliability Council (NERC) is a not-for-profit regulatory authority subject to oversight by FERC and other governmental authorities.

[27] NERC, *Balancing Authority Compliance Analysis Report*, 2013, p 16.

> Civil penalties, under the FAA's enforcement program, have always been considered a means to promote compliance with the FAA's regulations, not an end in themselves. In addition to the deterrence achieved by the appropriate use of civil penalties, the public interest is also served by positive incentives to promote and achieve compliance. Indeed, the FAA believes that aviation safety is well served by incentives for certificate holders… to identify and correct their own instances of noncompliance and to invest more resources in efforts to preclude their recurrence. The FAA's policy of forgoing civil penalty actions when one of these entities detects violations, promptly discloses the violations to the FAA, and takes prompt corrective action to ensure that the same or similar violations do not recur is designed to encourage compliance with the FAA's regulations, foster safe operating practices, and promote the development of Internal Evaluation Programs (IEPs)."[28] (SED Report at 17.)

As stated above, a utility's reporting of self-identified potential violations is a factor to consider in issuing citations and in determining the appropriate penalty. The Commission will weigh this factor with the other factors listed on a case-by-case basis and we do not establish a particular weight in advance to be given to this factor. (*See* §§ 6 and 7 above for weighing factors generally.) Nor do we agree with the utility arguments that if a utility self-identifies a potential violation, that the utility should be immune from citation on that potential violation. Although self-identification of potential violations is a mitigating factor, this factor should not immunize a utility for its potential violation. Context is determinative, and we direct Staff to weigh the many factors listed in

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[28] U.S. Department of Transportation, FAA, *Advisory Circular No. 00-58B*, § 5, April 29, 2009.

our rules and discussed above to determine the appropriate outcome in each case.

The SED Report also discussed the rationale for making this reporting requirement mandatory. In addition to the language in Resolution ALJ-274, the Report also states that SED could consider the quality of the utility report (reporting only the minimum threshold versus a more robust report) in determining whether to issue a citation and the appropriate amount of the penalty. The Report also posits that mandatory reporting could be in the best interest of safety because it could motivate electric and gas corporations to be more vigilant in preventing violations, because the fewer potential violations that exist, the fewer they would have to report. While these are important considerations, on balance, we believe the arguments in favor of voluntary reporting of potential violations are more persuasive. Finally, we note that if a utility knows of an existing potential violation, and actively conceals the violation and does nothing to remedy the problem, it will be subject to Commission action (whether by citation or an OII), and that such active concealment and failure to remedy the problem may be considered by the Commission as aggravating factors in taking enforcement action, notwithstanding the fact that self-reporting a potential violation is voluntary.

4. Criteria for Utility Reporting of Self-Identified Potential Violations

a. Requirement Applicable to both Gas and Electric Criteria

The SED Report recommends that reporting self-identified potential violations be limited to ones that meet any of the listed criteria (specifically discussed below) and "were not already reported via other means" (i.e., for gas: an Incident Report, Safety Related Condition report, or Quarterly Summary

Report, and for electric: an Incident Report or GO 165, 166, or 174 Reports), and has not come to SED's attention based on audits or data requests. (SED Report at 21.) We agree that the utilities do not need to self-report matters which they have already reported to SED.

In its reply comments, SoCalGas/SDG&E request clarification of SED's language characterizing what is already reported, stating that because the Incident Reports and Safety-Related Condition Reports are reports, and might not necessarily be determined to be violations, that the proposed rule should so indicate. We modify the proposed rule to reflect SoCalGas/SDG&E's concern.

Also, although not elaborated on in the SED Report or by the parties, our existing safety citation programs only permit a utility's self-report to be considered in whether to issue a citation (both gas and electric) and in the amount of the penalty to the extent that a utility self-identifies and self-corrects violations, reports the violation to Staff, and no injury or damage has occurred. (*See* Resolution ALJ-274, Appendix A, I.F.1; Phase I Decision, Appendix A, I.E.) Because we set more detailed criteria in the revised Rule, and require Staff to weigh a multitude of requirements set forth in §§ 6 and 7 above in determining whether to issue a citation and the amount of the penalty, we eliminate this prior language.

b. Gas

Proposed Gas Criterion 1: GO 112-F violations that pose a significant safety threat to the public and/or utility staff, contractors, or subcontractors.

PG&E and Southwest Gas generally support this criterion. However, PG&E also states that it is unclear if it needs to report potential violations under

this category if they are already reportable under another report pursuant to GO 112-F, § 124 and 49 CFR Part 191, §§ 191.23 and 191.25.

We adopt this criterion with minor modifications. We make minor modifications to state that what is reportable are "potential violations." Because we define a "potential violation" as a potential violation under each citation program, the specific reference to GO 112-F is unnecessary.

As to what type of potential violation is voluntarily reportable, if a gas utility has to report a condition under another code section, the potential violation is not reportable. For example, § 49 CFR Part 191.23(b)(3) and (4) contain exceptions from the "Safety-Related Conditions" reporting requirement and thus could be reportable as a self-identified potential violation. Also, there is value in SED learning quickly about potential violations that pose a significant safety threat so that SED can help ensure that appropriate corrective action is taken promptly and also to consider whether a citation is warranted. Therefore, if a qualifying condition is reportable more than 30 days after a potential violation is discovered under another GO or code, etc., that potential violation would also qualify for reporting under this rule because the Commission wants notification of these significant safety related potential violations as soon as possible.

Our adopted Criterion 1 for the gas safety citation program is therefore as follows: A potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors.

Proposed Gas Criterion 2: GO 112-F violations that caused a system wide impact or affected a large geographic region.

PG&E and Southwest Gas generally support this criterion, although PG&E makes the same argument as it made regarding Criterion 1 as to which violations

would be reportable. We make the same minor edit to this criterion as we do to Criterion 1 for the same reasons as stated above.

Our adopted Criterion 2 for the gas safety citation program is therefore as follows: A potential violation that caused a system wide impact or affected a large geographic region.

Proposed Gas Criterion 3: GO 112-F violations that resulted in pipeline failure or damage.

PG&E states this criterion is unclear insofar as whether "failure or damage" includes minor leaks and corrosion, and thus lacks a significance threshold.

Because the gas criteria for self-identified potential violations are focused on those potential violations that pose a significant safety threat, this criterion is subsumed in Criterion 1. We therefore eliminate this criterion.

Proposed Gas Criterion 4: Any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's personnel, contractors, or subcontractors, regardless of the outcome.

PG&E believes this criterion also lacks a significance threshold. SoCalGas/SDG&E state that this criterion does not appear to be within the scope of the statute. They argue that the utilities can only change what they can control and that intentional acts committed by contractors and their subcontractors are outside the legal control of the utilities. Southwest Gas concurs in this proposed criterion.

We agree that this criterion should be tied to safety and therefore modify it accordingly. However, we disagree with the utilities that intentional acts committed by contractors and subcontractors should not be reportable under this rule because these entities are outside of the utilities' legal control.

The utilities are responsible for complying with safety (and other) GOs and related laws and cannot evade this responsibility by delegating it to independent contractors. This responsibility is consistent with California law and Commission precedent.

In *Snyder v. Southern California Edison Co*mpany (1955) 44 Cal.2d 793, the California Supreme Court held that the duty imposed on Edison by § 702 and GO 95 could not be delegated to an independent contractor so as to insulate the utility from liability. The Commission similarly has held that utilities have a nondelegable duty to comply with all applicable safety codes and regulations in certain instances. In D.00-06-038, 2000 Cal PUC LEXIS 257, the Commission held that SoCalGas has a nondelegable duty under state and federal law to comply with all applicable safety codes and regulations governing its gas lines and cannot avoid the duty of compliance by allowing independent contractors to install earthquake valves on the utility's side of the meter. The Commission reasoned that California case law, GOs, and federal law supported this result.

Additionally, under the other gas criteria, the self-identified potential violations do not include a near miss scenario. Adopted Gas Criterion 3 is broader and includes a near miss scenario because the conditions described in this criterion are "difficult, if not impossible, to discover on a timely basis during routine audits and investigations (i.e., forging inspection records, faking signatures on maintenance records, using wrong numbers in design, etc.)" (*See* SED Report at 20.)

Our adopted Criterion 3 for the gas safety citation program is therefore as follows: Any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's personnel, contractors, or

subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

c. Electric

Proposed Electric Criterion 1: The potential violation created a condition that posed a significant, immediate safety threat to the public and/or utility staff, contractors or sub-contractors.[29]

PG&E states that this criterion is overbroad insofar as it may be covered by Priority Level 1 under GO 95, Rule 18A. We clarify that under this criterion, any self-identified potential violation that meets one or more of the identified criteria would be eligible to be reported as a self-identified potential violation, within 30 days of its being identified, if it has not already been reported or otherwise brought to SED's attention by another means (e.g. an Incident Report or GO 165, 166 or 174 Report, or had not already come to SED's attention based on audits and data requests.) There is value in SED learning quickly about potential violations that pose a significant safety threat so that SED can help ensure that appropriate corrective action is taken promptly and also to consider whether a citation is warranted. Therefore, if a qualifying matter is not reportable under another program within 30 days, it is voluntarily reportable as a self-identified potential violation.

We also make some minor modifications to this rule to make it more consistent with the gas Criterion 1 discussed above.

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[29] The intention of this criterion is to include any self-identified potential violation that presents such an obvious, immediate, and significant threat to life or limb of the public or utility workers that industry best practice dictates that any responsible utility would correct the condition immediately or as soon as possible. (This footnote is included in the SED Report.)

Our adopted Criterion 1 for the electric safety citation program is therefore as follows: A potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors.

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

The Joint Parties state that criterion 2 is problematic because it does not define "unplanned outages." The Joint Parties, PG&E and SoCalGas/SDG&E state that the phrase "could have caused" is ambiguous or overbroad.

In its reply comments, PG&E states that the language in the proposed electric criteria for self-reporting potential violations which concerns unplanned power outages should be modified to only include such outages which occur for an extended duration, because otherwise such outages could potentially result in a large volume of self-reports. PG&E also requests that the same rule be modified to eliminate reports concerning activation of a utility's emergency response system, because minor damage may trigger this reporting requirement and result in many reports. Also, PG&E states that GO 166 already requires the utility to notify the Commission of a major outage or other newsworthy event in a timely manner, so this reporting requirement is unnecessary.

To make this criterion more consistent with the gas safety citation program and to remove the perceived ambiguity, we modify this criterion so that it addresses actual potential violations, instead of a near miss. We retain the references to unplanned outages as that is a commonly used term whose

meaning is generally understood. We also modify this criterion in response to PG&E's comments to the PD, as discussed in Section 17 below. We do not anticipate the volume of such reports as PG&E suggests, because what is reported is a potential violation of certain GOs or related laws that caused a defined outage, not all outages whether or not they are potential violations. Also, we do not allow the utilities to report potential violations which they have already reported to the Commission by another means.

Our adopted Criterion 2 for the electric safety citation program is therefore as follows: A potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over 48 hours to over 1,000 electrical corporation customers; or caused the electrical corporation to activate its emergency response program.

Proposed Electric Criterion 3: A potential violation that clearly could have directly caused damage to property of the utility or others estimated to exceed $50,000.[30]

The Joint Parties recommend that criterion 3 be eliminated as unnecessary because property damage reporting is already addressed by the requirement contained in Resolution E-4184. Furthermore, the Joint Parties, PG&E and SoCalGas/SDG&E state that the phrase "could have directly caused" is ambiguous or overbroad.

Because we eliminate the near miss scenarios except in proposed criterion 4, and incidents of actual property damage over $50,000 is already reportable, we eliminate this criterion.

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[30] Electrical incidents that actually caused damage over $50,000 are already reportable under Incident Reporting Requirements. (This footnote is included in the SED Report.)

Proposed Electric Criterion 4: An instance of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors or subcontractors, regardless of the outcome.

The parties make the same general arguments as set forth above for Proposed Criterion 4 of the gas safety citation program. We modify this criterion consistent with our discussion above of the similar gas criterion.

Our adopted Criterion 3 for the electric safety citation program is therefore as follows: Any instances of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors, or subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

5. Correction of Self-Identified Potential Violations

The SED Report recommends that reports of self-identified potential violations be required to include information about whether the potential violation has been corrected. If the potential violation has not been corrected before the utility report is submitted, SED recommends that the utility's report include a plan and schedule for correction. No commenting party objects to this recommendation and we adopt it.

We emphasize a statement in the SED Report at 22 that these self-identification and reporting provisions in no way change or affect any existing reporting requirements. Each utility must continue to make records of all potential violations available for review by SED Staff during regular audits or at any time upon the request of SED. Additionally, self-identification and reporting of any potential violation or safety-related condition does not relieve a

utility of its existing responsibility to correct such violations and safety-related conditions as soon as feasible.

6. Reporting Period

We agree with the SED Report that utilities may have up to 30 days to report self-identified potential violations after discovering them. This is a modification to Resolution ALJ-274 which currently has a 10-day requirement and a new rule for the electric program. This additional time will enable the utility to more fully investigate the matter and to provide a more thorough report. However, we agree with the SED Report that we encourage the utilities to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission. We also emphasize that a 30-day reporting period in no way relieves the utilities of their duty to implement corrective action and make their facilities safe as quickly as possible.

7. Reporting Process

The SED Report at 22-23 states that under the GSRB's current process, gas corporations submit reports of self-identified potential violations to a shared email inbox at the Commission. In the utility report, the gas corporation explains the violation, when it occurred (if known), and when and how the gas corporation identified the violation; it also describes any planned or completed corrective actions. The Report also states that '[i]n the future SED may develop a web-based methodology or other refinements to the process for reporting of gas and electric self-identified potential violations. However, at this time the current GSRB methodology and practice is adequate for ESRB. We do not believe that Commission guidance is needed in this respect." (SED Report at 23.)

SED states that the existing reporting process works well for gas, and no commenting party objected to it. Because we are establishing the procedure concerning reporting self-identified potential violations for the electric safety citation program, we turn to the gas program for guidance. We therefore give SED the discretion to define and refine the ministerial reporting process (i.e. designating an email address or other web based portal) the gas and electrical corporations shall use to self-report potential violations.

8. Notification of City and County Officials of Self-Identified Potential Violation

The SED Report at 24-25 proposes that the gas safety citation program's requirement to notify city and county officials of a self-identified potential violation be retained for the gas program and extended to the electric program, because the criteria for reporting self-identified potential violations encompasses only the most serious potential violations. Therefore, the quantity of the reports should be fewer than currently reported under the gas program. The SED Report also reasons that it is in the public interest for local authorities to be made aware of high-risk potential violations.

The Joint Parties recommend that the Commission obtain feedback from local authorities and vet the requirements in workshops before requiring potential violations to be reported to local jurisdictions.

PG&E states that not all self-reports require notification to local authorities. According to PG&E, the utility already actively communicates and works closely with the cities and counties in its service territory on various safety issues. Based upon this experience, PG&E believes that a number of cities and counties are not interested in most self-reports of potential violations, whereas they would be interested in knowing about emergencies or ongoing significant safety issues. PG&E recommends that if the Commission is hesitant to eliminate

the mandatory notification requirement to local authorities, that the Commission delegate authority to SED to direct utilities on a case-by-case basis whether to notify local authorities, consistent with the desires of that local authority.

SoCalGas/SDG&E also recommend that the Commission reconsider the requirement that gas utilities notify city and county officials of any self-identified potential violations and should not adopt such a requirement for the electric safety citation program. SoCalGas/SDG&E state they have been under this reporting requirement for gas from the Commission's adoption of Resolution ALJ-274, and that city and county officials are less interested in receiving notifications of every self-reported potential violation and are more interested in knowing about significant incidents while they are occurring in real time. Therefore, SoCalGas/SDG&E recommend that such self-reporting be limited to actual violations for which the utility has incurred a fine or penalty. SDG&E also states that the Commission should only adopt such requirements for the electric safety citation program after the Commission obtains direct feedback from city and county officials as to what, if any, reporting would be most relevant and useful to them.

Southwest Gas proposes changes to the SED Report's notification requirement to city and county officials. First, Southwest Gas recommends that the notification should be expanded beyond City Managers or Chief Administrative Officers to include fire departments and first responders. Southwest Gas also recommends that any notice should be afforded the flexibility for the utility and the city and county to agree on separate notice terms. Specifically, if the city and county require broader notice of potential violations of more than the four criteria set forth in the SED Report, Southwest Gas recommends that the utility should provide such broader notice

but not inform the Commission. If the agreement calls for less notification, then Southwest Gas proposes that the Commission should accept a copy of the agreement between the utility and the city and county as compliant for those potential violations that are addressed in the agreement as not requiring notice to the city and county.

We modify this notification requirement for the gas safety citation program and extend our modified requirement to the electric program. We will not require the utility to notify city and county officials of a self-identified potential violation unless Staff requires such notification. If Staff so requires, the utility shall notify the city and county officials of a potential violation as soon as reasonable and necessary, and no later than 10 days after Staff gives the utility such notice. And regardless of whether a utility has notified the local officials of a potential violation, if the utility receives a citation, Rule 1.F of the citation rules applies, and the utility must notify the city and county officials as soon as is reasonable and necessary, and no later than ten days after service of a citation is effected. (*See* also discussion at § 12.)

This modified rule addresses concerns that reporting every self-identified potential violation may cause confusion with local authorities, but still retains the ability for the authorities to obtain prompt notification if Staff believes it necessary. Moreover, nothing in this rule prohibits a utility from providing broader notification than the rule requires, pursuant to any request it might obtain from a local jurisdiction or otherwise. We therefore modify this rule for the gas program and adopt the modified rule for the electric program.

9. Statute of Limitations and Other Matters

Southwest Gas recommends that the Commission establish a two-year statute of limitations on issuing a citation based on a self-identified potential

violation. Southwest Gas reasons that witnesses leave the company and memories fade, and a two-year statute of limitations would provide closure and finality. The SED Report disagrees with this recommendation, citing to § 6.1 of the Phase I Decision, where the Commission declined to impose a statute of limitations on issuing citations for the electric safety citation program in general. The SED Report states that there is no reason why the policy for self-identified potential violations should be different. In its comments on the Report, Southwest Gas disagrees, repeating its earlier arguments and urges the Commission to impose a two-year statute of limitations on all citations if it wishes consistency between self-identified potential violations and other violations.

We are not persuaded to impose a statute of limitations on issuing a citation based on a self-identified potential violation when we do not impose a statute of limitations on issuing a citation under the gas and electric safety citation program in general. As stated above, the Phase I Decision at 19-20 declined to impose a statute of limitations on the gas and electric safety citation program. D.15-05-054, the order modifying the Phase I Decision for purpose of clarification and denying rehearing, also addressed this general issue. In D.15-05-054 at 4-6, the Commission stated that PG&E appeared to be arguing that the Commission should have spelled out a specific time period for Staff to provide the utility with notice of a violation after discovering it.

The Commission rejected this argument. The Commission recognized that § 1702.5(a)(2) requires that the Commission's electric safety citation program include procedures ensuring that the Commission provides notice of a violation or violations within a reasonable period of time after discovery. However, the Commission also stated that there is "no express or implied language in § 1702.5

establishing the Legislature's intent to create any type of time bar to the authorized citation," and the fact that the Legislature did not define a "reasonable amount of time" in § 1702.5(a)(2) shows the Legislature intended for the Commission to make that determination. (*Id*. at 4-5.) For clarity, the Commission amended the procedural rules for the electric safety citation program to state that service of the citation shall be made within a reasonable period of time after the discovery of the violation. (*Id.* at 14.) We find this rationale to be persuasive on self-identified potential violations as well and do not adopt a specific statute of limitations for them.[31]

CUE recommends that the Commission consider having self-identified potential violations submitted to a neutral third party for independent evaluation. We agree with the SED Report at 27 that authority and responsibility for issuing citations for violations, and setting penalty amounts, rests with the Commission Staff alone, and that SED must not delegate this authority in any manner. We also agree with the SED Report that submission to a third party may present difficult confidentiality problems as some information submitted by utilities to the Commission may be submitted under confidentiality restrictions. CUE also recommends examining reporting programs of other entities. The SED Report at 27 states that "SED has investigated the self-identification and reporting programs of several entities, including FERC, NERC, and FAA, and believes that SED's recommendations contained in this report represent the best policies for reporting of self-identified potential violations by electrical and gas

[31] Similarly, we will not overturn the Phase I Decision in this regard and we do not impose a specific statute of limitations on all citations issued by these programs.

corporations and for SED's consideration of such reports in the citation process." We agree with this rationale and see no need for yet further process.

10. Which Commission Staff Should Issue Citations?

Question 10 in the Phase II Scoping Memo asked:

> How should the designation of Commission Staff who can issue a citation be refined, so as to harmonize the gas and electric citation programs in this regard?

A. Existing Gas and Electric Safety Citation Program

Resolution ALJ-274 (at Findings and Conclusions 14) allows the Executive Director to designate which Staff can issue a gas citation. The Phase I Decision at Ordering Paragraph (OP) 2 provides that Commission management at the Deputy Director level or higher must sign off on, or issue, a citation issued under the electric citation program.

