

APPENDIX A

Pilot Program Citation Appeal and General Order I56 Appellate Rules (Applicable on January 1, 2015)

Appendix A

Pilot Program Citation Appeal and General Order I56 Appellate Rules

1. Applicability

The purpose of this Pilot Program is to establish Appellate Rules (Rules) so that all Citation Appeals and General Order 156 Appeals can be filed with the Commission's Docket Office. These Rules are effective on January 1, 2015. For Citation Appeals, these Rules are to be read together with the Rules set forth in each statute, General Order, and Commission Resolution authorizing a Citation Program. For General Order 156 Appeals, these Rules are to be read together with General Order 156. These Rules are also applicable to future citation programs the Commission may establish.

Appendix A to the resolution adopting this pilot program sets forth the Pilot Program Citation Appeal and General Order 156 Appellate Rules which are applicable on January 1, 2015. Appendix B to the resolution adopting this pilot program sets forth how these Rules interact with an individual Citation Programs or General Order 156.

The Administrative Law Judge Division will monitor the success of this pilot program adopted today as an experimental procedural reform. Depending upon the initial results of these new procedures, and any additional needs that surface, the Commission may consider an expanded program or related rules changes in the future.

2. Definitions

"Appellant" means the cited entity initiating the appeal.

"Citation Appeal" means an appeal from a citation or revocation of a license issued pursuant to a Citation Program.

"Citation Program" means the individual applicable statute, General Order or Resolution authorizing the issuance of a citation or authorizing the revocation of a license.

"Clearinghouse" means the Commission-supervised program that conducts WMBE verifications and maintains a database of WMDVBES [women, minority and disabled veteran business] for the use of utilities and the Commission as defined by General Order 156 § 1.3.19.

“General Order 156 Appeal” means an appeal from a decision of the Clearinghouse made pursuant to General Order 156.

3. Filing the Notice of Appeal

Appellant must file a Notice of Appeal with the Commission’s Docket Office for a Citation Appeal by the time specified in the Citation Program or, for a General Order 156 Appeal, by the date set forth in General Order 156.

4. Extension of Time to File the Notice of Appeal

Unless authorized by a Citation Program, there shall be no extension of time to file a Notice of Appeal from a citation issued pursuant to a Citation Program or from a Clearinghouse Decision issued pursuant to GO 156. Any authorization of an extension of time to file a Notice of Appeal must be made by the Director (or designee) of the Commission Division which issued the citation, in writing, subject to the provisions of the Citation Program, and must be attached to the Notice of Appeal.

5. Minimum Content of the Notice of Appeal

The Notice of Appeal for a Citation Appeal must at a minimum state: (a) the date of the citation that is appealed; and (b) the rationale for the appeal as specifically instructed in the Citation Program. If a Citation Program is silent on instructions for setting forth the rationale for the appeal, the Notice of Appeal must state the grounds for the appeal. The Notice of Appeal must also set forth additional items, if any, as required by the Citation Program. Pursuant to Rule 4, if the Citation Program authorizes appellant to request an extension of time from a Division Director to file a Notice of Appeal, any extension received must be in writing and attached to the Notice of Appeal.

The Notice of Appeal for a General Order 156 Appeal must set forth (a) the date of the Clearinghouse Decision that is appealed; and (b) the grounds for the appeal as required by General Order 156 § 7.3.1.

6. Minimum Service Requirements for the Notice of Appeal

The Notice of Appeal for a Citation Appeal must be served, at a minimum, on the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov), on the Director of the Safety and Enforcement Division, and on the Director of the Commission Division issuing the citation if the Safety and Enforcement Division does not issue the citation, on the same day that the Notice of Appeal is filed. The appellant must file a proof of service to this

effect at the same time appellant files the Notice of Appeal. The Notice of Appeal must also be served on other entities if required by the Citation Program.

The Notice of Appeal of a Clearinghouse Decision pursuant to General Order 156 must at a minimum be served on the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) and on the Clearinghouse that issued the decision on the same day that the Notice of Appeal is filed. The appellant must file a proof of service to this effect at the same time appellant files the Notice of Appeal.

If the General Order 156 Appeal involves the Clearinghouse's determination of another entity's women, minority and disabled veteran business (WMDVBE) status, the entity whose WMDVBE status is challenged must also be served with the Notice of Appeal and may be a party to the appeal. The appellant must file a proof of service to this effect at the same time appellant files the Notice of Appeal.

7. Compliance Filing

For a Citation Appeal, 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 Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) and 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.

For a General Order 156 Appeal, no later than seven business days after the Notice of Appeal is filed, the Clearinghouse must file with the Commission's Docket Office a Compliance Filing which includes a complete copy of the decision, including all attachments, which is appealed. The Compliance Filing must be served on the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) and appellant on the same day the Compliance Filing is filed. The Clearinghouse must provide a proof of service to this effect at the same time it files the Compliance Filing.

8. Service List and Parties to an Appeal

The Commission will establish the service list for a Citation Appeal or a General Order 156 Appeal and maintain that service list on the appeal's Docket Card.

For a Citation Appeal, the parties to the appeal will be appellant and Staff which issued the citation which is appealed. Other interested persons may be placed on the information only section of the service list.

