

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 23, 2008

Draft Resolution W-4732
Agenda ID #8200

TO: ALL WATER AND SEWER UTILITIES

This is the draft Resolution of the Division of Water and Audits (Division). This draft Resolution will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution. An original and two copies of the comments, with a certificate of service, should be submitted to:

James Boothe
Project Manager
Division of Water and Audits
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Any comments on the draft Resolution must be received by the Division by January 12, 2009. Those submitting comments must serve a copy of their comments on 1) the service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Division of Water and Audits, on the same date that the comments are submitted to the Division.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution, a table of authorities and an appendix setting forth the proposed findings and ordering paragraphs. Replies to Comments are due on January 19, 2009.

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Comments shall focus on factual, legal or technical errors in the draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Late submitted comments will not be considered.

/s/RAMI S. KAHLON

RAMI S. KAHLON

Director

Division of Water and Audits

Enclosures: Draft Resolution W-4732

Certificate of Service

Service List

DRAFT

WATER/RSK/FLC/JB5/jlj

AGENDA ITEM #8200

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Division of Water and Audits
Water and Sewer Advisory Branch**

**Resolution No. W-4732
January 29, 2009**

RESOLUTION

**(RES. W-4732), CITATIONS TO ENFORCE COMPLIANCE
WITH THE COMMISSION'S ORDERS AND THE PUBLIC
UTILITIES CODE; PROCEDURES FOR APPEAL OF
CITATIONS.**

SUMMARY

This resolution delegates authority to the Director of the Division of Water and Audits (DWA) for enforcing compliance with the Commission's orders and the Public Utilities Code for water and sewer utilities. Delegating authority to DWA will allow the Commission to promptly respond to threats to protect the public interest arising from violations of the Commission's Orders and the Public Utilities Code. This program is designed to utilize resources efficiently and enhance overall regulation in California. The Director will issue citations only after written notice of non-compliance or violation has been given to the water or sewer utility and the water or sewer utility has failed to correct the non-compliance or violation in a timely manner.

BACKGROUND

Section 701 of the Public Utilities Code authorizes the Commission to "supervise and regulate every public utility in the State ... and do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." More specifically, Section 702 of the Public Utilities Code mandates

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in

the matters specified in this part, or any other matter in anyway relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

In turn, under Section 2101 of the Public Utilities Code, the Commission is directed "to see that the provisions of the constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed" Pursuant to this authority, and under this direction, the Commission had adopted, and at various times amended General Orders 103 (*Rules Governing Water Service Including Minimum Standards for Design and Construction*) and 96-B (*Rules Governing the Filing and Posting of Schedules*).

California law, including Public Utilities Code Section 7, authorizes the Commission to delegate certain powers to its staff, including the investigation of facts preliminary to agency action, and the assessment of specific penalties for certain violations. Over the last several years the Commission has used this authority in numerous areas, including household good movers, charter party carriers, passenger stage corporations, maintenance and operation of power plants, slamming by telecommunications providers, and compliance with resource adequacy requirements for electric power. This proposed resolution is consistent with these other approved citation programs.

CITATIONS

Before issuing a citation, DWA will notify the water or sewer utility in writing of a specific violation that is subject to fine and will provide at least 30 days for the water or sewer utility to achieve compliance. This proposed resolution authorizes the Director of DWA to issue a citation to any water or sewer utility for a violation of the Public Utilities Code or the Commission's orders. This proposed resolution also authorizes the Director of DWA to assess a fine for each offense up to the maximum allowed pursuant to Public Utilities Code Section 2107. A water or sewer utility that has been issued a citation may accept the fine imposed or contest it through a process of appeal. The following procedures govern the issuance and appeal of these citations.

1. *Contents.* The citation served upon the water or sewer utility (Respondent) by the DWA will include:
 - (a) A specification of each alleged violation;
 - (b) A statement of the facts upon which each alleged violation is based;
 - (c) A statement that the Respondent may either pay the amount of the fine set forth in the citation or appeal the citation, as set forth herein, and that the Respondent will forfeit the right to appeal the citation by failing to do either of these things within the allowable time;
 - (d) An explanation of how to file an appeal, including the Respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter; and
 - (e) A form for Notice of Appeal.
2. *Response.* Within 30 days after the date of service of the citation, Respondent shall remit payment of the full amount of the fine to DWA, agree with DWA on conditions for payment, or serve a Notice of Appeal upon DWA. Before the expiration of this deadline, DWA, an Administrative Law Judge ("ALJ"), or the Commission may extend the time for response upon a showing of good cause.
3. *Payment of fine; default.* If Respondent pays the full amount of the fine within the time allowed, the citation shall become final. Failure to pay the full amount of the fine or to file a Notice of Appeal will place Respondent in default, and the citation shall become final. A late payment is subject to a penalty of 10 percent.
4. *Appeal.*
 - (a) The Chief Administrative Law Judge shall designate an ALJ to hear an appeal of any citation.

- (b) An appeal shall be brought by serving a Notice of Appeal upon DWA, and the Respondent shall indicate the grounds for the appeal in the notice. DWA will promptly advise the Chief Administrative Law Judge upon receipt of a timely Notice of Appeal.
- (c) Upon advice from DWA that a citation has been appealed, the Chief Administrative Law Judge will promptly forward the matter to the designated ALJ, who will set the matter for hearing on the first Citation Calendar not less than 10 days after advice of the appeal is received from DWA. The ALJ may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- (d) Any appeal of a citation shall be heard in the Commission's courtroom in San Francisco or Los Angeles on a regularly scheduled day. Appeals shall be calendared accordingly, except that a particular matter may be re-calendared at the direction of the designated ALJ.
- (e) The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's usual procedures.
- (f) The Respondent may be represented at the hearing by an attorney or other representative, but such representation shall be at the Respondent's sole expense.
- (g) At the hearing, DWA will bear the burden of proof in establishing a violation. DWA will also bear the burden of producing evidence and, therefore, shall open and close. The ALJ may, in his or her discretion, alter the order of presentation. Formal rules of evidence do not apply, and all relevant and reliable evidence may be received at the discretion of the ALJ.
- (h) Ordinarily, the appeal will be submitted at the close of the hearing. Upon a showing of good cause, at the discretion of the ALJ, the record may be kept open for a reasonable period to permit a party to submit additional evidence or argument.

- (i) Within 60 days after the appeal is submitted, the ALJ will issue a proposed resolution resolving the appeal. The proposed resolution will be placed on the first available agenda, consistent with the Commission's applicable rules.
- (j) From the date that DWA receives a Notice of Appeal to and including the date when the final order is issued, neither the Respondent nor the staff of DWA, or agent or other person on behalf of the Respondent or staff of DWA, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or ALJ, except as expressly permitted under these procedures. Inquiries strictly limited to procedural matters are permitted.

NOTICE AND COMMENT

This draft resolution was mailed to all water and sewer service utilities and other interested parties in accordance with Section 311 of the Public Utilities Code. Comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

IT IS ORDERED THAT the following procedures shall govern the issuance and appeal of citations for violation of statutes, orders or rules relating to water and sewer utilities:

1. Authority is delegated to the Director of Division of Water and Audits to issue citations to enforce compliance by water and sewer utilities with the Commission's rules, regulations, and decisions.

2. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on January 29, 2009, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

SERVICE LIST
DRAFT RESOLUTION W-4732

Service list is attached.

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