B. Parties' Positions

All utilities commenting on this issue recommend that the provision in the electric safety citation program that Commission management at the Deputy Director level or higher must sign off on a citation apply to the gas safety citation program. ORA recommends no changes to the existing programs in this regard.

C. Modified Gas and Electric Safety Citation Programs

We find merit in harmonizing both programs to the extent feasible. Here, we modify the gas safety citation program so that it is similar to the electric safety citation program on this issue. Both programs will now require the Commission's Executive Director to designate Commission management at the Deputy Director level or higher (or designee) to issue a citation issued under the

gas and electric safety citation program.[32] We clarify here that if a designee is the signator, the Commission's Executive Director or Division Director shall have made that designation prior to the citation issuing, addressing such instances as when the Director or Deputy Director is on vacation or unavailable, etc.

11. Publication of Citations

Question 11 in the Phase II Scoping Memo asked:

> How should publication of citations and Notices of Appeal be addressed, so as to harmonize the gas and electric citation programs in this respect?

A. The Existing Gas and Electric Safety Citation Program

Resolution ALJ-274, Appendix I.B.5, requires Staff to publish each gas citation on the Commission's website no later than ten days following service of the citation, and to publish any Notice of Appeal on the Commission's website within ten days of the date the Notice of Appeal is submitted. The electric citation program does not address this issue.

B. Parties' Positions

No commenting utility objected to this proposal although many utilities did not express an opinion on timeframes to adopt. ORA supports applying the gas safety citation program's publication requirements to the electric safety citation program.

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[32] Although we change the gas safety citation program on the issue of what Commission staff can issue a citation, we note that Resolution ALJ-274 at 7 implementing the gas safety citation program stated that "[b]efore issuing a citation, Staff will generally consult with the Director or Deputy Director of the Consumer Protection and Safety Division."

C. Modified Gas and Electric Safety Citation Programs

We agree with ORA that it would be beneficial to extend the gas safety citation program's publication requirements for the citations and notices of appeal to the electric safety citation program so that both programs are uniform in this regard. We therefore include this publication requirement in the electric safety citation program.

12. Notification to Local Jurisdictions and Other State and Federal Agencies

Questions 12 and 13 in the Phase II Scoping Memo asked:

> 12. How should the gas and electric citation programs be refined and reconciled regarding notification of local authorities?
>
> 13. Should notification of any other State and/or federal agencies be required?

A. The Existing Gas and Electric Safety Citation Programs

Resolution ALJ-274, Appendix I.E requires each respondent gas corporation to notify local authorities "as soon as is reasonable and necessary, and no later than ten days after service of a citation is affected." The electric citation program does not address this issue.

B. Parties' Positions

The utilities advocate modifying or eliminating the requirement to notify the local authorities which currently exists only in the gas safety citation program. PG&E recommends modification of this requirement so that it applies only when the issue is localized but not when the issue is more widespread. The Joint Parties, SoCalGas/SDG&E and Southwest Gas all call for elimination of this requirement, generally arguing that the citation publication requirements on the Commission's website provide adequate notice. Southwest Gas states that

notifying the local authorities is not particularly useful, as such notice can be misunderstood by the local authorities. ORA recommends that the Commission add the gas safety citation program's requirement to notify the local authorities to the electric safety citation program.

The utility parties recommend that a notification requirement not be added for state and federal agencies. PG&E explains that other state or federal agencies with jurisdiction have their own reporting requirements and PG&E is unaware of any gap or program that requires the Commission to supplement such notification and reporting.

C. The Modified Gas and Electric Safety Citation Programs

We retain in the gas safety citation program and add to the electric safety citation program the requirement to notify the local authorities as soon as is reasonable and necessary, and no later than ten days after service of a citation is effected. We initially adopted this requirement in Resolution ALJ-274 establishing the gas safety citation program in response to party recommendations:

> "We have incorporated the recommendations put forth by DRA, the City and County of San Francisco, the City of San Bruno, Center for Accessible Technology, and TURN that any citations and appeals be made public by posting such documents on the Commission's website. We have also incorporated the recommendation that local authorities be notified when a citation is issued in their jurisdiction." (Resolution ALJ-274 at 8.)

There is inadequate justification to eliminate this requirement, especially in light of its origin. Posting this information on the Commission's website does not appear to be an effective substitute for actual notice to the local authorities. We therefore retain this requirement for the gas program and add it to the

electric safety citation program. Also, nothing in this rule prohibits a utility from providing broader notification than the rule requires, for example, to other local officials, pursuant to any request it might obtain from a local jurisdiction or otherwise.

We agree with the utilities that because other state and federal agencies with jurisdiction have their own requirements, we do not impose additional notice requirements for other state or federal agencies in either program.

13. Time to Respond to Citation and Compliance Plan Requirements

Question 14 in the Phase II Scoping Memo asked:

> How should the gas and electric citation programs be reconciled regarding the amount of time to respond to citations and compliance plan requirements?

A. The Existing Gas and Electric Safety Citation Programs

Resolution ALJ-274 requires gas corporations to respond to a citation within ten days and details compliance plan requirements. (Appendix A, I.A.4 and I.C.) The Phase I Decision requires electrical corporations to respond within thirty days and details compliance plan requirements. (Appendix A, I.A.6 and I.C.)

B. Parties' Positions

All commenting utility parties recommended adopting a 30-day period to respond to a citation and provide compliance plans, similar to that of the electric safety citation program. PG&E states that the 10-day limit currently imposed by the gas safety citation program is too short to permit a detailed and thorough investigation. PG&E also notes that if there is an imminent safety issue, SED can and should direct the utility to take corrective action immediately. PG&E states this is a separate issue from the response period to a citation.

ORA does not think that the 10-day response time to citations in the gas safety citation program should be changed to the 30-day response time in the electric safety citation program, because it would delay the resolution of the gas citations. However, ORA does not oppose shortening the response period for the electric safety citation program to 10 days, again, because it would expedite the resolution of citations.

C. Modified Gas and Electric Safety Citation Programs

We see merit in harmonizing both programs to the extent feasible. Here, extending the 30-day response time to a citation and the electric safety citation program's compliance requirements to the gas program will provide the utilities more time to develop a thoughtful response and should not compromise safety. Therefore, we modify the gas safety citation program so that the response time to a citation and compliance plan requirements are the same as those of the electric safety citation program, as defined below.

We clarify those requirements. First, if a utility wishes to appeal a citation, the time in which to do so is within 30 days from the date service of the citation is effected. This 30-day appeal period is a modification to the gas safety citation program, and remains unchanged in the electric safety citation program.

In terms of compliance plans, we reiterate our requirement under both programs that immediate safety hazards must be corrected immediately. This provision is the same under both programs and is unchanged. Violations that do not constitute immediate safety hazards must be corrected within 30 days after the citation is served for both programs. If other violations that do not constitute immediate safety hazards cannot be corrected within 30 days, then the utility receiving the citation shall submit a detailed Compliance Plan to the Director of SED within 30 days after the citation is served, unless the utility and

the Director of the SED, before the expiration of the 30-day period, agree in writing to another date, reflecting the soonest that the corporation can correct the violation. Also as stated above, we reiterate the provision in both programs that penalties may continue to accrue for each day of an ongoing violation until the violation is corrected, notwithstanding a Compliance Plan or repair schedule. (*See* Phase I Decision at 13-14 and OP 7, Appendix A; Resolution ALJ-274 at Appendix A, I.A.6 and I.C.1 and 2.)

14. Burden of Proof

Question 15 in the Phase II Scoping Memo asked:

> How should the burden of proof standards be refined and harmonized for the gas and electric citation programs?

A. The Existing Gas and Electric Safety Citation Programs

For a gas citation, Resolution ALJ-274, Appendix II.G provides that Staff has the burden to prove a prima facie case supporting the citation for an alleged violation, with the burden then shifting 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. For an electric citation, the Phase I Decision at Appendix A, II.B.8 provides that Staff has the burden of proof by a preponderance of the evidence and that, once Staff meets its burden, Respondent has the burden to prove any affirmative defenses it might raise.

B. Parties' Positions

All commenting utility parties recommend harmonizing the burden of proof standards for both programs so that both programs utilize the standard set forth in the electric safety citation program. ORA continues to support the burden of proof standard set forth in the gas safety citation program.

C. Modified Gas and Electric Safety Citation Program

As stated above, we see merit in harmonizing both programs to the extent feasible. On this issue, we believe it more appropriate to use the burden of proof standard as set forth in the electric safety citation program for both programs.

15. Other Issues

Questions 16, 17 and 18 in the Phase II Scoping Memo asked:

> 16. In addition to the issues identified above, are other refinements needed to harmonize the gas and electric citation programs?
>
> 17. Should any other improvements or refinements be made to the gas and/or electric citation programs at this time?[33] In addition to any other items, the parties may address whether it is necessary to modify the citation programs to require a utility audit, as recommended by the ORA in Phase I, to ensure penalties issued under these programs are paid by the shareholders, and not ratepayers. (*See* Phase I Decision at 30.)
>
> 18. Should the Commission provide guidance in Phase II regarding the timing and process for possible future modifications to the citation programs?

A. Other Issues

EPUC's comments are limited to the electric safety citation program. Specifically, EPUC recommends that the electric safety citation program

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[33] The Phase I Scoping Memo at 4 stated that in preparation for Phase II, it would be useful for the parties to comment on the Safety and Enforcement Division's Gas Safety Citation Program Standard Operating Procedure, Version 1.0 dated September 20, 2013. This is an internal Staff document and has not been adopted by the Commission. Staff is free to have workshops or otherwise seek comment on it but this ruling does not require Staff to do so. The gas and electric citation programs are in the beginning stages and further experience with them would be useful before making wholesale changes. For similar reasons, this ruling is not scoping an in depth examination of other agencies' penalty and citation programs at this time.

be clarified to ensure that the Commission can actively monitor and investigate reliability failures that could result in safety incidents, arguing that these clarifications support the legislative intent of SB 291. According to EPUC, reliability failures may provide evidence of a violation of existing GOs, decisions, regulations and codes, which violations would be subject to penalty. EPUC recommends that the Commission should also consider as additional grounds for enforcement violations of utility tariffs and industry standards. EPUC recommends that the Commission expressly require an investigation of any reliability outage resulting in damage to persons or property or repeated outages on the same circuit, and that the Commission also investigate any unplanned outages impacting essential use customers, as identified in the Commission's Priority System for Rotating Outages arising from supply shortages. The utilities that addressed EPUC's recommendation oppose it, generally arguing that it is outside the scope of this proceeding.

Our adopted citation programs address violations of GO 112-F (or its successor) including the federal regulations incorporated into the program, CFR Title 49, Parts 190, 191, 192, 193, and 199 (for gas), and violations of GOs 95, 128, 165, 166, 174 (for electric), or other related applicable decisions, codes, or regulations, and their successor GOs or regulations. To the extent reliability issues are included within this framework, they are addressed by the gas and electric safety citation program. We do not expand the program beyond this framework at this time.

ORA raises the recommendation it made in Phase I that the Commission should audit the utilities to ensure that any citation penalties are in fact paid through ratepayer and not shareholder funds. Notwithstanding the fact that this issue may be reviewed in general rate cases, ORA states that those general rate

cases are not the exclusive means by which to investigate and confirm proper allocation of penalty amount to shareholders. Alternatively, ORA recommends that citation payments could be accompanied by a signed verification by a utility officer at the vice president level or higher confirming that all remitted payment is funded by shareholders and will not be recovered in rates or otherwise directly or indirectly from ratepayers. The responding utilities oppose this proposal as unnecessary.

The law is clear that utilities must not use ratepayer funds to pay penalties; penalties must be paid by shareholder funds, and must not be recovered in rates or otherwise directly or indirectly charged to ratepayers. Because of the importance of this law, utilities should have procedures in place to ensure that penalties are paid properly with shareholder funds, and that the highest level officers are aware of and responsible for the law being followed regarding this payment processes. We do not need yet another procedure to insure that the law is followed.

The Joint Parties recommend that, similar to the gas safety citation program, the electric safety citation program be limited to non-conformances with specified GOs, decisions, laws and regulations, and not specific GOs or "related applicable decisions, codes, or regulations." (Joint Parties' Opening Comments at 6.) We do not modify the Phase I Decision in this regard, because we believe that violations with specific GOs, or the related decisions, laws and regulations implementing them, is sufficiently clear and circumscribed. However, we modify the gas safety citation program to include the language of the electric program, so that both programs are consistent.

We also clarify that modifications to the gas and electric safety citation programs will be imposed for citations issued on or after the official mailing date of this decision.

We also make several nonsubstantive ministerial changes to the rules to correct typographical or other minor errors and to improve the flow of the rules.

B. Next Steps

We need to gain experience from the gas and electric safety citation programs adopted by this decision before determining the next steps. We believe that further knowledge regarding the operation of these programs will come as the Commission implements them, and the Commission may again review these programs at a later time if appropriate. We close this proceeding.

16. Need for Hearings

The Phase II Scoping Memo at 12 stated that the order initiating this proceeding preliminarily stated that hearings may be needed, but that no workshops or evidentiary hearings are anticipated for Phase II. The Phase II Scoping Memo also gave parties an opportunity to request evidentiary hearings and no party made such request. We therefore determine that evidentiary hearings are not necessary.

17. Comments on the Proposed Decision (PD)

The PD of assigned Commissioner Picker in this matter was mailed to the parties in accordance with § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

On September 19, 2016, Edison, PG&E and SoCalGas/SDG&E filed comments on the proposed decision. No party filed reply comments.

Edison

Edison states it supports the focus of the Commission in ensuring that California's electric and gas delivery systems are operated safely and in accordance with the Commission's construction, operating and maintenance standards, and that in appropriate cases penalties for violations of the Commission's standards should be imposed. In that context, Edison recommends four changes to the PD. First, Edison argues that the PD's requirement that Staff assess each violation (if a citation issues) at $50,000 is inconsistent and conflicts with § 2107. Edison believes that Staff should have the discretion to issue a citation for each violation at between $500 and $50,000, reflecting the minimum and maximum thresholds of § 2107.

Edison also recommends that the PD be revised to redefine "self-identified potential violations" to remove the reporting of potential violations caused "by 'anyone' including communications infrastructure providers." (Edison 9/19/16 Comments to the PD at 2.) Edison believes the language in the PD is overbroad, and contradicts the Commission's GOs.

Edison also believes that the PD's administrative limit of $8 million should be revised to reflect a lower limit. Edison states that no party proposed an $8 million administrative limit and that there is no factual record supporting that amount. Edison states that the revenue requirements of the utilities are irrelevant as penalties are borne solely by the shareholders. Edison also argues that the $8 million dollar limit is essentially meaningless because under the PD, Staff can issue multiple distinct citations regardless of whether the violations occurred in the same incident or are of a similar nature. Edison urges the Commission to clarify that violations resulting from the same incident or the same general circumstances should be combined into a single citation that would be subject to the established administrative limit. Edison further asks the

Commission to adopt a $2 million dollar limit for any related series of violations similar to the limit used by PHMSA.

Finally, Edison states that the PD errs in finding that workshops would not be useful, because the PD provides countless examples of differences of opinion between all interested parties.

PG&E

PG&E appreciates the PD's efforts in merging the citation programs into a single set of rules applicable to both gas and electric corporations. PG&E also believes that allowing 30 days to self-report a potential violation will provide utilities with necessary time to investigate and develop appropriate corrective actions, and is an improvement over the current ten day limit for gas under Resolution ALJ-274. PG&E also speaks approvingly of the PD's flexibility with respect to notifying local authorities of a self-reported potential violation and that under the PD, self-reporting potential violations is voluntary.

PG&E disagrees with the PD's conclusion regarding Staff's discretion in determining penalty amounts, and similar to the other commenting utilities, argues that the PD errs by requiring Staff to impose penalties at the maximum amount of $50,000 set forth in § 2107, and in setting an $8 million administrative limit. PG&E argues that the $8 million administrative limit for each citation is arbitrary and not supported by the record. PG&E also agrees with Edison that the PD should be modified so that the administrative limit applies to a related series of violations occurring in the same incident or that are of a similar nature and not per citation. PG&E also believes that the proposed self-reporting Electric Criterion 2 will result in over-reporting and recommends further changes to narrow its scope.

SoCalGas/SDG&E

SoCalGas/SDG&E believe the PD correctly concludes, among other things, that gas and electric utilities should voluntarily report self-identified potential violations; that the electric safety citation program's 30-day response time and compliance plan requirements should extend to the gas program; that utilities may have up to 30 days to report self-identified potential violations after discovery; that utilities should not be required to notify city and county officials of self-identified potential violations unless Commission Staff requires such notification; and that both citation programs should use the burden of proof by preponderance.

Like the other two commenting utilities, SoCalGas/SDG&E disagree with the PD's $8 million administrative limit, characterizing it as arbitrary and lacking in foundation. Similar to the other commenting utilities, SoCalGas/SDG&E support adoption of a limit similar to that used by PHMSA of $2 million for any related series of violations.

SoCalGas/SDG&E also reiterate the argument that the Commission should adopt a reasonable statute of limitations regarding the issuance of citations under the gas and electric citation program. Similar to Edison, SoCalGas/SDG&E also disagree with the language used in the PD in describing a self-identified potential violation concerning utility reporting of communications infrastructure provider-caused potential violations.

Discussion

We make the following changes to the PD in light of the comments. First, we eliminate the language in Section 9.E.1 concerning self-reporting of communications infrastructure provider-caused potential violations. In other parts of this decision, we state we are not addressing hypothetical fact patterns absent a specific case or controversy. (See e.g. Section 6.C above: "As stated

above, we do not elaborate further here on each factor, nor on how each factor might apply in deciding whether a citation should issue, because we are without a factual basis to do so given the absence of a specific case or controversy." *See* also Section 7.C.) Our elimination of this language is not to be interpreted as agreement with the utilities' legal interpretation on this general issue; rather, it means that we do not address this fact pattern absent a specific case or controversy.

We also modify Electric Criterion 2 concerning self-identified potential violations to narrow its breadth. The PD's adopted Electric Criterion 2 is as follows: "A potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over one hour to over five percent of an electrical corporation's customers or unplanned power outages of over 24 hours to over 100 electrical corporation customers; or caused the electrical corporation to activate its emergency response program." PG&E states that the PD's Electric Criterion 2 is overbroad and recommends that Electric Criterion 2 for self-reporting potential violations should read as follows: "A potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over 96 hours to over 1,000 electrical corporation customers; or caused the electrical corporation to activate its severe and catastrophic emergency response program." (PG&E 9/19/16 Comments to PD at 10-11.)

We narrow the scope of Electric Criterion 2 but not to the extent requested by PG&E. We believe that 96 hours is too long of a period, and that 48 hours strikes a better balance for the voluntary self-reporting criterion. Furthermore, we disagree with PG&E that the emergency response program referenced in Electric Criterion 2 should be circumscribed to only the "severe and catastrophic" emergency response program, because the suggested language is

too narrow and also could cause ambiguity. We therefore modify Electric Criterion 2 for self-reporting potential violations as follows: "A potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over 48 hours to over 1,000 electrical corporation customers; or caused the electrical corporation to activate its emergency response program."

We also modify the findings of fact, conclusions of law and Appendix A as appropriate to reflect the above changes.

We do not modify the method Staff is to use in determining penalties nor do we modify the PD's administrative limit. First, in weighing the factors set forth in Sections 6.C and 7.C as to whether to issue a citation and the amount of the penalty, Staff has the discretion of whether or not to issue a citation in the first instance. Also, in setting an appropriate penalty, we retain the structure of the current gas and electric safety citation programs that Staff shall determine the penalty for each violation at the § 2107 maximum, and that in the case of a continuing violation, Staff has the discretion to assess penalties on less than a daily basis. We believe that this structure, which is the existing structure of the programs, strikes the appropriate balance. If Staff believes $50,000 is too high a citation amount, given its balancing of the factors listed in Sections 6.C and 7.C, it has the discretion to take appropriate measures and not to issue the citation in the first instance.

When Resolution ALJ-274 was enacted, the utilities made similar arguments against the excessive penalties that could result from setting a fine per violation at the § 2107 maximum. The Commission responded as follows:

> The utilities presume that because the CPSD [predecessor to SED] staff would have the authority to issue citations, that they would be imposing the citations for the maximum amount of penalties (and for the maximum days

> possible) without sufficient justification, and further that the Commission would, on appeal, uphold these amounts. However, as a facial challenge, the utilities, too, bear a heavy burden (which they have not met here) to challenge the citation enforcement procedures as unconstitutional, because in some future hypothetical situation constitutional problems may arise. *See Calif. Assn. of Private Special Education Schools v. Dep't of Education* (2006) 141 Cal.App.4th 360, 371-72 (and cases cited therein.) (Resolution ALJ-274 at 11.)

A similar outcome is appropriate here and we make no changes to the citation program structure in this regard.