For a General Order 156 Appeal, the parties to the appeal will be appellant and the Clearinghouse, except in the case of an appeal of a Clearinghouse determination of another entity's women, minority and disabled veteran business (WMDVB) status. In this case, the parties to the appeal will be appellant, the Clearinghouse, and may be the entity whose WMDVB status is challenged. Other interested persons may be placed on the information only section of the service list.

9. Exchange of Information

No later than three business days prior to the scheduled hearing on a Citation Appeal or General Order 156 Appeal, the parties must exchange all information they intend to introduce into the record at the hearing which is not included in the citation or Clearinghouse Decision and the Compliance Filing already filed with the Commission pursuant to Rule 7 of these Rules. The information exchange is not to be filed with the Commission or served upon the Administrative Law Judge or other decisionmakers.

10. Commencement of Hearing

A Citation Appeal hearing or a General Order 156 Appeal hearing must commence by the time specified in the Citation Program or, for a General Order 156 appeal, by the time set forth in General Order 156.

If the Citation Program is silent on when a hearing must commence, the hearing must occur promptly, with the parties notified at least 10 days in advance of the hearing. In this instance, the Administrative Law Judge may for good cause or the parties' agreement grant a reasonable continuance of the hearing.

11. Burden of Proof

The burden of proof in a Citation Appeal or a General Order 156 Appeal is governed by the language in the Citation Program or General Order 156. For Citation Programs which are silent as to which party has the burden of proof, the following rule applies: Staff has the burden to prove a *prima facie* case supporting its issuance of the citation for the alleged violation; the burden then shifts to appellant to demonstrate that a violation did not occur and the citation should not issue or that the amount of the penalty is inappropriate.

12. Hearing Venue

The venue for a Citation Appeal or a General Order 156 Appeal hearing will be as set forth in each Citation Program or in General Order 156. To the extent a Citation Program is silent on venue, the venue for the Citation Appeal hearing will be in either in San Francisco or Los Angeles, California, at the Commission's discretion.

13. Party Representative/Evidence

For all Citation Appeals and General Order 156 Appeals, appellant may be represented at the hearing by an attorney or other representative, but such representation will be at the appellant's sole expense. Rule 13.6 (Evidence) of the Commission's Rules of Practice and Procedure is applicable.

14. Obtaining a Transcript

For all Citation Appeals and General Order 156 Appeals, appellant may order a transcript of the hearing, and pay the cost of the transcript in accordance with the Commission's usual procedures.

15. Obtaining an Interpreter

For all Citation Appeals and General Order 156 Appeals, upon a good faith showing of language difficulty, the appellant will be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned Administrative Law Judge and the Commission's Public Advisor's Office not less than five business days prior to the date of the hearing.

16. Submission of the Record

The submission date in a Citation Appeal or a General Order 156 appeal is governed by the time specified in the Citation Program or General Order 156.

If a Citation Program is silent on the submission date for the appeal, the following rule applies: Ordinarily, the appeal will be submitted at the close of the hearing. In the Administrative Law Judge's discretion, the record may be kept open for a reasonable period to permit a party to submit additional evidence or argument.

17. Issuance Date of Draft Resolution

The Administrative Law Judge will issue a draft resolution resolving the Citation Appeal or General Order 156 appeal expeditiously, and no later than 60 days after the

Citation Appeal or General Order 156 appeal is submitted. The draft resolution will be placed on the first available agenda consistent with the Commission's applicable rules.

18. Issuance of Draft Resolution for Comment

A resolution addressing a Citation Appeal or a General Order 156 Appeal is subject to the public comment period as set forth in Pub. Util. Code § 311(g) and Article 14 of the Commission's Rules of Practice and Procedure (Rules). The draft resolution will be placed on the first available agenda, consistent with the Commission's applicable rules. Any person may file comments on the draft resolution pursuant to Rule 14.5 of the Commission's Rules.

19. Ex Parte Communications

For all Citation Appeals and General Order 156 Appeals, ex parte communications as defined by Rule 8.1(c) of the Commission's Rules of Practice and Procedure, with a decisionmaker, including any Commissioner, Commissioner advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge, are prohibited from the date the Citation or Clearinghouse Decision issued pursuant to General Order 156 is issued, through the date a final order is issued on the Citation Appeal or General Order 156 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.

20. Rehearing

A resolution resolving a Citation Appeal or a General Order 156 appeal approved by the Commission is subject to rehearing pursuant to Pub. Util. Code § 1731 and to judicial review pursuant to Pub. Util. Code § 1756.

21. Service of these Rules and Resolution Adopting Them With All Citations and Clearinghouse Decisions Concerning General Order 156

Commission Staff must serve a copy of these Rules and the Resolution adopting this pilot program with all citations issued.

The Clearinghouse must serve a copy of these Rules and the Resolution adopting this pilot program with all Clearinghouse Decisions concerning General Order 156.

22. Applicable Procedure when Pilot Program Appellate Rules Are Silent

For a Citation Appeal, in the event these pilot program appellate rules and the applicable General Order or Resolution authorizing issuance of the citation which is appealed are silent on a procedural issue, the Commission's Rules of Practice and Procedure are applicable.

For a General Order 156 appeal, in the event these pilot program appellate rules and General Order 156 are silent on a procedural issue, the Commission's Rules of Practice and Procedure are applicable.

(END OF APPENDIX A)