We similarly make no changes to the $8 million administrative limit. As we state in Section 8, we arrive at this figure by exercising our discretion. Contrary to the commenting utilities' arguments, the $8 million administrative limit is supported by the record, with some utilities recommending an administrative limit as low as $200,000 for large utilities (and $25,000 to $50,000 for smaller utilities), and ORA recommending that the citation programs retain the current administrative limit of the § 2107 statutory maximum.[34]

Furthermore, the $2 million figure now advocated by the three commenting utilities was set forth for comment in the Phase II Scoping Memo, and all three utilities failed to support the $2 million figure in their comments

[34] As stated in footnote 15 above, on rehearing, PG&E argued that the Phase I Decision failed to adopt any administrative limit because according to PG&E, the administrative limit should be less than the statutory maximum. The Commission's decision on rehearing, D.15-05-054 at 9-12, found PG&E's arguments without merit.

thereto.[35] We therefore make no changes on the amount of the administrative limit set forth in Section 8.

The comments concerning imposing a statute of limitations on the citation programs and the need for workshops raise similar arguments made in the proceeding. We addressed the statute of limitations argument in Section 9 above, and the need for workshops in Section 5 above, and throughout this decision, and do not repeat our discussion here. Finally, we make several non-substantive changes to the PD to improve the flow and correct typographical errors.

18. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Dan H. Burcham is the assigned Administrative Law Judge in this proceeding.

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[35] In its Phase II Opening Comments at 8-10 and Reply Comments at 3-4, PG&E failed to support the $2 million administrative limit. PG&E recommended an administrative limit per citation and per incident for a violation or related series of violations. PG&E supported workshops to address this issue, and argued that an appropriate administrative limit could be analogous to the $200,000 limit in the propane gas citation program. PG&E did not agree that the administrative limit should be $2 million, similar to PHMSA. According to PG&E, the $2 million limit is the maximum administrative civil penalty for any related series of violations for the PHMSA, where here, the Commission retains the right to issue an OII with appropriate penalties. In SoCalGas/SDG&E's Opening Comments at 6-10, SoCalGas/SDG&E recommended workshops for setting the administrative limit for a related series of violations. The Joint Parties (which includes Edison) also recommended workshops to set an administrative limit for a related series of violations. The Joint Parties' Opening Comments noted that previously, Edison suggested a $250,000 administrative limit for any related series of violations for large utilities. The Joint Parties then recommended that the "Commission should adopt a separate, lower two-tier limit of $25,000 for the first set of related violations to occur in any annual period (or 1/10th of the proposed administrative limit for a large investor owned utility) and $50,000 for each set of related violations occurring thereafter for the smaller investor owned utilities which have smaller California service territories and a significantly smaller number of customers." (Joint Parties Opening Comments at 9-10.)

Findings of Fact

1. We endeavor to keep both the gas and electric safety citation programs as similar as possible in structure and process as we adopt necessary improvements and refinements to them.

2. The Commission issued the initial gas and electric safety citation programs after a notice and comment period; no hearings or workshops were necessary.

3. Because of overlap in the statutory and decisional factors that Staff must consider in the citation programs as to whether to issue a citation, our modified rules synthesize the overlap into one set of criteria. These criteria are derived from § 1702.5(a)(1), § 2104.5 and D.98-12-075, Appendix A, § (b) (fines), 85 CPUC2d 155, 193-195.

4. In determining whether to issue a citation and the amount of the penalty, it is important to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations.

5. The Commission does not here weigh the various factors listed in §§ 6 and 7 and determine how they might apply to potential factual situations on whether to issue a citation and the amount of the penalty. Such fact-dependent decisions are inappropriate in rulemaking, in which no specific case or controversy exists.

6. As Staff issues more citations, there will be a body of precedent from which to draw context and compare results, based on comparable factual outcomes and differences in outcomes that are explained.

7. Workshops, largely comprised of multiple utility parties and ORA, would not be useful or efficient to further delineate how Staff should weigh the factors listed and discussed in §§ 6 and 7 based in hypothetical situations.

8. We strive for a safe utility system and want recordkeeping violations, if they exist, to be remedied before any actual harm occurs.

9. How the maintenance schedule in GO 95, Rule 18A interplays with the citation program is beyond the scope of this proceeding, in absence of a specific case or controversy. Furthermore, we do not wish in this decision to apply a limited rule (Rule 18A in GO 95) to all violations in all applicable GOs.

10. It is not useful to further tier penalty levels in workshops, especially when most of the utility participants propose an administrative limit to the overall citation penalty of no more than $500,000 for a related series of violations. This type of inquiry is better addressed as a factual inquiry, in a particular case or controversy, in light of our adopted citation programs.

11. We determine the administrative limit of no more than $8 million for each citation issued under the gas and electric safety citation programs in exercising our discretion with the goal of establishing a robust citation program which ensures that utilities do not have incentives to make economic choices that cause or unduly risk violations, while providing that the most egregious violations should be presented to the Commission in an OII. The Staff has the discretion to either address each violation in a distinct citation or to include multiple violations in a single citation regardless of whether the violations occurred in the same incident or are of a similar nature. If necessary, we can reexamine this limit once the Commission gains experience with it.

12. We do not want potential citation penalties to be factored into the utility business model as a mere cost of doing business.

13. Given the large revenue requirements of the major energy and gas utilities, the administrative limit we set today is reasonable and achieves the goal of being sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations which may lead to a citation. We may also initiate an OII for more egregious violations.

14. We understand that there are smaller energy utilities as well; however, under our citation programs, SED has the discretion on whether to issue a citation in the first instance and whether to fine for multiple days, by considering various criteria, including the size of the utility.

15. "Self-identified potential violations" is the appropriate term to define the topic, because this term reflects the statutory language of § 1702.5 and also because, as the SED Report points out, the Commission, not the parties, determines what is in fact a violation.

16. We agree with the SED Report that further workshops are not needed on the self-identified potential violation issues. As the SED Report points out, workshops can be helpful when there are significant differences of opinion or different levels of knowledge among parties regarding factual issues, and to help the parties find common ground and reach consensus or compromise on relevant issues. Here, the interested parties on this issue are all utilities (as opposed to a mixture of utilities and consumer groups, etc.). There is no significant difference of opinion among the interested parties, who have all been afforded the opportunity to file written comments and replies.

17. If reporting of self-identified potential violations is mandatory, rather than voluntary, such reports might not properly be considered a mitigating factor in whether to issue a citation and in determining an appropriate penalty. Additionally, our gas and electric safety citation programs establish and refine rules and procedures for issuance of such citations, but do not establish new rules the violation of which can cause additional citations to issue. A voluntary self-reporting requirement is also consistent with the practices of several other regulatory agencies, including the FERC and FAA.

18. No party objects to the recommendation in the SED Report that utilities do not need to self-report matters which they have already reported to SED under another code section, GO or other reporting requirement.

19. Under both the gas and electric safety citation program, Criteria 1 and 2 of voluntarily reported self-identified potential violations do not include a near miss scenario. Adopted Criterion 3 for both programs is broader and includes a near miss scenario because the conditions described in this criterion are difficult, if not impossible, to discover on a timely basis during routine audits and investigations (i.e., forging inspection records, faking signatures on maintenance records, using wrong numbers in design, etc.).

20. There is value in SED learning quickly about potential violations that pose a significant safety threat so that SED can help ensure that appropriate corrective action is taken promptly and also to consider whether a citation is warranted. Therefore, if a qualifying matter is not reportable under another program within 30 days, it is voluntarily reportable as a self-identified potential violation.

21. No party objects to the SED Report's recommendations regarding providing information about whether the self-reported potential violation has been corrected, or if not, including a plan and schedule for correction.

22. A period of up to 30 days to report self-identified potential violations will enable the utility to more fully investigate the matter and to provide a more thorough report. However, we encourage the utilities to consult with Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission.

23. The SED Report states that the procedure concerning reporting self-identified potential violations for gas works well, and no party objected to it. Because we are establishing the procedure concerning reporting self-identified

potential violations for the electric safety citation program, we turn to the gas program for guidance.

24. This modified rule for utility reporting of self-identified potential violations addresses concerns that reporting every self-identified potential violation may cause confusion with local authorities, but still retains the ability for the authorities to obtain prompt notification if Staff believes it necessary.

25. There is inadequate justification to eliminate the requirement in the gas safety citation program to notify the local authorities as soon as is reasonable, and no later than ten days after service of a citation is effected, especially in light of its origin in response from local authorities and consumer groups. Posting this information on the Commission's website does not appear to be an effective substitute for actual notice to the local authorities.

26. Because other state and federal agencies with jurisdiction have their own notification requirements, we do not impose additional notice requirements for other state or federal agencies in either program.

27. Extending the 30-day response time to a citation and the electric safety citation program's compliance requirements to the gas program will provide the utilities more time to develop a thoughtful response and should not compromise safety.

28. The Commission needs to gain experience from the gas and electric safety citation programs adopted by this decision before determining the next steps. Further knowledge regarding the operation of these programs will come as the Commission implements them, and the Commission may again review these programs at a later time if appropriate.

Conclusions of Law

1. No workshops or hearings are necessary in rendering today's decision which refines the gas and electric safety citation programs.

2. Staff has the discretion of whether or not to issue a citation in the first instance.

3. Staff shall consider the criteria set forth in §§ 6 and 7 of today's decision and in Rules I.A and I.B (Appendix A) in determining whether to issue a citation and the amount of the penalty.

4. In the event of an appeal, Staff will be required to explain how it weighed the various factors discussed in §§ 6 and 7 in reaching its decision on whether to issue the citation and the amount of the penalty.

5. Staff should not be limited to issuing citations for only certain categories of violations (e.g., those violations with an immediate safety impact.)

6. The Commission will consider Petition 16-05-004 by separate decision and nothing in this decision prejudges the outcome of the Petition.

7. The structure of the citation program in Resolution ALJ-274 (gas) and D.14-12-001 (electric) should be maintained in that Staff shall determine the penalty for each violation at the § 2107 maximum, with discretion to assess penalties on less than a daily basis (again at the statutory maximum). We require Staff to weigh the criteria set forth in §§ 6 and 7 of today's decision and in Rules I.A and I.B (Appendix A) in determining the penalty amounts consistent with the above framework.

8. An administrative limit of no more than $8 million for each citation issued under the gas and electric safety citation programs should be adopted. The Staff has the discretion to either address each violation in a distinct citation or to

include multiple violations in a single citation regardless of whether the violations occurred in the same incident or are of a similar nature.

9. Both the gas and electric safety citation programs should be modified to make utility reporting of self-identified potential violations voluntary. The citation programs will take into account such voluntary reporting as a factor in both issuing a citation in the first instance and in the amount of the penalty.

10. Although self-identification of potential violations is a mitigating factor for Staff to weigh in determining whether to issue a citation and the amount of the penalty, this factor should not immunize a utility for its potential violation. Context is determinative, and we direct Staff to weigh the many factors listed in our rules and discussed in §§ 6 and 7 above to determine the appropriate outcome in each case.

11. If a utility knows of an existing potential violation, and actively conceals the violation and does nothing to remedy the problem, it will be subject to Commission action (whether by citation or an OII), and such active concealment and failure to remedy the problem may be considered by the Commission as aggravating factors in taking enforcement action, notwithstanding the fact that self-reporting a potential violation is voluntary.

12. The recommendation in the SED Report that utilities do not need to self-report matters which they have already reported to SED should be adopted.

13. It is reasonable to focus the reporting of self-identified potential violations to those potential violations that pose a significant safety threat.

14. It is reasonable to adopt the following criteria for utility reporting of self-identified potential violations for the gas safety citation program:
(a) a potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors; (b) a potential violation that caused a

system wide impact or affected a large geographic region; and (c) any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's personnel, contractors, or subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

15. It is reasonable to adopt the following criteria for utility reporting of self-identified potential violations for the electric safety citation program: (a) a potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors; (b) a potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over 48 hours to over 1,000 electrical corporation customers; or caused the electrical corporation to activate its emergency response program; and (c) any instances of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors, or subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

16. The utilities are responsible for complying with safety (and other) GOs and related laws and cannot evade this responsibility by delegating it to independent contractors. This responsibility is consistent with California law and Commission precedent.

17. Reports of self-identified potential violations should be required to include information about whether the potential violation has been corrected. If the potential violation has not been corrected before the utility report is submitted, the utility's report should include a plan and schedule for correction.

18. The self-identification and reporting provisions contained in the gas and electric safety citation programs in no way change or affect any existing reporting requirements. Each utility must continue to make records of all

potential violations available for review by SED Staff during regular audits or at any time upon the request of SED. Additionally, self-identification and reporting of any potential violation or safety-related condition does not relieve a utility of its existing responsibility to correct such violations and safety-related conditions as soon as feasible.

19. The gas and electric safety citation program should be modified so that utilities may have up to 30 days to report self-identified potential violations after discovering them. This 30-day reporting period for self-identified potential violations in no way relieves the utilities of their duty to implement corrective action and make their facilities safe as quickly as possible.

20. SED should have the discretion to define and refine the ministerial reporting process (i.e. designating an e-mail address or other web based portal) the gas and electrical corporations should use to self-report potential violations.

21. The gas safety citation program's notification requirement to local officials of self-identified potential violations is modified and should apply to both the gas and electric safety citation programs. Under the modified rule, we will not require the utility to notify city and county officials of a self-identified potential violation unless Staff requires such notification. If Staff so requires, the utility must notify the city and county officials of a potential violation as soon as reasonable and necessary, and no later than 10 days after Staff gives the utility such notice. And regardless of whether a utility has notified the local officials of a potential violation, if the utility receives a citation, Rule 1.F of the citation rules applies, and the utility must notify the city and county officials as soon as is reasonable and necessary, and no later than ten days after service of a citation is effected. Nothing in this rule prohibits a utility from providing broader

notification than the rule requires, pursuant to any request it might obtain from a local jurisdiction.

22. As we stated in D.15-05-054 at 4-5, there is "no express or implied language in § 1702.5 establishing the Legislature's intent to create any type of time bar to the authorized citation," and the fact that the Legislature did not define a "reasonable amount of time" in § 1702.5(a)(2) shows the Legislature intended for the Commission to make that determination.

23. We are not persuaded to impose a statute of limitation on issuing a citation base on a self-identified potential violation, especially when we do not impose a statute of limitations on issuing a citation under the gas and electric safety citation program in general.

24. The authority and responsibility for issuing citations under the gas and electric safety citation programs for violations, and setting penalty amounts, should rest with the Commission Staff alone, and Staff must not delegate this authority in any manner, such as to a neutral third party.

25. The gas safety citation program should be modified so that it is similar to the electric safety citation program on the issue of which Commission Staff may issue a citation. Both programs will now require the Commission's Executive Director to designate Commission management at the Deputy Director level or higher (or designee) to issue a citation issued under the gas and electric safety citation program. If a designee is the signator, the Commission's Executive Director or Division Director shall have made that designation prior to the citation issuing.

26. It is beneficial to extend the gas safety citation program's publication requirement to the electric safety citation program. This publication requirement requires Staff to publish each gas citation on the Commission's website no later

than ten days following service of the citation, and to publish any Notice of Appeal on the Commission's website within ten days of the date the Notice of Appeal is submitted.

27. The provision in the gas safety citation program which requires each respondent gas corporation to notify local authorities "as soon as is reasonable and necessary, and no later than ten days after service of a citation is effected" should be retained and extended to the electric safety citation program.

28. The gas safety citation program is modified so that the response time to a citation and compliance plan requirements are the same as those of the electric safety citation program; that is, that there be a 30-day response time.

29. Immediate safety hazards must be corrected immediately.

30. Under both the gas and electric safety citation programs, violations that do not constitute immediate safety hazards must be corrected within 30 days after a citation is served. If other violations that do not constitute immediate safety hazards cannot be corrected within 30 days, then the utility receiving the citation shall submit a detailed Compliance Plan to the Director of SED within 30 days after the citation is served, unless the utility and the Director of the SED, before the expiration of the 30-day period, agree in writing to another date, reflecting the soonest that the corporation can correct the violation.

31. Under both the gas and electric safety citation program, we reiterate the provision in both programs that penalties may continue to accrue for each day of an ongoing violation until the violation is corrected, notwithstanding a Compliance Plan or repair schedule.

32. The burden of proof in the gas safety citation program should be modified to reflect the burden of proof in the electric safety citation program; that is, that Staff has the burden of proof by a preponderance of the evidence and that once

Staff meets its burden, Respondent has the burden to prove any affirmative defenses it might raise.

33. The adopted citation programs address violations of GO 112-F including the federal regulations incorporated into the program, CFR Title 49, Parts 190, 191, 192, 193, and 199 (for gas), and violations of GOs 95, 128, 165, 166, 174 (for electric), or other related applicable decisions, codes, or regulations, and their successor GOs or regulations. We do not expand the program beyond this framework at this time.

34. The law is clear that utilities must not use ratepayer funds to pay penalties; penalties must be paid by shareholder funds, and must not be recovered in rates or otherwise directly or indirectly charged to ratepayers. Because of the importance of this law, utilities should have procedures in place to ensure that penalties are paid properly with shareholder funds, and that the highest level officers are aware of and responsible for the law being followed regarding this payment processes.

35. Changes to the gas safety citation program and electric safety citation program will be in place for citations issued on or after the effective date of this decision.

36. This decision should be effective immediately so that the modifications to the gas and electric safety citation program can be implemented as soon as possible.

O R D E R

IT IS ORDERED that:

1. The Commission delegates the authority to the Safety and Enforcement Division Staff, or other such Staff as may be designated by the Commission's Executive Director, to issue citations to and to levy penalties against gas

corporations to enforce compliance with General Order (GO) 112-F, including the federal regulations incorporated into the program, Code of Federal Regulations (CFR) Title 49, Parts 190, 191, 192, 193, and 199 (and the successor GOs and CFRs), or other related applicable decisions, codes or regulations (or successor applicable codes or regulations); and against electrical corporations owning or operating electrical supply facilities to enforce compliance with GOs 95, 128, 165, 166, 174 (and successor GOs), or other related applicable decisions, codes, or regulations (or successor applicable codes or regulations).

2. Staff shall have the authority to issue citations for violations that have occurred both before and after the effective date of this decision. Resolution ALJ-274 shall govern all gas citations issued prior to the effective date of this decision. Decision 14-12-001 and attached Rules shall govern all electric citations issued prior to the effective date of this decision. This decision and the modified gas and electric safety citation programs adopted by it, shall govern all gas and electric citations issued on or after the effective date of this decision.

3. The Commission's Executive Director shall designate Commission management at the Deputy Director level or higher (or designee) to issue a citation issued under the gas and electric safety citation program. If a designee is the signator, the Commission's Executive Director or Division Director shall have made that designation prior to the citation issuing.

4. The Citation Procedures and Appeals Process set forth in Appendix A are adopted to govern the issuance and appeal of citations to gas and electrical corporations for the violations of the laws referenced in Ordering Paragraph 1 above.

5. Penalty payments for citations issued pursuant to the gas and electric safety citation programs are the responsibility of shareholders of the cited gas or

electrical corporations and must not be recovered in rates or otherwise directly or indirectly charged to ratepayers.

6. Gas and electrical corporations must cure any cited violation as soon as feasible as determined by the Safety and Enforcement Division.

7. Payment of the penalty or filing a Notice of Appeal does not exempt the gas or electrical corporation from curing any cited violation.

8. Violations that constitute immediate safety hazards must be corrected immediately. Violations that do not constitute immediate safety hazards must be corrected within 30 days after the citation is served. If other violations that do not constitute immediate safety hazards cannot be corrected within 30 days, then the utility receiving the citation must submit a detailed Compliance Plan to the Director of the Safety and Enforcement Division (SED) within 30 days, unless the utility and the Director of the SED, before the expiration of the 30-day period, agree in writing to another date, reflecting the soonest that the corporation can correct the violation.

9. Notwithstanding a Compliance Plan or repair schedule, penalties may continue to accrue for each day of an ongoing violation until the violation is corrected. Penalties will be stayed during an appeal.

10. No evidentiary hearings are necessary.

11. Rulemaking 14-05-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

CITATION RULES - PROCEDURES AND APPEAL PROCESS; APPLICABLE TO GAS CORPORATIONS' OR ELECTRICAL CORPORATIONS' FACILITIES VIOLATIONS, INCLUDING RULES AND ATTACHMENT 1

APPENDIX A

Citation Rules - Procedures and Appeal Process

Applicable to Gas Corporations' and Electrical Corporations' Facility Violations

I. Citation Procedures

A. Issuance of Citation

1. The Commission's Safety and Enforcement Division (SED), or other Staff as may be designated by the Executive Director (Staff), has authority under these Rules to issue citations to Respondent gas corporations and electrical corporations for the following violations:
    a. for gas corporations, violations of General Order (GO) 112-F, including the federal regulations incorporated into the program, Code of Federal Regulations (CFR) Title 49, Parts 190, 191, 192, 193, and 199; or other related applicable decisions, codes or regulations; and
    b. for electrical corporations owning or operating electrical supply facilities, violations of GOs 95, 128, 165, 166, 174 or other related applicable decisions, codes, or regulations.
2. Citation to the GOs and other laws in Rule I.A.1 above and in these citation procedures is applicable to any successor applicable codes or regulations which may be adopted or enacted.
3. Staff has the discretion of whether or not to issue a citation in the first instance. Staff shall consider and weigh the following criteria to determine whether or not to issue a citation:

- Severity or gravity of the offense, including the following:
  - Economic harm to the victims
  - Unlawful benefits gained by the utility
  - Violations that physically harm people or property
  - Violations that threatened physical harm to people or property
  - Harm to the integrity of the regulatory processes, including disregarding a statutory or Commission directive
  - The number of violations
  - The number of consumers affected
- Conduct of the utility, including the following:
  - Degree of culpability
  - Actions taken to prevent a violation
  - Actions to detect a violation
  - Actions to disclose and rectify a violation, including voluntary reporting of potential violations (see also Rule I.G below), voluntary removal or resolution efforts undertaken, and the good faith of the utility in attempting to achieve compliance, after notification
  - Prior history of violations
- Financial resources of the utility, including the size of the business
- Totality of the circumstances, including the following:
  - Establishing a fine that effectively deters further unlawful conduct
  - Consideration of facts that tend to mitigate the degree of wrongdoing or exacerbate the wrongdoing
  - Evaluation of harm from the perspective of the public interest
  - Ensuring that a utility does not have incentives to make economic choices that cause or unduly risk a violation
- The role of precedent, including the following:
  - Consideration of previously issued decisions that involve the most reasonably comparable factual circumstances

These criteria are further defined in Attachment 1, which is an excerpt from Decision 98-12-075, 84 CPUC2d at 155, 193-195.

4. Staff shall determine the penalty for each violation at the statutory maximum as defined by Public Utilities Code § 2107. Staff has the discretion to assess penalties on less than a daily basis (again at the § 2107 statutory maximum.) Staff shall weigh the criteria set forth in Rule I.A.3 above in determining the penalty amounts consistent with this framework.
5. The administrative limit for each citation issued pursuant to this citation program is $8 million. The Staff has the discretion to either address each violation in a distinct citation or to include multiple violations in a single citation regardless of whether the violations occurred in the same incident or are of a similar nature.
6. The Commission's Executive Director shall designate Commission management at the Deputy Director level or higher (or designee) to issue a citation issued under the gas and electric safety citation program. If a designee is the signator, the Commission's Executive Director or Division Director shall have made that designation prior to the citation issuing.

B. Contents of Citation

1. A specification of each alleged violation, including citation to the portion of GO 112-F and the federal regulations incorporated into the program (for gas) or GOs 95, 128, 165, 166, 174 (for electric), and other related applicable decisions, codes, or regulations allegedly violated;
2. A statement of the facts upon which each alleged violation is based. While the citation need not include all supporting evidence, Staff will make the evidence available for timely inspection upon request by the Respondent; see also Rule II.B.4 below.
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 Rule I.A.3 and I.A.4;
4. The penalty assessed for each offense, determined consistent with the factors set forth in Rule I.A.3 and I.A.4;
5. The total amount of the penalty;

6. A statement that the Respondent must, within thirty days[36] 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 immediate safety hazards must be corrected immediately; that violations that do not constitute immediate safety hazards must be corrected within 30 days after the citation is served. The citation shall also inform Respondent that if other violations that do not constitute immediate safety hazards cannot be corrected within 30 days, then the Respondent must submit a detailed Compliance Plan to the Director of SED within 30 days after the citation issues, unless the utility and the Director of SED, before the expiration of the 30 day period, agree in writing to another date, reflecting the soonest that the Respondent can correct the violations. 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 30 days. The citation shall also inform the Respondent that payment of a citation or filing a Notice of Appeal does not excuse the Respondent from curing the violation, that the amount of the penalty may continue to accrue until a Notice of Appeal is filed, and that penalties are stayed during the appeal process.
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, to request an interpreter, and a copy of or electronic reference to Resolution ALJ-299 Establishing Pilot Program Citation Appeal and General Order 156 Appellate Rules (Citation Appellate Rules).
9. A form for filing the appeal, which will be called a "Notice of Appeal".

[36] The number of days stated are calendar days unless otherwise noted. See also 1.15 of the Commission's Rules of Practice and Procedure regarding computation of time.

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

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 shall 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.

5. No later than ten days following service of the citation, Staff shall publish each citation on the Commission's website. To the extent that a Respondent submits a Notice of Appeal of the Citation, Staff shall publish that Notice of Appeal on the Commission's website within ten days of the date the Notice of Appeal is submitted.

D. Response to Citation

1. Violations that constitute immediate safety hazards must be corrected immediately. Violations that do not constitute immediate safety hazards must be corrected within 30 days after the citation is served. If other violations that do not constitute immediate safety hazards cannot be corrected within 30 days, then the Respondent must submit a detailed Compliance Plan to the Director of the SED within 30 days after the citation is served, unless the utility and the Director of SED, before the expiration of the 30 day period, agree in writing to another date, reflecting the soonest that the Respondent can correct the violations. The Compliance Plan must provide 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 must 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.

E. <u>Payment of Penalty or Default</u>

1. All cited violations must be cured, as set forth in Rule I.D.1. Payment of penalties must 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 must 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.

F. Notification of Local Authorities

As soon as is reasonable and necessary, and no later than ten days after service of a citation is effected, each Respondent gas or electrical corporation must notify the Chief Administrative Officer or similar authority in the city and county where the violation occurred for which the citation is issued, and within ten days of such notification must notify the Director of SED that the local authorities have been notified by serving an affidavit that lists the date of notification and the name and contract information of each local authority so notified.

G. Self-Identified and Self-Corrected Potential Violations

1. To the extent that a gas or electrical corporation voluntarily self-identifies a potential violation pursuant to the criteria set forth in this Rule, Staff shall consider such facts, in addition to those factors set forth in Rules I.A.3 and I.A.4 above, in determining whether a citation should be issued and the amount of the penalty if a citation is issued.
2. If a gas or electrical corporation voluntarily provides notification of such potential violations to Commission Staff under this Rule, it must do so within 30 days of self-identification of the potential violation. The notification of the self-identified potential violation must also state when the violation will be corrected. A gas or electrical corporation reporting under this Rule is encouraged to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission. This 30-day reporting period in no way relieves the gas or

electrical corporation of its duty to implement corrective action and make its facilities safe as quickly as possible

3. Criteria for self-reporting potential violations:
    a. A "potential" violation is a potential violation of GO 112-F, including the federal regulations incorporated into the program, CFR Title 49, Parts 190, 191, 192, 193, and 199 (for gas) and of GOs 95, 128, 165, 166, 174 (for electric) or other related applicable decisions, codes, or regulations; a potential violation that is voluntarily reportable is listed in Rules I.G.3.b and I.G.3.c below. A potential violation is not reportable by gas or electrical corporations under this Rule if it results from facts contained in reports already provided to SED by other means (e.g., for gas: an Incident Report, Safety Related Condition report, or Quarterly Summary Report, and for electric: an Incident Report or GO 165, 166, or 174 Reports), or which have come to SED's attention in audits or data requests. If a potential violation is reportable via another report or means, but the report is due more than 30 days after the discovery of the potential violation, then that potential violation is voluntarily reportable under the criteria listed below.

    b. Voluntarily reportable self-identified potential violation criteria for gas: (i.) a potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors; (ii.) a potential violation that caused a system wide impact or affected a large geographic region; and (iii.) any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's personnel, contractors, or

subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

c. Voluntarily reportable self-identified potential violation criteria for electric: (i.) a potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors; (ii.) a potential violation that caused system wide impacts to the electric grid; caused unplanned power outages of over 48 hours to over 1,000 electrical corporation customers; or caused the electrical corporation to activate its emergency response program; and (iii.) any instances of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors, or subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

4. A report of a self-identified potential violation must include information about whether the potential violation has been corrected. If the potential violation has not been corrected before the utility report is submitted, the gas or electrical corporation's self-report must include a plan and schedule for correction.
5. SED has the discretion to define and refine the ministerial reporting process (i.e. designating an email address or other web based portal) that gas and electrical corporations use to self-report potential violations.
6. A gas or electrical corporation must provide notice to the local authorities described in Rule I.F above within 10 days after Staff advises the gas or electrical corporation to notify the local authorities of a potential violation. Within ten days of such notification, a gas or electrical corporation must notify the Director of SED that the local authorities have been notified by serving an affidavit that lists the date of notification and the name and contract information of each local authority so notified.
7. The self-identification and reporting provisions in this Rule in no way change or affect any existing reporting requirements. Each

electrical and gas corporation must continue to make records of all potential violations available for review by SED Staff during regular audits or at any time upon the request of SED. Additionally, self-identification and reporting of any potential violation or safety-related condition does not relieve an electrical or gas corporation of its existing responsibility to correct such violations and safety-related conditions as soon as feasible.

II. Appeal

A. Notice of Appeal

1. If Respondent wishes to appeal a citation, Respondent (now Respondent/Appellant) must file a Notice of Appeal with the Commission's Docket Office, pursuant to Resolution ALJ-299, within 30 days from the date service of the citation is effected. Respondent/Appellant must serve the Notice of Appeal on the Commission's Executive Director, the Chief Administrative Law Judge (ALJ) (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) , the General Counsel, the Director of SED, and the Director of the Office of Ratepayer Advocates. Respondent/Appellant must serve the Notice of Appeal on the same day the Notice of Appeal is filed and must file a proof of service to this effect at the same time it files the Notice of Appeal.

2. Filing a Notice of Appeal does not excuse the Respondent/Appellant from curing the violation described in the citation. Pursuant to Resolution ALJ-299, Rule 5 of the Citation Appellate Rules, the Notice of Appeal must state the date of the citation that is appealed and explain with specificity each and every ground for the appeal.

B. Designation of ALJ and Hearing Procedures

1. 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. Pursuant to Resolution ALJ-299, Rule 7 of the Citation Appellate Rules, no later than seven business days after the Notice of Appeal is filed, Staff issuing the citation must file with the Commission's Docket Office a Compliance Filing which includes a complete copy of the citation, including all attachments, which is appealed. The Compliance Filing must be served on the Chief ALJ (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) and Respondent/Appellant on the same day the Compliance Filing is filed. Staff must file a proof of service to this effect at the same time it files the Compliance Filing.
4. Pursuant to Resolution ALJ-299, Rule 9 of the Citation Appellate Rules, no later than three business days prior to the scheduled hearing on the citation appeal, the parties must exchange all information they intend to introduce into the record at the hearing which is not included in the citation already filed with the Commission pursuant to Resolution ALJ-299, Rule 7 of the Citation Appellate Rules, unless otherwise directed by the ALJ. The information exchange is not to be filed with the Commission or served upon the ALJ or other decision makers.
5. 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.
6. Upon a good faith showing of language difficulty, the Respondent/Appellant 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 five business days prior to the date of the hearing.
7. 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.
8. Staff has the burden of proof by a preponderance of the evidence and accordingly shall open and close the hearing. Respondent/Appellant has the burden to prove affirmative defenses it might raise. The ALJ may, in his or her discretion, alter the order of presentation at the hearing.

9. Respondent/Appellant may be represented at the hearing by an attorney or other representative, but such representation will be at the Respondent's/Appellant's sole expense. Rule 13.6 (Evidence) of the Commission's Rules of Practice and Procedure is applicable.

10. 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

Pursuant to Resolution ALJ-299, Rules 17 and 18 of the Citation Appellate Rules, the ALJ will issue a draft resolution resolving the appeal expeditiously, and no later than 60 days after the appeal is submitted. The draft resolution will be placed on the first available agenda, consistent with the Commission's applicable rules. Persons 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

Pursuant to Resolution ALJ-299, Rule 19 of the Citation Appellate Rules, *ex parte* communications as defined by Rule 8.1(c) of the Commission's Rules of Practice and Procedure, with a decision maker, including any Commissioner, Commissioner advisor, the Chief ALJ, any Assistant Chief ALJ, the assigned ALJ, or the Law and Motion ALJ, are prohibited from the date the citation issued, through the date a final order is issued on the citation appeal.

A final order means 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 finally resolved.

Attachment 1 to Citation Rules - Procedures and Appeal Process

Applicable to Gas Corporations' and Electrical Corporations' Facility Violations

Excerpt from Decision 98-12-075, 84 CPUC2d at 155, 193-195, Section D.2.b of Appendix B:

(b) Fines

The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others. For this reason, fines are paid to the State of California, rather than to victims.

Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result. To capture these ideas, the two general factors used by the Commission in setting fines are: (1) severity of the offense and (2) conduct of the utility. These help guide the Commission in setting fines which are proportionate to the violation.

i. Severity of the Offense

The severity of the offense includes several considerations. Economic harm reflects the amount of expense which was imposed upon the victims, as well as any unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in establishing the fine. In comparison, violations which caused actual physical harm to people or property are generally considered the most severe, with violations that threatened such harm closely following.

The fact that the economic harm may be difficult to quantify does not itself diminish the severity or the need for sanctions. For example, the Commission has recognized that deprivation of choice of service providers, while not necessarily imposing quantifiable economic harm, diminishes the competitive marketplace such that some form of sanction is warranted.

Many potential penalty cases before the Commission do not involve any harm to consumers but are instead violations of reporting or compliance requirements. In these cases, the harm may not be to consumers but rather to the integrity of the regulatory processes. For example, compliance with Commission directives is required of all California public utilities:

"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 or affecting its business as

a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees." Public Utilities Code § 702.

Such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.

The number of the violations is a factor in determining the severity. A series of temporally distinct violations can suggest an on-going compliance deficiency which the public utility should have addressed after the first instance. Similarly, a widespread violation which affects a large number of consumers is a more severe offense than one which is limited in scope. For a "continuing offense, " PU Code § 2108 counts each day as a separate offense.

ii. Conduct of the Utility

This factor recognizes the important role of the public utility's conduct in (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation. The public utility is responsible for the acts of all its officers, agents, and employees:

"In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his [or her] official duties or employment, shall in every case be the act, omission, or failure of such public utility." Public Utilities Code § 2109.

(1) The Utility's Actions to Prevent a Violation

Prior to a violation occurring, prudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations, and most critically, the utility regularly reviewing its own operations to ensure full compliance. In evaluating the utility's advance efforts to ensure compliance, the Commission will consider the utility's past record of compliance with Commission directives.

(2) The Utility's Actions to Detect a Violation

The Commission expects public utilities to monitor diligently their activities. Where utilities have for whatever reason failed to meet this standard, the Commission will continue to hold the utility responsible for its actions. Deliberate as opposed to inadvertent wrong-doing will be considered an aggravating factor. The Commission will also look at the management's conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management

personnel. The Commission will closely scrutinize any attempts by management to attribute wrong-doing to rogue employees. Managers will be considered, absent clear evidence to the contrary, to have condoned day-to-day actions by employees and agents under their supervision.

(3) The Utility's Actions to Disclose and Rectify a Violation

When a public utility is aware that a violation has occurred, the Commission expects the public utility to promptly bring it to the attention of the Commission. The precise timetable that constitutes "prompt" will vary based on the nature of the violation. Violations which physically endanger the public must be immediately corrected and thereafter reported to the Commission staff. Reporting violations should be remedied at the earliest administratively feasible time.

Prompt reporting of violations furthers the public interest by allowing for expeditious correction. For this reason, steps taken by a public utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

iii. Financial Resources of the Utility

Effective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

iv. Totality of the Circumstances in Furtherance of the Public Interest

Setting a fine at a level which effectively deters further unlawful conduct by the subject utility and others requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case. The Commission will review facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

v. The Role of Precedent

The Commission adjudicates a wide range of cases which involves sanctions, many of which are cases of first impression. As such, the outcomes of cases are not usually directly comparable. In future decisions which impose sanctions the parties and, in turn, the Commission will be expected to explicitly address those previously issued decisions which involve the most reasonably

comparable factual circumstances and explain any substantial differences in outcome.

(END OF APPENDIX A)

APPENDIX B

REPORT OF THE SAFETY AND ENFORCEMENT DIVISION ON SELF-IDENTIFIED POTENTIAL VIOLATIONS

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Natural Gas and Electric Safety Citation Programs.	Rulemaking 14-05-013 (Filed May 15, 2014)

REPORT OF THE SAFETY AND ENFORCEMENT DIVISION ON SELF-IDENTIFIED POTENTIAL VIOLATIONS

June 1, 2016

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Commission's Natural Gas and Electric Safety Citation Programs.	Rulemaking 14-05-013 (Filed May 15, 2014)

REPORT OF THE SAFETY AND ENFORCEMENT DIVISION ON SELF-IDENTIFIED POTENTIAL VIOLATIONS

I. Summary

This report presents recommendations of the California Public Utilities Commission's (CPUC's or Commission's) Safety and Enforcement Division (SED) regarding utility reporting of self-identified potential violations and their consideration in the electric and gas citation programs. SED is currently authorized to issue citations and is advisory Staff in Rulemaking (R.) 14-05-013.

Decision (D.) 14-12-001, in adopting an electric citation program, provided that Phase II would establish the reporting process and criteria for violations that are self-identified and self-corrected by electrical corporations. Pending Phase II, electrical corporations were not required to report self-identified potential violations to SED.

Gas corporations have been reporting self-identified and self-corrected violations to SED, as required by Resolution ALJ-274. Each gas corporation has developed its own criteria for self-reports, as described in Section IV below.

Although D.14-12-001 and Resolution ALJ 274 both discuss the reporting of "self-identified violations," SED believes the terminology used in Senate Bill 291 (SB 291), codified in Public Utilities Code Section 1702.5, more accurately applies. Section 1702.5(a)(1) states, in part, that the "commission staff shall take into account voluntary reporting of potential violations." (emphasis added.) Because the determination of what

constitutes a violation is made only through a Commission process, SED believes the term "potential violation" is more appropriate.

SED considers a potential violation to be a condition that could potentially represent a violation(s) of Commission General Orders or other applicable decisions, codes or regulations for gas or electric facilities.

In this report, SED's Electric Safety and Reliability Branch (ESRB) and Gas Safety and Reliability Branch (GSRB) provide recommendations and a consistent approach to reporting policies and procedures for self-identified possible violations to the extent practicable, as explained below.

II. Background

Senate Bill 291 (Hill, 2013) added Public Utilities (PU) Code Section (§) 1702.5, effective January 1, 2014. PU Code § 1702.5(a)(1) provides as follows:

> 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, and prior history of violations, the gravity of the violation, and the degree of culpability.

Resolution ALJ-274 (issued December 7, 2011), which the Commission adopted before SB 291 was enacted, established a gas safety citation program for gas corporations. Resolution ALJ-274 contains the following provision regarding self-identified and self-corrected violations:

> F. Self-identified and self-corrected violations
>
> 1. To the extent that a gas corporation self-identifies and self-corrects violations and no injury or damage has occurred, Staff shall consider such facts in determining whether a citation should be issued. The gas corporation shall provide notification of such violations shall be provided (sic) to Commission Staff and to local authorities, as described above, within ten days of self-identification of the violation. (Resolution ALJ-274, Appendix A, I.F.1.)

Resolution ALJ-274 also requires that gas corporations provide notification of any self-identified and self-corrected violations to Commission Staff and to local authorities within ten calendar days of self-identification of the violation.

D.14-12-001 (Phase I Decision) adopted an electric citation program and contains the following provisions regarding self-identified and self-corrected violations:

> E. Self-Identified and Self-Corrected Violations
> Phase II of Rulemaking 14-05-013 will establish additional Self-Identified reporting requirements, which shall encompass reporting process and criteria. Those requirements shall be developed in Phase II pursuant to further direction by the Assigned Commissioner and ALJ. To the extent that an electrical corporation self-identifies and self-corrects violations, reports the violation to Commission Staff, and no injury or damage has occurred, Staff shall consider such facts, in addition to those factors set forth in California Public Utilities Code § 1702.5 (a)(1), § 2104.5, D. 98-12-075, and Resolution ALJ-277, in determining whether a citation should be issued and the amount of the penalty if a citation is issued. The electrical corporation shall provide notification of such violations to Commission Staff within 30 days of self-identification of the violation. The electrical corporation's notification of the self-identified violation shall also state when the violation will be corrected, consistent with the time period in GO 95. (D.14-12-001, Appendix A, Citation Procedures and Appeal Process, Section I.E.)

The Phase II scoping memo contains the following questions regarding self-reporting of potential violations:

> 7. How should the requirements for self-reporting of violations in Resolution ALJ-274 and the Phase I Decision be reconciled? [Footnote 7: The Phase I Decision at 18 states that the Commission does not intend to revisit the 30 day reporting requirement for self-identified [electric] violations. However, the two citation programs differ as to the number of days after self-identification that a utility must report such violations to the Commission. This ruling inquires from the parties their position on the limited question of whether these time frames should be uniform or not and why.]

8. What additional self-identified reporting requirements, including reporting processes and criteria, should be established? (See e.g. Phase I Decision at 18-19 and 37-38.)

9. Should the requirements adopted in Resolution ALJ-274 (gas) and D.14-12-001 (electric) that Staff shall consider whether a utility timely self-identifies potential violations where no injury or damage has resulted in deciding whether to cite such violations, and the amount of the penalty if a citation issues, be modified? If so, state the suggested modifications and the rationale for them.

III. Parties' Comments on Self-identified Violations

The Phase II scoping memo allowed parties to file opening comments on the questions in the scoping memo no later than November 2, 2015 and reply comments no later than December 2, 2015. A summary of the comments regarding self-identified violations follows. (Not all parties addressed these issues in their comments.)

A. Joint Parties

PacifiCorp, Southern California Edison Company (Edison), Bear Valley Electric Service, and Liberty Utilities (CalPeco Electric) (collectively, Joint Parties) filed joint comments and reply comments.

The Joint Parties recommend that the time period to self-report a violation after discovery be harmonized so that both programs have the 30-day requirement. The Joint Parties state that the self-reporting language is vague and needs clarification, and that the expectation for self-reporting is not clear. The Joint Parties do not believe that the Commission wants to receive self-reports for every potential nonconformance with General Order (GO) 95 identified during regular inspection and maintenance programs. These parties also note there are several regulatory requirements for self-reporting, such as the utilities' annual GO 165 reports and incident reports. They state that categories of violations that are subject to the self-reporting requirements should be identified by a tiered, risk-based approach that focuses on conditions that have an immediate safety impact. The Joint Parties believe that self-reporting should be encouraged with avoided

citations or eliminated/reduced penalties. These parties agree that Staff should have the discretion whether to issue a citation or to eliminate or reduce penalty amounts in connection with self-reported violations, but urge the Commission to adopt guidelines that incorporate stakeholder input. According to these parties, Staff should follow such guidelines in exercising such discretion.

The Joint Parties recommend that all-party workshops be held to address, among other things, establishment of guidelines for the self-reporting requirements and the content of any self-report, and to assist Staff in determining the extent to which a self-report will affect a determination of whether to issue a citation and the amount of the associated penalty.

B. CUE

The Coalition of California Utility Employees (CUE) recommends that the Commission "develop a broader safety enforcement program for gas and electric corporations." CUE states that the citation program must "incentivize self-reporting so that the utilities are more willing to come forward with violations."

CUE recommends that the Commission examine other successful regulatory safety enforcement programs such as the Federal Aviation Administration (FAA), which uses anonymous "aggregate, protected data from industry and government voluntary reporting programs, to proactively find safety issues, identify safety enhancements and measure the effectiveness of solutions." CUE recommends that the Commission consider using a neutral third party, like the FAA uses the National Aeronautics and Space Administration, to evaluate confidential safety reports.

C. ORA

The Office of Ratepayer Advocates (ORA) does not recommend any new self-reporting requirements in its opening comments, but reserves the right to reply to other proposals in its reply. In its reply comments, ORA states that no commenting party provides adequate justification for delaying self-reporting in gas cases, and the value of

having the same timeframe across both programs is not outweighed by delaying the reporting for gas corporations.

D. PG&E

Pacific Gas and Electric Company (PG&E) believes the 30-day self-reporting period for the electric safety citation program, rather than the 10-day period for gas, is the more reasonable approach, as it allows the utilities time to consult with SED and to develop a thoughtful and thorough solution to the problem. PG&E believes the current self-reporting process for both programs is very unclear and inconsistent and it is difficult for the utilities to know what the Commission wants self-reported. For instance, PG&E states that, at the September 24, 2015 Safety En Banc, SED discussed the existing confusion around self-reporting and stated that gas utilities had very different approaches; some exclude violations found through internal Quality Assurance/Quality Control (QA/QC) procedures, and others report only violations that have an associated safety-related condition. PG&E states that electric utilities face similar uncertainties.

PG&E recommends workshops to develop clear and transparent criteria for what types of violations and under what circumstances the Commission wants utilities to self-report, to provide additional guidance on the type of matters the Commission wants to be self-reported, and on how to factor self-reporting into the issuance or amount of any potential citation. PG&E does not address self-reporting in its reply comments.

E. SoCal Gas and SDG&E

Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E) recommend that for consistency, the gas and electric self-reporting timeframes be the same, and that the Commission adopt the electric 30-day period for both programs. SoCalGas/SDG&E state that the 10-day self-reporting period for gas is insufficient time for the utility to gather all the underlying facts and information necessary to carefully analyze the underlying violation and potential remedies. In reply comments, SoCalGas/SDG&E add that 10 calendar days might include only 6 business

days, and that a 30-day self-reporting period would provide adequate investigation time and avoid the need for piecemeal submittals to Staff.

SoCalGas/SDG&E recommend that workshops be held to establish the process for reporting different types of self-identified compliance items. These utilities state this will allow for greater consistency between the gas and electric reporting processes, as well as between all utilities. In reply comments, they add that workshops would "enable parties to work with the Commission and with each other to reach informal consensus" on self-reporting of potential violations and other important topics.

SoCalGas/SDG&E recommend that the Commission focus on using this reporting process for high-risk items where a hazardous condition or incident occurs. Their view is that routine nonconformances should be reported to SED but not necessarily through a formal process that also requires reporting information to city and county officials. SoCalGas/SDG&E state the self-reporting requirements of both programs should be aligned with established reporting requirements to be effective but not overly burdensome. These parties give as an example various items already being reported through the Commission's and the Pipeline and Hazardous Materials Safety Administration's (PHMSA) incident reporting process, through the GO 165 reporting process and pre-audit reports.

SoCalGas/SDG&E also recommend that there be exceptions from the self-reporting requirement. They state that, if a violation falls under one of the following categories, it should not have to be self-reported: (1) the violation is on the utility's auditable maintenance plan or pre-audit exception list, (2) the violation is on the utility's GO 165 report, or (3) the violation is reported pursuant to an incident report.

SoCalGas/SDG&E recommend that Staff be required to take into account efforts by the utility to self-report potential violations and also instances when there is no harm resulting from a violation or nonconformance, in deciding whether to cite such violations and in determining the amount of the penalty. According to these utilities, this will provide an incentive to utilities to report and for the utilities and Staff to work together to

develop "lessons learned" and best practices. SoCalGas/SDG&E assert that, if utilities face penalties when self-reporting violations without regard to their efforts to be forthcoming about identified nonconformances, employees will be discouraged from self-reporting.

In reply comments, SoCalGas/SDG&E agree with Southwest Gas' recommendation that there should be a two-year statute of limitations on issuing a citation based on a self-reported violation.

F. Southwest Gas

Southwest Gas recommends that the self-reporting notification requirements for both programs be 30 days, thus increasing the reporting period for gas utilities from 10 days to 30 days.

Southwest Gas states there should be two layers of self-reporting: safety-related and non-safety-related violations. A safety-related gas violation would be defined as a non-compliance with GO 112-E (currently GO 112-F) and/or Title 49 Code of Federal Regulations (CFR) Parts 190, 191, 192, 193, and 199 which results in an injury to people or property damage in excess of $50,000. These violations would have a 30-day reporting requirement. Non-safety-related violations would be reported in advance of the next subsequent SED audit of the location (inspection unit) where the non-safety-related violation occurred and would be disclosed in writing to SED on a pre-audit exceptions list.

Southwest Gas also asserts that factors such as self-identification and events where no injury or damage result should be considered when determining to issue a citation or the amount of the penalty if a citation is issued.

Southwest Gas recommends that there be a statute of limitations on issuing a citation based on a self-reported violation, and that no citation should be issued more than two years after a violation is self-reported. The utility asserts this is fair because witnesses leave the company and memories fade, and the statute of limitations would provide closure and finality.

IV. Current Reporting of Self-identified Violations

D.14-12-001, in adopting an electric citation program, provided that Phase II would establish the reporting process and criteria for violations that are self-identified and self-corrected by electrical corporations. Pending Phase II, electrical corporations were not required to report self-identified violations to SED.

Gas corporations have been reporting self-identified violations to SED and self-correcting them, as required by Resolution ALJ-274. As of January 2016, 121 self-identified violations have been reported to GSRB, and citations in the amount of $25.2 million were issued for nine self-identified violations.

Each gas corporation has developed its own criteria for self-reporting, as described below.

A. PG&E

PG&E currently self-reports all probable violations of GO 112-F, Reference Title 49 CFR Parts 190, 191, 192, 193, and 199 and violations of its own procedures, excluding the following:

4. Internal audit findings that are submitted during regular audits/inspections by GSRB,
5. QA/QC issues that are corrected promptly, and
6. Violations that are covered in an on-going proceeding, e.g., an Order Instituting Investigation (OII) proceeding.

B. SoCalGas and SDG&E

SoCalGas and SDG&E currently self-report only instances that meet the criteria of Safety Related Conditions as per Title 49 CFR, Part 191, Section 191.23.

SoCalGas and SDG&E originally submitted exception reports (internal-audit findings) during GSRB regular audits of each inspection unit. SoCalGas and SDG&E now submit the exception reports, covering the entire system, on a quarterly basis.

C. Southwest Gas

Southwest Gas currently reports only instances that meet the criteria of Safety Related Conditions as per Title 49 CFR, Part 191, Section 191.23.

V. Reporting Requirements that may Include Potential Violations

As parties have recognized in their comments, a number of reporting requirements already exist that may result in potential violations being brought to the attention of the Commission. Incidents or conditions that SED becomes aware of through the requirements listed below may or may not result in a finding of a violation. However, SED (or the Commission) may make such a determination after performing an investigation.

A. Gas Corporation Reporting Requirements

Current reporting requirements and practices for gas corporations are summarized below.

1. Incident Reports as Required by GO 112-F Section 122.2(a)

Gas corporations are required to report to the Commission within two hours during normal working hours all incidents that meet the following criteria:

1. Incidents which require U.S. Department of Transportation (DOT) notification:
   i. An event that involves a release of gas from a pipeline, or of LNG, liquefied petroleum gas (LPG), refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
      - A death, or personal injury necessitating in patient hospitalization; or
      - Estimated property damage of $50,000 or more, including loss to the utility and others, or both, but excluding cost of gas lost; or
      - Unintentional estimated gas loss of three million cubic feet or more.

   ii. An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.

   iii. An event that is significant in the judgment of the utility, even though it did not meet the criteria of GO 112-F Sections 122.2(a)(1)(i) or (ii).
2. Incidents which either have attracted public attention or have been given significant news media coverage, that are suspected to involve natural gas and/or propane (LPG) gas, which occur in the vicinity of the utility's facilities; regardless of whether or not the utility's facilities are involved.

3. Incidents where the failure of a pressure relieving and limiting stations, or any other unplanned event, results in pipeline system pressure exceeding its established Maximum Allowable Operating Pressure plus the allowable build up set forth in 49 CFR § 192.201.
4. Incidents in which an under-pressure condition, caused by the failure of any pressure controlling device, or any other unplanned event other than excavation-related damage, results in any part of the gas pipeline system losing service or being shut-down.

2. Safety Related Condition Reports

Gas safety-related conditions must be reported within 10 working days as required by GO 112-F Section 124 or 49 CFR Part 191, Sections 191.23 and 191.25. This includes any of the following conditions involving facilities in service:

1. In the case of a pipeline (other than a liquified natural gas (LNG) facility) that operates at a hoop stress of 20 percent or more of its specified minimum yield strength, general corrosion that has reduced the wall thickness to less than that required for the Maximum Allowable Operating Pressure, and localized corrosion pitting to a degree where leakage might result.
2. Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline or the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.
3. Any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.
4. Any material defect or physical damage that impairs the serviceability of a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength.
5. Any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its Maximum Allowable Operating Pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices.
6. A leak in a pipeline or LNG facility that contains or processes gas or LNG that constitutes an emergency.
7. Inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank.
8. Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes

other than abandonment, a 20 percent or more reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility that contains or processes gas or LNG.

3. Quarterly Summary Reports Required by GO 112-F Section 122.2 (d)

This quarterly report includes a summary of all Commission reportable and non-reportable gas incidents as follows:

1. Incidents that were reported through the Commission's Emergency Reporting website.
2. Incidents for which either a DOT Form PHMSA F7100.1 or DOT Form PHMSA F7100.2 was submitted.
3. Incidents which involved escaping gas from the utility's facilities and property damage including loss of gas in excess of $1,000.
4. Incidents which included property damage between $0 and $1,000, and involved fire, explosion, or excavation related damage.
5. Incidents where the failure of a pressure relieving and limiting stations, or any other unplanned event, results in pipeline system pressure exceeding its established Maximum Allowable Operating Pressure plus the allowable build up set forth in 49 CFR § 192.201.
6. Incidents in which an under-pressure condition, caused by the failure of any pressure controlling device, or any other unplanned event other than excavation-related damage, results in any part of the gas pipeline system losing service or being shut-down.

4. Data Submitted or Available During Inspections and Audits

Although there is no Commission-mandated requirement to do so, the large gas corporations (PG&E, SoCalGas, SDG&E, and Southwest Gas) provide notification of GO 112-F violations via Internal Finding Reports (a.k.a. Exception Reports) during regular inspections and audits.

B. Electrical Corporation Reporting Requirements

Current reporting requirements for electrical corporations are summarized below.

1. Notification of Major Outages

Electrical corporations must notify the Commission and other entities within one hour of a major outage, as required by GO 166, Standard 6.

2. Incident Reports

Electric utilities must report to the Commission, within two hours during normal working hours, incidents that meet the following criteria:[37]

1. Result in fatality or personal injury rising to the level of in-patient hospitalization and attributable or allegedly attributable to utility owned facilities; or
2. Involve damage to property of the utility or others estimated to exceed $50,000; or
3. Are the subject of significant public attention or media coverage and are attributable or allegedly attributable to utility facilities.

3. Annual Reports

Electrical corporations must submit annual reports including the following:

1. All missed or late substation inspections in annual reports required by GO 174.
2. Emergency plans in annual reports required by GO 166.
3. Annual outage and reliability statistics in annual reports required, most recently, by D.16-01-008.

Additionally, large electrical corporations must report all missed overhead and underground inspections in an annual report required by GO 165.

4. Data Submitted or Available During Inspections and Audits

The electric utilities maintain large databases which list all system non-conformances which include GO 95, GO 128, GO 165, and GO 174 violations on their distribution, transmission and substation facilities that they are aware of through their own inspections, customer complaints and trouble reports. In addition to violations of Commission rules and GOs, the databases also may include violations of the utility's own standards or procedures. The number of violations contained in these databases runs into

[37] D.06-04-055, Appendix B, as amended by Resolution E-4184.

the hundreds of thousands, likely millions, because they include everything, including many conditions that may not be violations of the Commission rules and GOs, but may be non-compliances with the utilities' own requirements or the requirements of other public agencies.

Although these violations are not reported through Commission-mandated requirements, ESRB reviews them during audits and incident investigations.

VI. SED Recommendations Regarding Self-identified Potential Violations

After careful review of the filed comments and based on experience to date with the gas and electric citation programs, SED has the following recommendations regarding self-identified potential violations.

As explained in Section VI.C below, ESRB and GSRB do not recommend that the reporting procedures for self-identified potential violations apply to every potential violation not otherwise reported. Instead, we recommend that the procedures apply to potential violations that pose imminent danger to the public, and to unsafe conditions that might be difficult, if not impossible, to discover during routine audits and investigations (e.g., forging inspection records, faking signatures on maintenance records, using wrong numbers in design, etc…). Under these procedures, SED may be made aware of high risk potential violations that fail to meet other reporting criteria. Neither ESRB nor GSRB sees value in reporting every self-identified potential violation within 30 days.

A. Whether Workshops are Needed Regarding Self-identified Potential Violations

All of the utilities recommend workshops to address, among other things, criteria for self-identified potential violations, the reporting process, and how Staff should factor reporting of self-identified potential violations into its determinations of whether to issue a citation and, if so, the amount of the associated penalties. Some parties also believe that workshops could allow all parties to reach consensus.

SED does not see a need for workshops for several reasons. Workshops can be helpful when there are significant differences of opinion or different levels of knowledge

among parties regarding factual issues. Workshops also may be valuable when discussion among the parties can help the parties find common ground and reach consensus or compromise on relevant issues. However, workshops often lead to acrimony and dissension with limited usefulness.

In this report, SED recommends procedures for reporting of self-identified potential violations, and does not believe that workshops would lead to any further specificity. Submission of written comments on SED's recommendations should provide sufficient development of the record on these issues.

Some parties suggest that the Commission should investigate other self-reporting regimes. SED has investigated several other such regimes, and many of these (for example the North American Electric Regulatory Corporation (NERC) procedures) accept or require self-reporting of all violations. These are much broader reporting provisions than SED recommends in this proceeding, and their consideration through workshops would not be helpful.

Other issues, such as the self-reporting timeline, statute of limitations, and notifications to other jurisdictions, can be considered adequately through written comments because of their limited scope or clear guidance in D.14-12-001 or existing statutes.

Regarding how Staff should consider reporting of self-identified potential violations in deciding whether to issue a citation or in determining the amount of a citation, SED believes this should be within the discretion of Staff, subject to existing statutes or Commission decisions or practices. This is not a matter to be determined by the regulated parties, and we see no benefit to having it discussed in workshops.

B. Mandatory vs. Voluntary Reporting of Self-identified Potential Violations

The Commission needs to specify whether reporting of self-identified potential violations will be mandatory or voluntary. This issue was not directly addressed in

opening and reply comments, and the limited allusions to this issue by parties were ambiguous in most cases.

Resolution ALJ-274 states (Finding and Conclusion 20), "It is reasonable to ***require*** the gas corporations to provide notice of any self-identified and self-corrected violations…to Commission Staff…within ten calendar days of self-identification." (emphasis added). SB 291, codified in PU Code Section 1702.5(a)(1), states, "the commission staff shall take into account ***voluntary*** reporting of potential violations…" (emphasis added). Finally, D.14-12-001 states:

> E. Self-Identified and Self-Corrected Violations
> Phase II of Rulemaking 14-05-013 will establish additional Self-Identified reporting ***requirements***, which shall encompass reporting process and criteria. (emphasis added.)

While SED has considered the reporting of self-identified violations pursuant to Resolution ALJ-274 to be mandatory, the Commission should specify in Phase II the nature of the reporting provisions going forward, for both the gas and electric citation programs.

SED does not make recommendations as to whether reporting of self-identified potential violations should be mandatory or voluntary, but summarizes below some of the arguments for and against each approach.

1. Rationale for Making Reporting of Potential Violations Voluntary

Several regulatory agencies, including the Federal Energy Regulatory Commission (FERC) and the Federal Aviation Administration (FAA), allow regulated entities to submit voluntary reports of possible violations. The agency may then consider the voluntary reports in determining whether to assess a civil penalty and, if so, the amount of the penalty. A commonly-described objective of such voluntary reporting programs is that offering regulated entities an incentive of reduced or waived penalties if they voluntarily identify, correct, and report possible regulatory violations will induce those

entities to be more proactive in their audit and inspection regimes, and will improve their compliance with the agency's regulations.

FERC has stated that it "will maintain our practice of awarding penalty credit for parties that promptly self-report violations, assuming such conduct is not negated by a poor compliance culture."[38] A study by NERC[39] found that in 2012 approximately ninety percent of the violations of its regulations for critical infrastructure were self-identified and reported to NERC through its voluntary reporting procedures.[40] The FAA has described the reasoning behind its voluntary disclosure reporting program as follows:

> Civil penalties, under the FAA's enforcement program, have always been considered a means to promote compliance with the FAA's regulations, not an end in themselves. In addition to the deterrence achieved by the appropriate use of civil penalties, the public interest is also served by positive incentives to promote and achieve compliance. Indeed, the FAA believes that aviation safety is well served by incentives for certificate holders… to identify and correct their own instances of noncompliance and to invest more resources in efforts to preclude their recurrence. The FAA's policy of forgoing civil penalty actions when one of these entities detects violations, promptly discloses the violations to the FAA, and takes prompt corrective action to ensure that the same or similar violations do not recur is designed to encourage compliance with the FAA's regulations, foster safe operating practices, and promote the development of Internal Evaluation Programs (IEPs).[41]

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[38] Federal Energy Regulatory Commission, *Revised Policy Statement on Enforcement*, Docket No. PL08-3-000, May 15, 2008, para. 62.

[39] NERC is a not-for-profit regulatory authority subject to oversight by FERC and other governmental authorities.

[40] NERC, *Balancing Authority Compliance Analysis Report*, 2013, p 16.

[41] U.S. Department of Transportation, Federal Aviation Administration, *Advisory Circular No. 00-58B*, Section 5, April 29, 2009.

By its language, SB 291 arguably has the intent that the reporting of self-identified potential violations should be voluntary. The Commission appears to have expressed this view of SB 291 in the Order instituting R.14-05-013 and in D.14-12-001.[42]

SB 291 directs that voluntary utility reporting of potential violations will be taken into account in considering citations and penalties. However, if reporting of self-identified potential violations is mandatory, such reports might not properly be considered a mitigating factor.

Finally, it appears from opening comments that Pacificorp and PG&E, at least, assume the self-reporting will be voluntary.43

2. Rationale for Making Reporting of Potential Violations Mandatory

With respect to the alternate view that the Commission should mandate that electric and gas corporations report self-identified potential violations, instead of leaving it to the discretion of an electrical or gas corporation, mandatory reporting would help ensure that SED is aware of all self-identified potential violations which involve serious safety and reliability conditions.

In the spirit of SB 291, with mandatory reporting it would still be possible for SED to weigh the voluntary nature element as the level and usefulness of supporting detail provided with the required reporting of the possible violation. SED would assess whether or not the information exceeded the minimum reporting threshold and was helpful in allowing SED to fully understand how the violation occurred and whether the corrective action employed to prevent recurrence is sufficient. In this regard, Staff could consider the quality of voluntary supporting detail as a potential mitigating factor in determining a penalty amount, along with other factors consistent with PU Code Section 2104.5 which

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[42] Order instituting R14-05-013, pp. 7-8: D.14-12-001, pp. 8-9 and 16.

[43] Pacificorp opening comments, p. 11; PG&E opening comments, p. 11.

allows the Commission to consider "…the good faith of the person charged in attempting to achieve compliance."

In addition, mandatory reporting could be in the best interest of safety because it could motivate electric and gas corporations to be more vigilant in preventing violations (i.e., the fewer violations they commit, the fewer they would have to report). The utilities also would be required to remediate or devise a corrective action plan as part of the reporting process.

Finally, at least for gas corporations, reporting is already mandatory per Resolution ALJ-274. The defined and limited reporting criteria recommended in this report represent an improvement over the current reporting system for gas corporations, and should be easier for gas corporations to comply with.

SED notes that if the Commission decides that reporting of self-identified potential violations is mandatory, not only may a utility's failure to self-report be considered as an aggravating factor in citation penalty assessments, but the failure to self-report may become a separate violation in itself subject to additional citations. This should be considered in determining whether self-reporting should be mandatory or voluntary.

C. Criteria for Self-identified Potential Violations to be Reported

As described in Section V above and as noted by several parties in their comments, there are a number of existing requirements for the electric and gas utilities to report events and activities that might be violations.

SoCalGas/SDG&E recommend that the self-reporting requirements be aligned with established reporting requirements (citing the Commission's and PHMSA's incident report process, the GO 165 reporting process, and pre-audit reports), "to be effective but not overly burdensome."

SoCalGas/SDG&E believe that the reporting process should focus on high-risk items where a hazardous condition or incident occurs, and that "routine nonconformances" should be reported to SED but not necessarily through "a formal

process that also requires reporting information to city and county officials." They assert that a violation should not have to be self-reported if it is on the utility's auditable maintenance plan or pre-audit exception list, in the utility's GO 165 report, or reported pursuant to an incident report.

The Joint Parties recommend that categories of violations that are subject to the self-reporting requirements be identified by a tiered, risk-based approach.

Southwest Gas recommends that there be two layers of self-reporting: safety-related and non-safety-related violations. In its view, a non-compliance with GO 112 or 49 CFR Parts 190, 192, 193, and 19 which results in an injury to people or property damage in excess of $50,000 should have a 30-day reporting requirement, with non-safety-related violations disclosed to SED only on a pre-audit exceptions list.

In general SED agrees with party comments on what should be considered a self-identified potential violation. SED does not see value in reporting of potential violations already reported on a timely basis under other requirements. SED wants to limit the reporting to potential violations related to conditions that pose imminent danger to the public, risks to large portions of the gas or electrical system, or unsafe conditions that are difficult, if not impossible, to discover on a timely basis during routine audits and investigations (i.e., forging inspection records, faking signatures on maintenance records, using wrong numbers in design, etc.). ESRB and GSRB recommend reporting criteria which we believe focus on potential violations with possible repercussions to safety and system reliability.

SED agrees with the Joint Parties that it would not be useful for the Commission to receive and review reports for every self-identified potential non-conformance with general orders identified during regular inspection and maintenance programs. SED has access to such information, reviews the documentation during audits, and can request access the information at any time, e.g., as part of audits and incident investigations.

SED recommends the following criteria for reporting of self-identified potential violations. While the recommended criteria for gas corporations and for electrical

corporations are similar in concept, their details differ because of the differing characteristics of the respective systems.

1. Gas Corporations

SED recommends that the citation program provide for the reporting by gas corporations of only self-identified potential violations that meet any of the following four criteria, were not already reported via other means (i.e., an Incident Report, Safety Related Condition Report, or Quarterly Summary Report), and had not come to SED's attention based on audits or data requests. For instance if a reportable incident occurs and is reported to SED, the gas corporation should not later report any related self-identified potential violations because SED will conduct an investigation and make that determination. The four recommended criteria are as follow:

1. GO 112-F violations that pose a significant safety threat to the public and/or utility staff, contractors, or subcontractors.
2. GO 112-F violations that caused a system wide impact or affected a large geographic region.
3. GO 112-F violations that resulted in pipeline failure or damage.
4. Any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's personnel, contractors, or subcontractors, regardless of the outcome.

2. Electrical Corporations

SED recommends that the citation program provide for the reporting by electrical corporations of only self-identified potential violations that meet any of the following four criteria, were not already reported via other means (e.g., an Incident Report or General Order 165, 166, or 174 Reports), and had not come to SED's attention based on audits or data requests. For instance if a reportable incident occurs and is reported to SED, the electrical corporation should not later report any self-identified potential violations related to that incident. The four recommended criteria are as follow:

1. The potential violation created a condition that posed a significant, immediate safety threat to the public and/or utility staff, contractors or sub-contractors.[44]
2. The potential violation caused or could have caused system-wide impacts to the electric grid, caused or could have caused unplanned power outages of over one hour to over 5 percent of an electrical corporation's customers or unplanned power outages of over 24 hours to over 100 electrical corporation customers, or caused or could have caused the electrical corporation to activate its emergency response program.
3. A potential violation that clearly could have directly caused damage to property of the utility or others estimated to exceed $50,000.[45]
4. An instance of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors or subcontractors, regardless of the outcome.

These self-identification and reporting provisions should in no way change or affect any existing reporting requirements. Each utility should continue to make records of all potential violations available for review by SED staff during regular audits or at any time upon the request of SED.

Additionally, self-identification and reporting of any potential violation or safety-related condition in no way should relieve a utility of its existing responsibilities to correct such violations and safety-related conditions.

D. Reporting Procedures for Self-identified Potential Violations

1. Reporting Process

Under GSRB's current process, gas corporations submit reports of self-identified violations to a shared email inbox at the Commission.[46] In the report, the gas corporation

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[44] The intention of this criterion is to include any self-identified potential violation that presents such an obvious, immediate, and significant threat to life or limb of the public or utility workers that industry best practice dictates that any responsible utility would correct the condition immediately or as soon as possible.

[45] Electrical incidents that actually caused damage over $50,000 are already reportable under Incident Reporting Requirements.

[46] ALJ274SelfReports@cpuc.ca.gov

explains the violation, when it occurred (if known), and when and how the gas corporation identified the violation; it also describes any planned or completed corrective actions.

In the future SED may develop a web-based methodology or other refinements to the process for reporting of gas and electric self-identified potential violations. However, at this time the current GSRB methodology and practice is adequate for ESRB. We do not believe that Commission guidance is needed in this respect.

2. Correction of Self-identified Potential Violations

SED recommends that reports of self-identified potential violations be required to include information about whether the potential violation has been corrected. If a potential violation has not been corrected before the report is submitted, the report should include a plan and schedule for correction. Reporting self-identified potential violations does not relieve the utility of its obligation to correct violations with any immediate safety hazard as soon as feasible.

3. Reporting Period

PG&E supports a 30-day self-reporting period for both electric and gas utilities, on the basis that the longer period would allow the utilities time to consult with SED and to develop a thoughtful and thorough solution to the problem. SoCalGas/SDG&E state that the current 10-day self-reporting period for gas is insufficient time for the utility to gather all the underlying facts and information necessary to analyze carefully the underlying violation and potential remedies, pointing out that a ten-calendar-day requirement might only be six business days, depending on when a violation was first identified. They add that a 30-day period would allow adequate time to conduct necessary investigations and avoid the need to piecemeal submittals to Staff.

Joint Parties recommend that the time period to self-report a violation after discovery be 30 days for both electric and gas utilities. Southwest Gas recommends a 30-day reporting requirement for what it terms safety-related violations, with non-safety-related violations disclosed to SED only on a pre-audit exceptions list.

ORA opposes increasing the current 10-day reporting period for gas utilities, although it does not contest the 30-day period for electric utilities.

The utilities suggest harmonizing the reporting time requirement for both gas and electric utilities, and argue that the current 10-day self- reporting period for gas is an insufficient amount of time for the utility to gather all the underlying facts and information necessary to carefully analyze the underlying violation and potential remedies and consult with SED to develop a thoughtful and thorough solution to the problem. As the report of self-identified violations should include a corrective action plan, SED agrees with this argument. SED agrees with the utilities' recommendation that both gas and electric utilities be given 30 days to report self-identified potential violations.

However, although SED is agreeable to a 30-day reporting period, SED encourages the electric and gas utilities to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with a subsequent official submission. SED emphasizes that a 30-day reporting period in no way relieves the utilities of their duty to implement corrective actions, and make their facilities safe as quickly as possible.

4. Notification to City and County Officials

Resolution ALJ-274 requires that gas corporations notify local authorities, including "the Chief Administrative Officer or similar authority in the city and county where a citation is issued" within 10 days of self-identifying a violation.[47] The electric citation program adopted in D.14-12-001 does not contain a similar requirement for self-identified electric violations.

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[47] Resolution ALJ-274, Appendix A, Section I.E, which is referenced by Section I.F of Appendix A.

SoCalGas/SDG&E, PG&E, and Southwest Gas recommend deleting the requirement in the gas citation program that they notify city and county officials of each self-identified violation, because they feel the requirement may undermine on-going efforts to improve the effectiveness of outreach to first responders. They assert that, by requiring over-reporting of information that is not particularly useful or of interest to local jurisdictions, the Commission runs the risk of those jurisdictions "tuning out" and ignoring future correspondences that may be of greater interest and importance.

Because SED recommends that the reporting procedures for self-identified potential violations encompass only the most serious potential violations, the quantity of reports should be reduced from the current levels for gas corporations. Further, it is in the public interest for local authorities to be made aware of high-risk potential violations, so that they may coordinate with the utilities to prepare for potential emergencies if necessary. In light of the serious nature of the potential violations that would be reported, SED recommends continuation of the requirement in Resolution ALJ-274 that gas corporations notify city and county officials, and extension of this requirement to electrical corporations.

E. Consideration in the Citation Process of Utility Reports of Self-identified Potential Violations

The Joint Parties recommend that self-reporting be encouraged with avoided citations or eliminated/reduced penalties. They ask the Commission to adopt guidelines for Staff to follow in deciding whether to issue a citation or to eliminate or reduce penalty amounts in connection with self-reported violations.

SoCalGas/SDG&E recommend that Staff be required to take into account efforts by the utility to self-report potential violations and also instances when there is no harm resulting from a violation or nonconformance, in deciding whether to cite such violations and in determining the amount of the penalty. They assert that this will provide an incentive to utilities to report and for the utilities and Staff to work together to develop "lessons learned" and best practices and that, "if utilities face penalties when self-

reporting violations without regard to their efforts to be forthcoming about identified nonconformances, employees will be discouraged from self-reporting."

Southwest Gas recommends that factors such as self-identification and events where no injury or damage result should be considered when determining to issue a citation or the amount of the penalty if a citation is issued.

SED recommends that, because the circumstances might vary widely from instance to instance, SED should retain the flexibility to determine on a case-by-case basis how to assess the importance and weight to be given to the fact that the utility has self-identified and reported a potential violation. While self-identification and reporting of a potential violation may appropriately be considered as a mitigating factor in specific instances, a utility should not be shielded from a citation and penalty by such an action. Self-identified and reported potential violations (provided SED subsequently determines these to be actual violations) should remain subject to citations and monetary fines, at the discretion of SED management, based on consideration of the totality of circumstances related to the violation.

SED recommends that the Phase II decision affirm that, for both gas and electric violations, Staff shall consider whether a utility has timely self-identified, reported, and corrected the violations in deciding whether to issue a citation and, if so, in determining the penalty amount. If a utility believes that a citation has been issued inappropriately, or that an assessed fine is disproportionate to the violation, it would have the option of appealing the citation to the Commission.

F. Other Recommendations Regarding Self-identified Potential Violations

Southwest Gas recommends that there be a two-year statute of limitations on issuing a citation based on a self-reported violation, on the basis that this would be fair because witnesses leave the company and memories fade, and the statute of limitations would provide closure finality. SoCalGas/SDG&E agree with this recommendation. SED disagrees with imposing any time limitations on issuing a citation based on a self-identified potential violation. In Section 6.1 of D.14-12-001, the Commission decided

against any statute of limitations for citations in general. SED sees no reason the policy for self-identified potential violations should be different.

CUE recommends that the Commission consider having self-identified potential violations submitted to a neutral third party for independent evaluation. SED disagrees with this recommendation. Authority and responsibility for issuing citations for violations of Commission regulations, and setting penalty amounts, rests with Commission Staff alone. SED must not delegate this authority in any manner. Additionally, submission to a third party would present difficult confidentiality problems as some information submitted by utilities to the Commission may be submitted under confidentiality restrictions. CUE has failed to provide a convincing rationale why its recommendation should be considered.

CUE recommends examining reporting programs of other entities. SED has investigated the self-identification and reporting programs of several entities, including FERC, NERC, and FAA, and believes that SED's recommendations contained in this report represent the best policies for reporting of self-identified potential violations by electrical and gas corporations and for SED's consideration of such reports in the citation process.

APPENDIX C

SUMMARY OF THE PARTIES' OPENING AND REPLY COMMENTS TO THE PHASE II SCOPING MEMO DATED OCTOBER 1, 2015

APPENDIX C

Summary of the Parties' Comments and Reply Comments on the Phase 2 Scoping Memo filed on November 2, 2015 and December 2, 2015 respectively

Coalition of California Utility Employees (CUE)

CUE recommends that the Commission "develop a broader safety enforcement program for gas and electric corporations." (CUE Opening Comments at 1.) CUE states that the citation program must "incentivize self-reporting so that the utilities are more willing to come forward with violations." (Id. at 3.)

CUE recommends that the Commission should examine other successful regulatory safety enforcement approaches, such as the Federal Aviation Administration (FAA), which uses anonymous "aggregate, protected data from industry and government voluntary reporting programs, to proactively find safety issues, identify safety enhancements and measure the effectiveness of solutions." (Id.) CUE recommends that the Commission consider using a neutral third party, like the FAA uses the National Aeronautics and Space Administration, to evaluate confidential safety reports.

Energy Producers and Users Coalition (EPUC)

EPUC responds specifically to question 17 of the Scoping Memo, as to whether any other improvements or refinements should be made to the gas and electric safety citation program. EPUC's comments are limited to the electric safety citation program. Specifically, EPUC recommends that the electric safety citation program should be clarified to ensure that the Commission can actively monitor and investigate reliability failures that could result in safety incidents, arguing that these clarifications support the legislative intent of Senate Bill (SB) 291. According to EPUC, reliability failures may provide evidence of a violation of existing General Orders (GOs), decisions, regulations and codes, which violations would be subject to penalty. EPUC recommends that the Commission should also consider as additional grounds for enforcement violations of utility tariffs and industry standards. EPUC recommends that the Commission expressly require an investigation of any reliability outage resulting in damage to persons or property or repeated outages on the same circuit, and that the

Commission also investigate any unplanned outages impacting essential use customers, as identified in the Commission's Priority System for Rotating Outages arising from supply shortages.

Certain Investor Owned Utilities (Joint Parties), including PacifiCorp, Southern California Edison Company, Bear Valley Electric Service and Liberty Utilities (CalPeco Electric) LLC

The Joint Parties state that the citation programs do not adequately define when non-conformances with specific, existing legal and regulatory requirements will be considered by the Commission to be violations, and when and whether such violations will be actionable or ripe for a citation. The Joint Parties recommend that citations only be issued for non-conformances with an immediate safety impact. As an example, these parties cite to GO 95, Rule 18A which has three levels of corrective action. The Joint Parties recommend that citations are only appropriate at the most severe level (Priority 1), where conditions pose an immediate safety and/or reliability risk and must be corrected immediately. The Joint Parties also recommend that no citations issue for all non-conformances without an immediate safety impact that have been identified by the utility and scheduled for corrective action in the ordinary course of business. The Joint Parties recommend workshops on this issue in order to establish objective standards for implementing the requirement under § 1702.5(a)(1)[48] that the "gravity of the violation be considered" in determining whether to issue a citation.

The Joint Parties also recommend that, as a general rule, no citation should issue when the utility complies with applicable remedial requirements or cures a known non-conformance within a reasonable period of time after the utility became aware of the violation. According to the Joint Parties, the exception would be cases where the utility either knows or should have known of the violation and after acquiring either actual or constructive knowledge of the violation, the utility fails to cure it within a reasonable period. The Joint Parties state this is the enforcement standard which the Commission previously adopted in D.04-04-065. Again, the Joint Parties call for workshops on this issue.

[48] Statutory references are to the California Public Utilities Code unless otherwise specified.

The Joint Parties also recommend that citations not be issued to utilities for violations caused by Joint Users, such as communications corporations or third parties over which the Commission has jurisdiction, and over whom the subject utilities do not hold any enforcement authority. The Joint Parties also recommend that, similar to the gas safety citation program, the electric safety citation program be limited to non-conformances with specified GOs, decisions, laws and regulations, and not specific GOs and "related applicable decisions, codes, or regulations." (Joint Parties' Opening Comments at 6.) The Joint Parties reason that utilities need a clearly defined universe of requirements for which the electric safety citation program applies, so they can focus their ratepayer dollars on projects that maximize safety impacts.

The Joint Parties recommend that Staff have the discretion to issue a penalty for the first day and each subsequent day of each violation in an amount below the maximum amount set forth in § 2017, subject to a pre-determined tiered approach and an overall administrative cap. The Joint Parties recommend this pre-determined tiered approach be developed in workshops, where penalty severity levels should include a specific penalty range within the overall statutory range of $500 to $50,000 per day/per violation, and the specific range for each severity level be pre-established based on risk. The Joint Parties also recommend that in addition to an administrative cap on the amount of penalties that could be issued for a single violation or related series of violations, a cumulative annual cap on penalties may be appropriate. The Joint Parties recommend that the mechanisms in place should avoid unjustly excessive penalties.

In response to Question 3 in the Scoping Memo, which asks whether the listed factors should continue to be considered in determining penalty amounts, the Joint Parties recommend that, within the framework of tiered, risk-based pre-established penalty levels, Staff should exercise discretion in determining penalty amounts, subject to (a) the considerations of §§ 2014.5 and 1702.5(a)(1), (b) any other aggravating or mitigating factors developed in workshops and (c) the self-reporting guidelines described in the Joint Parties' comments below. The Joint Parties also recommend that, if there is a cure period or remedial action for any violation, that a citation not issue unless the utility fails to comply with the remedial requirements in the requisite period or the violation has caused injury or property damage. If the Commission does not adopt this recommendation, the Joint Parties recommend that daily penalties should not accrue in the above

instance, so long as the utility has scheduled the condition for remediation consistent with the existing requirements.
The Joint Parties urge the Commission to adopt an overall administrative limit consistent with their overall approach outlined above, following workshops. According to the Joint Parties, an "administrative schedule with pre-determined penalty ranges based on the severity of the offense, coupled with a pre-determined administrative limit, allows the Commission to meet its safety objectives while enabling utilities doing business in California to manage their risk." (Id. at 8.) The Joint Parties point out that the Commission can still initiate an Order Instituting Investigation (OII) when penalties in excess of the administrative limit are warranted.

The Joint Parties recommend that the Commission consider the Pipeline and Hazardous Material Safety Administration (PHMSA) limit of $2 million for any related series of violations as a model to the extent it includes a limit that caps penalties for any series of violations, including ongoing violations. The Joint Parties argue that "such a limit is critical to enable investor owned utilities to manage the risk associated with the implementation of the safety citation program." (Id. at 9.) The Joint Parties again advocate for workshops to set the amounts. The Joint Parties, also note that previously in this proceeding, Edison suggested an administrative limit of $250,000 for any related series of violations to apply to the large investor owned utilities. The Joint Parties recommend that the Commission adopt a separate, lower two-tier limit of $25,000 for the first set of related violations to occur in any annual period, and $50,000 for each set of related violations occurring thereafter for the smaller investor owned utilities which have smaller California service territories and a significantly smaller number of customer accounts.

The Joint Parties recommend that the time period to self-report a violation after discovery be harmonized so that both the electric and gas safety citation programs have the 30-day requirement. The Joint Parties state that the self-reporting language is vague and needs clarification, and that the expectation for self-reporting is not clear. The Joint Parties do not believe that the Commission wants to receive self-reports for every potential non-conformance with GO 95 identified during regular inspection and maintenance programs. These parties also note there are several regulatory requirements for self-reporting, such as the utilities' annual GO 165 reports and incident reports. They state that categories of violations that are subject to the self-reporting requirements should be identified by a tiered, risk-based approach that focuses on conditions that have an

immediate safety impact. The Joint Parties state that self-reporting should be encouraged with avoided citations or eliminated/reduced penalties. These parties agree that Staff should have the discretion whether to issue a citation or to eliminate or reduce penalty amounts in connection with self-reported violations, but urge the Commission to adopt guidelines that incorporate stakeholder input. According to these parties, Staff should follow such guidelines in exercising such discretion.

The Joint Parties recommend that all-party workshops be held to address, among other things, establishment of guidelines for self-reporting requirements and the content of any self-report, and to assist Staff in determining the extent to which a self-report will affect a determination of whether to issue a citation and the amount of the associated penalty.
The Joint Parties encourage reconciling provisions in the gas safety and electric safety citation programs. The Joint Parties recommend that the gas safety citation program be modified to reflect the provision in the electric safety citation program that certain persons in the Commission's Safety and Enforcement Division (SED) management be aware of the need for a citation before it issues. The Joint Parties do not object to adopting a provision for the electric safety citation program that is in the gas program; namely, that Staff publish each citation on the Commission's website no later than 10 days following service of the citation and publish any notice of appeal on the website within 10 days of submission.

The Joint Parties recommend that the provision in the gas safety citation program requiring notification of local officials is unnecessary, given the above publication requirement, and that this notification provision should be eliminated. Alternatively, the Joint Parties recommend that if the Commission maintains this notification provision for gas, the provision should not apply to the electric safety citation program. Similarly, the Joint Parties recommend that the provision requiring the gas utilities to report the citations to other state or federal authorities is unnecessary because the gas and electric utilities are subject to existing regulations, including federal reporting requirements. The Joint Parties recommend that this provision be eliminated from the gas safety citation program and not be extended to the electric safety citation program.

The Joint Parties recommend that the gas safety citation program be modified so that the response time to a citation is 30 days (instead of the current 10 days), similar to the electric safety citation program. The Joint Parties further

recommend that the burden of proof under the gas safety citation program be modified to reflect the burden of proof articulated in the electric safety citation program. Generally, if not specifically mentioned, the Joint Parties recommend that if the Commission chooses to harmonize both programs, the Commission should use the electric safety citation program as a model since that program was established through the rulemaking process, rather than by resolution.

The Joint Parties believe that audits of the utilities every three years to monitor whether penalties are in fact paid by shareholders (as recommended by ORA) are unnecessary as these audits occur in the general rate cases. The Joint Parties recommends that the Commission conduct an independent review of the success of the citation programs during the initial years of implementation and improve the programs on the basis of such review and stakeholder input.

The Joint Parties reiterate their request for workshops on many of the above issues and attach proposed workshop guidelines to their comments.
In their reply comments the Joint Parties state they agree with the comments of the other utilities, specifically PG&E, SoCalGas/SDG&E, and CUE. The Joint Parties state that EPUC's comments to include reliability issues are beyond the scope of this proceeding. Finally, the Joint Parties reiterate that workshops are critical to the success of the safety citation programs.

Office of Ratepayer Advocates (ORA)

In its opening comments, ORA does not advocate major changes from the existing gas and electric safety citation programs. For instance, ORA does not recommend that additional factors other than those set forth in the programs be considered. This is so, according to ORA, because one of the risks of including excessive additional factors in the determination of a citation is the confusion that could arise from overlapping factors.

ORA states that there is sufficient flexibility for Staff under the current penalty parameters, and that these parameters are appropriate and should be continued. ORA states that the parties to a citation can settle for amounts less than the citation's initial issue amount, and ultimately, that the Commission retains the discretion to adjust penalties. ORA recommends that the administrative limit on the amount of penalties that may be set by Commission Staff (the statutory maximum) remain unchanged. In response to the question as to whether the Commission should adopt an administrative limit similar to that used by

PHMSA of $2 million for any series of violations[49], ORA states that this limit is inappropriate because the entire regulation in question covers a broad range of conduct and penalties, and it is inappropriate to select one figure from one subpart of the regulation as the new Commission administrative limit. ORA also states that the $2 million figure may be insufficient in years to come when taking into account inflation, and that use of the statutory mandate in § 2107 is appropriate as it links to the public utilities regulation experience in California.

ORA does not recommend any new self-reporting requirements in its opening comments, but reserves the right to reply to other proposals in its reply. In its reply comments, ORA states that no commenting party provides adequate justification for delaying self-reporting in gas cases, and the value of having the same timeframe across both programs is not outweighed by delaying the reporting for gas corporations.

ORA recommends that adding the gas safety citation program's requirements of publication of citation material and Notices of Appeal on the Commission's website, and requiring notification of local authorities, would be a beneficial addition to the electric safety citation program. In terms of the time to respond to a citation, ORA does not think that the 10-day response time to citations in the gas safety citation program should be changed to the 30-day response time in the electric safety citation program, because it would delay the resolution of the gas citations. However, ORA does not oppose shortening the response period for the electric safety citation program to 10 days, again, because it would expedite the resolution of citations.

ORA continues to support the burden of proof in the gas safety citation program and incorporates its prior comments on this point. (See ORA reply comments dated July 7, 2014 at 8-9, and ORA's opening comments on the proposed interim decision on the Electric Safety Citation Program dated November 18, 2014 at 1-3.)

ORA again raises the recommendation that the Commission audit the utilities to ensure that any citation penalties are in fact paid through ratepayer and not shareholder funds. Notwithstanding the fact that this issue may be reviewed in

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[49] *See* Code of Federal Regulations (CFR) §190.223.

general rate cases, ORA states that those general rate cases are not the exclusive means by which to investigate and confirm proper allocation of penalty amount to shareholders. Alternatively, ORA recommends that citation payments could be accompanied by a signed verification by a utility officer at the vice president level or higher confirming that all remitted payment is funded by shareholders and will not be recovered in rates or otherwise directly or indirectly from ratepayers. ORA also proposes ministerial correction comments regarding its name change.

In its reply comments, ORA objects to modification of the citation programs to limit the ability of Staff to issue citations. For example, concerning PG&E's recommendation that Staff should not issue citations where the violation has not resulted in injury, property damage, or interruption in service, the violation is scheduled to be addressed in a timely manner consistent with GO 95, Rule 18A and the utility's auditable maintenance program that complies with GO 95, ORA states this proposal misreads Rule 18A. In any event, ORA agrees with the Commission's assessment in the Phase I Decision that it will not reinterpret each provision of each applicable law and GO in the Phase I Decision. ORA argues that ultimately, compliance with Rule 18 A does not immunize a utility from violations of other GOs or statutes. ORA also recommends that the citation programs not be limited to situations where injury has occurred. ORA notes that this limitation would omit a "near miss" scenario, as well as record keeping violations, and may have the adverse effect of limiting these more minor violations to an OII, because Staff could not address them by citation. (ORA Reply Comments at 3.) ORA opposes PG&E's recommended $200,000 as an administrative limit for citations, arguing that in some cases (such as a recent fine in a Carmel house explosion against PG&E of $10.85 million), the $200,000 limit would have been an insufficient deterrent. ORA also recommends that the Commission retain the discretion to determine which Staff may issue a citation instead of limiting this authority to a Deputy Director level or higher. ORA also disagrees with certain parties' requests to relitigate issues of statute of limitations and the culpability of third parties. ORA cites to its prior reply comments in this proceeding where ORA states, among other things, that a one-year statute of limitations could improperly immunize utilities with longstanding violations, such as those that came to light after the Malibu fires. Regarding the culpability of third parties, ORA also cites to its prior comments that state that if, for example, a clearance violation between an electric line and communications line might in some ways, be the fault of the communications company, that would not relieve the electric company of its responsibility to maintain adequate

clearance. Similarly, according to ORA, pole overloading can be caused by multiple parties, including the electric utility. ORA also recommends that the Commission remain flexible in exercising its discretion to potentially modify its citation programs.

Pacific Gas and Electric Company (PG&E)

PG&E responds to the specific questions in the Scoping Memo. But before PG&E does so, it recommends that workshops be held in this Phase, as PG&E states workshops are critical to providing enhanced guidance to Commission Staff and clarity to the utilities and the public. Particularly, PG&E recommends workshops to: (a) explore other safety citation and safety enforcement models, such as those by the airline industry and by the North American Electric Reliability Corporation (NERC), as well as other Commission citation programs; (b) clarify what types of non-compliances or violations are appropriate for a citation and how to apply the factors in §1702.5(a)(1) and § 2014.5; (c) develop a tiered penalty/fine structure based on the various aggravating and mitigating factors, including guidance to Commission Staff on how to take those factors into consideration; and (d) develop clear guidelines for what the Commission wants the utilities to self-report.

PG&E recommends that Staff consider factors additional to those set forth in §1702.5(a)(1) and § 2014.5 in whether to issue a citation. PG&E recommends that citations not issue where: (1) the violation or nonconformance has not resulted in any injury, property damage or caused any interruption in service; (2) the violation or nonconformance is scheduled to be addressed in a timely manner consistent with GO 95, Rule 18A and the utility's auditable maintenance program; and (3) the utility's auditable maintenance program complies with GO 95, Rule 18A. PG&E recommends that the Commission hold workshops to develop additional guidance for both Staff and regulated utilities on how to apply the various factors in §1702.5(a)(1) and § 2014.5. In particular, PG&E recommends that the Commission explore how to assess the gravity of a violation, perhaps using a risk-tiered approach along the lines of SED's September 20, 1023 Gas Safety Citation Program, Standard Operating Procedure Version 1.0 (Gas SOP).

PG&E recommends that both the electric and gas safety citation programs be modified to permit Staff to assess penalties in an amount below the statutory maximum of $50,000 per day, but pursuant to Commission approved guidelines with tiered penalty levels developed through workshops. PG&E states the factors listed on pages 5-6 of the Scoping Memo and those listed in Section 6.2 of the Gas SOP are excellent factors to be considered, but both SED and the utilities would benefit from increased clarity and understanding as to how these factors should and will be applied. PG&E states that other successful safety enforcement and citation programs do not start with a maximum fine, citing to NERC's revamped risk-based collaborative approach (revamped from a "zero tolerance" approach). PG&E states that starting with the maximum fine creates a negative incentive that NERC revamped its program to avoid. PG&E states that the above considerations also apply to developing guidance in the amount of the penalty.

PG&E recommends an administrative limit per citation and per incident for a violation or related series of violations and that this limit should be consistent with other citation programs. PG&E supports workshops that could develop detailed criteria for different penalty ranges and different administrative limits, depending on the severity of the violations and various aggravating or mitigating factors. PG&E believes that an appropriate administrative limit could be analogous to the $200,000 limit in the propane gas citation program. PG&E states that, under the propane gas citation program statute and Commission resolution, Commission Staff is limited not to exceed a $200,000 fine for a single violation or related series of violations for propane. (See §§ 4456 and 4457, where the statue limits the penalty to $200,000 for a single violation or series of violations.) Thus, PG&E recommends an administrative limit in the range of $200,000 or below for a violation or a related series of violations, in the workshops as described above. PG&E also states that should the underlying facts warrant a more serious sanction, the Commission has the option to open an OII. Thus, PG&E does not agree that the administrative limit should be $2 million, similar to PHMSA. According to PG&E, the $2 million limit is the maximum administrative civil penalty for any related series of violations for the PHMSA, while here, the Commission retains the right to issue an OII with appropriate penalties.

PG&E states that the 30-day self-reporting period for the electric safety citation program, rather than the 10-day period for gas, is the more reasonable approach, as it allows the utilities time to consult with SED and to develop a thoughtful and thorough solution to the problem. PG&E states the current self-reporting process

for both programs is very unclear and inconsistent and it is difficult for the utilities to know what the Commission wants self-reported. For instance, PG&E states at the September 24, 2015 Safety En Banc, SED discussed the existing confusion around self-reporting and stated that gas utilities had very different approaches; some exclude violations found through internal Quality Assurance/Quality Control (QA/QC) procedures, and others report only violations that have an associated safety related condition. PG&E states that electric utilities face similar uncertainties.

PG&E recommends workshops to develop clear and transparent criteria for what types of violations and under what circumstances the Commission wants utilities to self-report, to provide additional guidance on the type of matters the Commission wants the utilities to self-report, and on how to factor self-reporting into the issuance or amounts of any potential citation.
PG&E recommends that the rule adopted in the electric safety citation program that Commission management at the Deputy Director level or higher needs to sign off on a citation apply to the gas program as well. PG&E recommends that both programs should be harmonized as to publishing citations on the Commission's website, but does not express an opinion on the timeframes to adopt. PG&E recommends that both programs be harmonized as to providing notice to local jurisdictions. PG&E supports notification to local authorities where an issue is localized, but states that some citations are not local in nature. PG&E does not recommend that notification of any other state or federal agencies be required, because other state or federal agencies with jurisdiction have their own reporting requirements and PG&E is unaware of any gap or program that requires the Commission to supplement such notification and reporting.

PG&E recommends that the gas safety citation program be modified to allow a gas corporation 30 days to respond to citations and provide compliance plans, similar to the timeframe in the electric safety citation program. PG&E states that the 10- day limit currently imposed by the gas safety citation program is too short to permit a detailed and thorough investigation. PG&E also notes that if there is an imminent safety issue, SED can and should direct the utility to take corrective action immediately. PG&E states this is a separate issue from the response period to a citation.

PG&E recommends that the burden of proof between the two programs be harmonized so that both programs apply the burden of proof adopted in the electric safety citation program.

In terms of other refinements, PG&E cites approvingly to the Gas SOP and recommends that, to simplify and to improve consistency, workshops already recommended include a discussion of which aspects of the Gas SOP should be modified or apply to the electric safety citation program. According to PG&E, "the workshops should also explore whether the criteria for gas citations shall have a similar provision to electric that citations should not be issued where a violation or nonconformance has not resulted in any injury, property damage or caused any interruption in service, and the violation or nonconformance was already scheduled to be addressed in a timely manner consistent with GO 112-F." (PG&E Opening Comments at 15.) PG&E does not cite where this provision exists in the electric safety citation program adopted in the Phase I Decision.

In summary, PG&E recommends workshops to address the following topics:

- Explore other safety citation and enforcement models, such as those by the airline industry and NERC, as well as other Commission citation programs, as suggested by the Independent Review Panel.
- Clarify which types of non-compliances or violations are appropriate for a citation and how to apply the various factors in §§ 1702.(a)(1) and 2104.5.
- Develop a tiered penalty/fine structure based on the various aggravating and mitigating factors, including guidance to Commission Staff on how to take those factors into consideration.
- Develop clear guidelines on what the Commission wants the utilities to self-report.

PG&E also recommends that the Commission schedule a workshop or other approach to review the safety citation programs after the first two years, which review would consider the efficacy of the programs and address any issues, problems or inconsistencies.

In its reply comments, PG&E reiterates the need for workshops and states that all commenting utilities all agreed with PG&E's recommendation for workshops. PG&E also states that it agrees with CUE of the need to develop a broader safety enforcement program and not merely a safety citation program. PG&E also

agrees with the Joint Parties and SoCalGas/SDG&E's recommendation that the Commission clarify that only violations or non-conformances that have an immediate safety impact be considered violations for which a citation may be issued. PG&E states this will provide an incentive for utilities to focus efforts on significant issues rather than minor ones. PG&E also agrees with the Joint Parties' recommendation that citations not be issued to an electric utility for violations caused by communications companies or third parties over whom the Commission has jurisdiction. PG&E does not agree with ORA that the fact that a utility can negotiate a fine lower than the statutory maximum of $50,000 per day after appealing a citation is a substitute for providing Staff the opportunity to issue a citation for less than $50,000 in the first instance. PG&E points out that the utility must first appeal the citation and settle, and then the Commission must approve the settlement. PG&E states that this process is inefficient and it would be simpler for Staff to exercise its discretion in a prudent manner in the first instance, subject to preapproved Commission guidelines. PG&E rebuts ORA's argument against an administrative limit, arguing that the $2 million limit for a series of related violations set forth in 49 CFR Part 190.223(a) is the largest of the various penalty amounts available to PHMSA under that code. Other maximum penalty amounts include $50,000 and $1,000 for other matters. PG&E argues that in this case, the Commission also has the option to pursue higher penalties in an OII. Finally, PG&E states that EPUC's reliability concerns are being addressed in another Commission proceeding.

Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E)

While the factors set forth in § § 2104.5 and 1702.5(a)(1), as well as the factors set forth in Decision (D).98-12-075, Appendix A at 188-190 guide Staff's consideration on whether to issue a citation, SoCalGas/SDG&E recommend that the gas and electric safety citation programs be limited to violations that pose a demonstrable and immediate threat to public safety. It is SoCalGas/SDG&E's opinion that the gravity of the violation and degree of culpability of the utility should be threshold factors in considering whether to issue a citation under these safety citation programs. SoCalGas/SDG&E recommend that Staff prioritize its consideration of factors to align with the risks to the public as follows:

- **The severity and gravity of the offense**
  - Degree of culpability of the utility
  - Violations that impact a community's health, safety, and environment
  - Economic harm to the victims
  - Unlawful benefits gained by the utility
  - Violations that created a hazardous condition and threatened physical harm to people, property or the environment
  - Harm to the integrity of the regulatory processes, including disregarding a statutory or Commission directive
  - The number of violations related to the offense
  - The number of people and consumers impacted
- **Conduct of the utility**
  - Voluntary reporting of the offense and history of reporting previous potential violations (level of transparency)
  - Prior history of violations
  - The good faith and actions taken to detect, correct, and prevent the violation
  - Actions taken to disclose the violation
  - The compliance culture of the utility
  - Plan to resolve any systemic conditions that led to the violations
- **Totality of the circumstances**
  - Establishing a fine that effectively deters further hazardous conduct
  - Consideration of the facts from above that mitigate or exacerbate the degree of wrongdoing
  - Evaluation of harm from the perspective of the public interest

SoCalGas/SDG&E also recommend that the Commission refine the gas and electric safety citation programs to distinguish between violations and nonconformances, stating that the Commission has regulations and decisions making this distinction, citing to GO 95, Rule 18 and 18A. These parties also cite D.12-01-032 at 14-15, where they state the Commission replaced the word "violation" with "nonconformance" to distinguish between safety-related violations and technical variances. SoCalGas/SDG&E support safety citation programs that afford utilities an opportunity to correct a variance without incurring a penalty.

SoCalGas/SDG&E recommend that the safety citation programs be modified to provide Staff with discretion to assess penalties on less than a daily basis and at less than the maximum statutory level. SoCalGas/SDG&E recommend that Staff weigh the factors listed above in determining the amount of the penalty, and state that this approach is consistent with § 1702.5(a)(1), which requires Staff to take into account "voluntary reporting of potential violations" and "voluntary removal or resolution efforts" taken by the utility in determining whether to assess a penalty, and § 2104.5, which requires the Commission to consider "the good faith of the person charged in attempting to achieve compliance, after notification of a violation" in determining the amount of penalty.

(SoCalGas/SDG&E Opening Comments at 5.) These utilities recommend a graduated enforcement approach outlined below and believe that Staff should explain how the penalty amount is determined, including the use of the prioritization factors, so that the utility can better understand why that particular penalty is being imposed.

SoCalGas/SDG&E recommend that Staff consider the factors listed in §2.1.1 of the ruling, as prioritized by SoCalGas/SDG&E above, in determining penalty amounts. SDG&E/SoCalGas again recommend that penalties not be imposed for nonconformances or technical variances, absent a pattern of behavior by the utility indicating a disregard of the rules. These utilities state that it is impossible for utilities to be perfect in all compliance matters at all times. For example, these utilities state that changes that rely on new technology designed to make the system safer and more reliable necessarily require integration at both the technological level, as well as throughout the workforce. During this process, technical nonconformances may arise, which should diminish over time as the transition becomes complete. These utilities argue they should not be fined for these nonconformances, provided the utilities explain the cause of the nonconformances and a plan to remedy them.

SoCalGas/SDG&E recommend that the Commission set an administrative limit different from the maximum penalty set forth in § 2107 for citations issued by Staff under the gas and electric safety citation programs. According to SoCalGas/SDG&E, this administrative limit should be discussed and agreed upon in workshops. SoCalGas/SDG&E state the Commission has acknowledged that it is impossible for a utility to keep its distribution system in perfect compliance with safety GOs, and that there may be multiple violations on a

utility's system at any given time. SoCalGas/SDG&E cite to a prior Commission approach that incorporated notice and an opportunity to correct violations before issuing penalties, citing D.04-04-065 (a Safety OII dealing with only with Southern California Edison Company). These utilities state that the Independent Review Panel's report issued in response to the San Bruno explosion recognized this graduated enforcement scheme, and recommended that Staff have citation authority to provide for a more graduated system of enforcement, with an OII reserved for the most severe violation. SoCalGas/SDG&E recommend a graduated enforcement process modeled after PHMSA enforcement regulations and containing the following elements: (1) the issuance of a warning letter prior to citation; (2) an opportunity to correct the violation before a citation and penalty; and (3) a meaningful opportunity to be heard.

With respect to the issue of self-identified potential violations, SoCalGas/SDG&E recommend that for consistency, the gas and electric self-reporting timeframes be the same, and that the Commission adopt the electric 30-day period for both programs. SoCalGas/SDG&E state that the 10-day self- reporting period for gas is insufficient time for the utility to gather all the underlying facts and information necessary to carefully analyze the underlying violation and potential remedies. In reply comments, SoCalGas/SDG&E add that 10 calendar days might include only six business days, and that a 30-day self-reporting period would provide adequate investigation time and avoid the need for piecemeal submittals to Staff.

SoCalGas/SDG&E recommend that workshops be held to establish the process for reporting different types of self-identified compliance items. These utilities state this will allow for greater consistency between the gas and electric reporting processes, as well as among all utilities. In reply comments, they add that workshops would "enable parties to work with the Commission and with each other to reach informal consensus" on self-reporting of potential violations and other important topics. (SoCalGas/SDG&E Reply Comments at 2.)

SoCalGas/SDG&E recommend that the Commission focus on using this reporting process for high-risk items where a hazardous condition or incident occurs. Their view is that routine nonconformances should be reported to the Safety and Enforcement Division (SED) but not necessarily through a formal process that also requires reporting information to city and county officials.

SoCalGas/SDG&E state that the self-reporting requirements of both programs should be aligned with established reporting requirements to be effective but not overly burdensome. These parties give as an example various items already being reported through the Commission's and PHMSA's incident reporting process, through the GO 165 reporting process and pre-audit reports.

SoCalGas/SDG&E also recommend that there should be exceptions from the self-reporting requirement. They state that, if a violation falls under one of the following categories, it should not have to be self-reported: (1) the violation is on the utility's auditable maintenance plan or pre-audit exception list, (2) the violation is on the utility's GO 165 report, or (3) the violation is reported pursuant to an incident report.

SoCalGas/SDG&E recommend that Staff be required to take into account efforts by the utility to self-report potential violations and also instances when there is no harm resulting from a violation or nonconformance, in deciding whether to cite such violations and in determining the amount of the penalty. According to these utilities, this will provide an incentive to utilities to report and for the utilities and Staff to work together to develop "lessons learned" and best practices. (SoCalGas/SDG&E Opening Comments at 11.) SoCalGas/SDG&E assert that, if utilities face penalties when self-reporting violations without regard to their efforts to be forthcoming about identified nonconformances, employees will be discouraged from self-reporting.
In reply comments, SoCalGas/SDG&E agree with Southwest Gas' recommendation that there should be a two-year statute of limitations on issuing a citation based on a self-reported violation.

SoCalGas/SDG&E recommend that the gas safety citation program conform to the electric safety citation program so that management at the Deputy Director level or higher be required to sign off on the issuance of a citation. SoCalGas/SDG&E recommend that both programs be harmonized with respect to publication of citations and notices of appeal. (Currently the gas program requires citations be published on the Commission's website within 10 days of being served, and gas utilities must also publish any Notice of Appeal on the Commission's website within 10 days of submission. The electric safety citation program is silent on this matter.)

SoCalGas/SDG&E recommend that the requirement (which currently exists only in the gas program) to notify local authorities within 10 days after a utility is

served with a citation be eliminated. This requirement does not exist in the electric program, and SoCalGas/SDG&E state this type of reporting is not particularly useful or of interest to local jurisdictions. If the requirement is maintained, these utilities recommend that it only apply to citations of "serious violations" with high risks to avoid burdening local jurisdictions. SoCalGas/SDG&E Opening Comments at 13.) Similarly, these utilities recommend that it is unnecessary to require the utility to provide notification of a citation to other state or federal agencies, as such information will be listed on the Commission's website. These utilities state that they will be in contact with other state or federal agencies as appropriate.

SoCalGas/recommend that the time to respond to a citation be 30-days for both programs (thus increasing the 10-day time period currently in place for the gas program.) These utilities also recommend that the Commission harmonize the burden of proof in both programs to make it consistent with that stated in the electric safety citation program.

Because the electric safety citation program applies to facilities used by more than one entity, in situations where a violation is caused by a third party, SDG&E urges the Commission to recognize the electric utility's degree of culpability when considering issuing a citation or assessing a penalty.
These utilities encourage the Commission to revisit the gas and electric safety citation programs in 18 to 24 months after a final decision in Phase II, to confirm the programs are functioning as intended and to address any issues that may arise. These parties also request workshops on the following topics: administrative limits, self-reporting of potential violations and technical nonconformances that have no safety component.

Southwest Gas Corporation (Southwest Gas)

In addition to the factors set forth in § 2104.5 and § 1702.5(a)(1), Southwest Gas recommends that, in deciding whether to issue a citation, Staff also consider actions taken to prevent a violation including, but not limited to, quality assurance/Quality control measures, existing pipeline safety programs in place, and company standards that exceed minimum code requirements. Southwest Gas also recommends that when determining the appropriate penalty in light of the size of the business, the Commission (for a multi-jurisdictional utility such as Southwest Gas) only consider the size of the business in California and not the total size of the corporate business in all states in which the utility operates.

In terms of penalties, Southwest Gas states that the Commission should give Staff the flexibility to determine the penalty at less than the § 2107 maximum and should allow for the assessment of penalties on less than a daily basis. Southwest Gas argues that the failure to consider assessment of penalties at less than the statutory maximum of $50,000 per day conflicts with § 2104.5 which requires evaluation of certain mitigating factors when determining the amount of a penalty, and § 2107, which contemplates a penalty range.

Southwest Gas recommends that the Commission place an administrative limit on Staff so that they can issue citations no greater than $500,000 for any related series of violations. Southwest Gas states that this limit is consistent with § 1702.5(a)(3), and allows the Commission to address higher penalties in an OII. Southwest Gas states that the $500,000 limit would equal the highest non-daily limit afforded Staff for any related series of violations in other citation programs and would amount to 25% of the $2 million limit which PHMSA employs, discussed in the ruling and below. Southwest Gas believes that $500,000 is sufficient enough to ensure that utilities do not have incentives to make economic choices that cause or unduly risk violations because the limit is both substantial and the fines are not recovered through ratepayers.

Southwest Gas recommends that the limit on any penalty issued under Resolution ALJ-274 for any related series of violations should be capped at $2 million for several reasons. According to Southwest Gas, this requirement would promote consistent assessment of penalties for most of the violations, use of the $2 million limit is consistent with the PHMSA's intent for penalties associated with noncompliance, and 49 CFR § 190.223 which established the $2 million penalty was recently revised in 2013, and thus is a fairly recent amount.

Southwest Gas recommends that the self-reporting notification requirements for both programs be 30 days, thus increasing the reporting period for gas utilities from 10 days to 30 days.

Southwest Gas states there should be two layers of self-reporting: safety-related and non-safety-related violations. A safety-related violation would be defined as a non-compliance with GO 112-E (currently GO 112-F) and/or 49 CFR Parts 190, 191, 192, 193, and 199 which results in an injury to people or property damage in excess of $50,000. These violations would have a 30- day reporting requirement. Non-safety-related violations would be reported in advance of the next

subsequent SED audit of the location (inspection unit) where the non-safety-related violation occurred and would be disclosed in writing to SED on a pre-audit exceptions list.

Southwest Gas also asserts that factors such as self-identification and events where no injury or damage result should be considered when determining to issue a citation or the amount of the penalty if a citation is issued.

Southwest Gas recommends that there be a statute of limitations on issuing a citation based on a self-reported violation, and that no citation should be issued more than two years after a violation is self-reported. The utility asserts this is fair because witnesses leave the company and memories fade, and the statute of limitations would provide closure and finality.

Southwest Gas recommends that Resolution ALJ-274 be modified to require a Deputy Director level or higher to sign off on a citation before it is issued, similar to the requirement in the electric safety citation program.

Southwest Gas states that the process currently used in Resolution ALJ-274 (Commission publication of the citation within ten days of service of a citation and publishing any Notice of Appeal within ten days of submission) provides adequate notice to all parties and need not be changed. Southwest Gas recommends that Resolution ALJ-274 be modified to eliminate the requirement to notify the local authorities, because this notice, according to Southwest Gas, tends to be misunderstood by local authorities because these authorities do not understand why they are being noticed about an issue. Southwest Gas states that publication of the citations on the Commission's website provides timely notice to the public of citations issued. Furthermore, Southwest Gas does not recommend any further notice of other state or federal agencies be required, as the gas industry already has certain notice requirements associated with certain incidents, and additional notice requirements to other state or federal agencies could cause confusion.

Southwest Gas recommends that the gas and electric safety citation programs be made consistent to allow a response to a citation and the compliance plan requirement, if any, to be made within 30 days instead of the current 10 days. Southwest Gas also recommends that the burden of proof set forth in Resolution ALJ-274 be revised so that it is consistent with that set forth in the electric safety citation program.

Finally, Southwest Gas recommends that the Commission should provide guidance on future modifications to both programs as future modifications will allow for remediation of unexpected issues which may need to be addressed.

END OF APPENDIX C

APPENDIX D

SUMMARY OF THE PARTIES' OPENING AND REPLY COMMENTS TO THE PHASE II AMENDED SCOPING MEMO DATED JUNE 15, 2016

APPENDIX D

Summary of the Parties' Comments and Reply Comments on the June 1, 2016 SED Report entitled "Report of the Safety and Enforcement Division on Self-Identified Potential Violations" attached to the June 15, 2016 Assigned Commissioner's Amended Scoping Memo and Ruling for Phase II. Opening comments were filed on July 15, 2016 and reply comments were filed on August 5, 2016.

Certain Investor Owned Utilities (Joint Parties), including PacifiCorp, Southern California Edison Company, Bear Valley Electric Service and Liberty Utilities (CalPeco Electric) LLC

The Joint Parties recommend further refinements of the second and removal of the third criteria of potential violations subject to self-reporting under the electric safety citation program. As to the second criterion that would require the utilities to self-report outages that meet certain conditions, the Joint Parties state that this criterion is problematic because it does not define "unplanned outages" and the phrase "could have caused" is ambiguous. For this reason, the Joint Parties recommend that Criterion 2 be removed or refined and clarified in workshops. The Joint Parties also recommend that Criterion 3, which would require utilities to report a "potential violation that clearly could have directly caused damage to property of the utility or others estimated to exceed $50,000", is unnecessary because property damage reporting is already addressed by the requirement contained in Resolution E-4184. Furthermore, the Joint Parties state that the phrase "could have directly caused" is ambiguous and without clarification, would likely require utilities to engage in guesswork.

The Joint Parties also recommend that the criteria for self reporting should be modified to remove, or clarify through workshops, the term "potential violations," because the utilities would have to engage in speculation and such reporting is also complicated because potential violations may be caused by third parties (such as communications infrastructure providers) and not by the utilities.

Like the other commenting utilities, the Joint Parties recommend the Commission adopt a voluntary approach to self-reporting requirements, agreeing with the rationale set forth in the SED Report in this regard. If the Commission determines that the self-reporting is mandatory, then the Joint Parties call for workshops to clarify and refine two of SED's criteria, to avoid

utility over-reporting. The Joint Parties recommend that the Commission obtain feedback from local authorities and vet the requirements in workshops before requiring potential violations to be reported to local jurisdictions.

The Joint Parties also recommend that the utilities should not have to self-report potential violations where the utility knows or should have known of the potential violation but has a reasonable plan to cure the violation, citing to D.04-04-065. The Joint Parties also recommend the Commission clarify that compliance with established timeframes to complete corrective action in GO 95, Rule 18A satisfies a utility's obligation to take corrective action within a reasonable period of time. The Joint Parties again recommend workshops to address all of these issues.

Pacific Gas and Electric Company (PG&E)

PG&E states it agrees with many of the SED Report's recommendations including the recommendation that both gas and electric utilities be given thirty days to report self-identified potential violations; that there is no value in self-reporting potential violations already reported on a timely basis under other reporting requirements; and that the self-reporting criteria should focus on potential violations with possible repercussions to safety and system reliability. PG&E, like the other commenting utilities, agrees with the SED Report's rationale that the self-reporting requirement be voluntary, as opposed to mandatory.

PG&E states that the proposed criteria for when a utility should self-report are an excellent start, but they are ambiguous and overly broad in several respects. As to the gas criteria, PGE supports the first two. PG&E states that the third criterion, to report GO 112-F violations that resulted in pipeline failure or damage, is unclear, as PG&E does not know what SED means by "damage or failure"; for example, whether this criterion includes a minor leak or corrosion. As to the fourth criterion, PG&E believes that instances of fraud, sabotage, falsification of records or other instances of deception, regardless of outcome, also lack any significance threshold.

As to the self-reporting criteria for electrical corporations, PG&E believes three criteria are overbroad. As to the first criterion, PG&E states it may include potential violations which may be covered by Priority Level 1 under GO 95, Rule 18 A, and is unclear if these potential violations should be handled by GO 95 or

should also be self-reported. PG&E also believes the phrases "caused or could have caused" in SED's recommended second criterion and "could have caused" in SED's third criterion also renders these two criteria overbroad.

PG&E also states that not all self-reports require notification to local authorities. According to PG&E, the utility already actively communicates and works closely with the cities and counties in its service territory on various safety issues. Based upon this experience, PG&E believes that a number of cities and counties are not interested in most self-reports of potential violations, whereas they would be interested in knowing about emergencies or ongoing significant safety issues. PG&E recommends that if the Commission is hesitant to eliminate the mandatory notification requirement to local authorities, that the Commission delegate authority to SED to direct utilities on a case-by-case basis whether to notify local authorities, consistent with the desires of that local authority. Finally, PG&E states that workshops would help refine the self-reporting criteria and could also develop guidelines for how SED takes voluntary self-reporting into consideration. Specifically, PG&E recommends workshops would be useful in developing a set of guidelines or principles for Commission approval regarding when Staff should and should not issue a citation notwithstanding a utility's self-report.

In its reply comments, PG&E states that the language in the proposed electric criteria for self-reporting potential violations which concerns unplanned power outages should be modified to only include such outages which occur for an extended duration, because otherwise such outages could potentially result in a large volume of self-reports. PG&E also requests that the same rule be modified to eliminate reports concerning activation of a utility's emergency response system, because minor damage may trigger this reporting requirement and result in many reports. Also, PG&E states that GO 166 already requires the utility to notify the Commission of a major outage or other newsworthy event in a timely manner, so this reporting requirement is unnecessary. PG&E also agrees with the Joint Parties' and SoCalGas/SDG&E's arguments regarding notification of local authorities. PG&E also agrees with the Joint Parties that the Commission should clarify how to align the citation program with the utilities' obligation to take corrective action within a "reasonable period" as required by GO 95, Rule 18A. Finally, PGE agrees with other parties' opening comments that self-reporting potential violations should be voluntary, and the need for workshops if such self-reporting is mandatory.

Southern California Gas Company/San Diego Gas & Electric Company (SoCalGas/SDG&E)

SoCalGas/SDG&E agree with the SED Report's recommendation for a 30-day reporting period in both the gas and electric safety citation programs for self-identified potential violations. Like the other commenting utilities, SoCalGas/SDG&E agree with the SED Report's rationale for voluntary, as opposed to mandatory reporting of self-identified potential violations.

With respect to self-reporting criteria, SoCalGas/SDG&E state that the SED Report's fourth criterion for self-reporting "any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's [an electrical corporation's] personnel, contractors, or subcontractors, regardless of outcome,"[50] does not appear to be in the scope of the statute. SoCalGas/SDG&E argue that the utilities can only change what they can control and intentional acts committed by contractors and their subcontractors are "something that happens outside the legal control of the utilities." (SoCalGas/SDG&E Opening Comments on Self-Reporting at 3.) Furthermore, SoCalGas/SDG&E argue that there is no explanation of how intentional acts of fraud, sabotage or intentional falsification of records can impact safety. SoCalGas/SDG&E also state that the second criterion regarding system-wide impacts to the electric grid which caused or could have caused certain unplanned outages is open to too much subjectivity and arbitrary judgment.

SoCalGas/SDG&E therefore recommend that a possible means for addressing their concerns of the SED Report's proposed criteria is to merge criteria 1 through 3 into one criterion as follows:

"1. The potential violation created a condition that posed a significant, immediate safety threat to the public and/or utility staff, contractors or sub-contractors. **A condition that posed a 'significant, immediate safety threat' includes ones that caused any of the following:**

[50] Citing SED Report at 21-22.

a. **system-wide impacts to the electric grid;**
b. **unplanned power outages of over one hour to over 5 percent of an electrical corporation's customers or unplanned power outages of over 24 hours to over 100 electrical corporation customers;**
c. **the electrical corporation to activate its emergency response program; or**
d. **directly caused damage to property of the utility or others estimated to exceed $50,000.**" (SoCalGas/SDG&E Opening Comments on Self-Reporting at 5, bold face in the original to distinguish from the text of SED's proposed criteria and the additions by SoCalGas/SDG&E.)

SoCalGas/SDG&E also state that the term "condition" in the proposal above should be further defined or described in contextual text, and recommend looking to GO 95, Rule 18 for clarity and consistency.

SoCalGas/SDG&E also recommend that the Commission reconsider the requirement that gas utilities notify city and county officials of any self-identified potential violations and should not adopt such a requirement for the electric safety citation program. SoCalGas/SDG&E state they have been under this reporting requirement for gas from the Commission's adoption of Resolution ALJ-274, and that city and county officials are less interested in receiving notifications of every self-reported potential violation and are more interested in knowing about significant incidents while they are occurring in real time. Therefore, SoCalGas/SDG&E recommend that such self-reporting be limited to actual violations for which the utility has incurred a fine or penalty. SDG&E also states that the Commission should only adopt such requirements for the electric safety citation program after the Commission obtains direct feedback from city and county officials as to what, if any, reporting would be most relevant and useful to them.

SoCalGas/SDG&E see the need for workshops only to the extent the Commission pursues an electric safety citation program that makes reporting of potential violations mandatory instead of voluntary.

In their reply comments, SoCalGas/SDG&E support PG&E's position on SED's proposed third criterion for gas corporations. SoCalGas/SDG&E also request clarification to SED's language characterizing what is already reported, stating

that because the Incident Reports and Safety-Related Condition Reports are reports, and might not necessarily be determined to be violations, that the proposed rule should so indicate. SoCalGas/SDG&E also agree with Edison that Communication Infrastructure Providers are the appropriate parties to report their own potential violations which Communication Infrastructure Providers cause.

Southwest Gas Corporation (Southwest Gas)

Southwest Gas concurs with much of the SED Report, such as the recommendations that a "self-identified potential violation" used by the SED Report, rather than the term "self-identified violation" used by Resolution ALJ-274, is the appropriate term to use going forward; that Resolution ALJ-274's self-reporting requirement should only apply to potential violations "that pose an immediate danger to the public"[51], and not to every potential violation, and should not be reported to SED if they are already reported to SED through other means; with the Report's four recommended criteria of reportable self-identified potential violations under the gas safety citation program; and with the SED Report's recommended reporting process and timeline to report and correct self-identified potential violations.

Southwest Gas proposes changes to the SED Report's notification requirement to city and county officials. First, Southwest Gas recommends that the notification should be expanded beyond City Managers or Chief Administrative Officers to include fire departments and first responders. Southwest Gas also recommends that any notice should be afforded the flexibility for the utility and the city and county to agree on separate notice terms. Specifically, if the city and county require broader notice of potential violations of more than the four criteria set forth in the SED Report, Southwest Gas recommends that the utility should provide such broader notice but not inform the Commission. If the agreement calls for less notification, then Southwest Gas proposes that the Commission should accept a copy of the agreement between the utility and the city and county as compliant for those potential violations that are addressed in the agreement as not requiring notice to the city and county.

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[51] Citing SED Report at 14.

Southwest Gas, like the other commenting utilities, recommends that the reporting of self-identified potential violations should be considered voluntary, agreeing with the rationale set forth in the SED Report on this proposal. Finally, Southwest Gas disagrees with the SED Report's recommendation not to impose any time limitations on issuing a citation for a self-reported potential violation. Southwest Gas recommends a two-year statute of limitations be imposed on these potential violations because issuance of a citation beyond two years creates prejudice insofar as witnesses may become less available or have diminished recollection of an incident. If the Commission desires a consistent application of a statute of limitations to all violations, Southwest Gas recommends an alternative proposal that no citations be issued more than two years after SED discovers or is otherwise notified of a potential violation.

(**END OF APPENDIX D)**