

Decision 14-12-001 December 4, 2014

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)

DECISION ON AN ELECTRIC SAFETY CITATION PROGRAM

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DECISION ON AN ELECTRIC SAFETY CITATION PROGRAM

Summary

This decision adopts an electric safety citation program to further implementation of the Commission's natural gas and electric safety enforcement programs. The electric safety citation program applies to electrical corporations owning and operating electrical supply facilities. This electric safety citation program also satisfies the requirement in Senate Bill 291 (Stats. 2013, Ch. 601) signed by the Governor on October 5, 2013, to develop and implement a safety enforcement program for electrical corporations by January 1, 2015. The Commission previously adopted a natural gas safety citation program in Resolution ALJ-274, on December 1, 2011. This proceeding remains open to, among other things, provide a forum for making improvements and refinements to the Commission's natural gas and electric safety citation programs.

1. Background

The Commission issued this rulemaking to further the implementation of its natural gas and electric safety enforcement programs. The Commission designated as this rulemaking's first priority the implementation of a new electric safety citation program, in compliance with Senate Bill (SB) 291¹ discussed below. The Order Instituting Rulemaking (OIR) attached a proposed

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

electric safety citation program as Attachment B and sought the parties' comments on this proposal.²

The following parties filed timely opening comments: Coalition of California Utility Employees (CUE), Energy Producers and Users Coalition, Office of Ratepayer Advocates (ORA), PacificCorp, d/b/a Pacific Power (PacifiCorp), Bear Valley Electric Service, a division of Golden State Water Company, and Liberty Utilities LLC, (collectively CASMU), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison). The following parties filed timely reply comments: ORA, PG&E, SDG&E, and Edison. These comments are summarized in Appendix B and are discussed more fully in the decision below.

2. Authority for the Electric Safety Citation Program

2.1. General Jurisdiction

The Commission has broad regulatory authority, as set forth in Article XII of the California Constitution and Pub. Util. Code § 701 et seq.³ Section 701 authorizes the Commission to “supervise and regulate every public utility in the State ... and do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”

² Opening comments on the proposed electric safety citation program were due on June 20, 2014 and replies were due on July 7, 2014. After the August 13, 2014 prehearing conference, the assigned Commissioner issued his Commissioner’s Scoping Memo and Ruling (Scoping Memo) on September 26, 2014, which determined that no further hearings were necessary prior to issuing the proposed decision on the electric safety citation program and determined that such proposed decision would issue by October 31, 2014.

³ All statutory citations are to the California Public Utilities Code unless otherwise stated.

As mandated in § 702:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

Pursuant to § 451 each public utility in California must:

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

Indeed, the Commission has stated that “[t]he duty to furnish and maintain safe equipment and facilities is paramount for all California public utilities.” (Decision (D.) 11-06-017.)

Pursuant to § 2101, the Commission is directed to:

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

Pursuant to § 768⁴ and other relevant authority, the Commission has adopted, and at various times amended the following General Orders (GOs) and their precursors concerning the utilities’ electrical system including:

⁴ In relevant part, § 768 provides that the Commission “may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. The commission may establish uniform or other standards of construction or equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand.”

- **GO 95, Rules for Overhead Electric Line Construction.** This GO was first adopted in 1941, in D.34884, and prescribes the rules governing the design, construction and maintenance of overhead electrical supply facilities;
- **GO 128, Rules for Construction of Underground Electric Supply and Communication Systems.** This GO was first adopted in 1967, in D.73195 and D.73462, and prescribes the rules governing the design, construction, and maintenance of underground and pad-mounted electrical supply and communication facilities;
- **GO 165, Inspection Cycles for Electric Distribution Facilities.** This GO was first adopted in 1997, in D.97-03-070, and prescribes the rules governing inspection cycles for electrical supply facilities;
- **GO 166, Standards for Operation, Reliability and Safety During Emergencies and Disasters.** This GO was first adopted in 1998, in D.98-07-097, and sets standards for operation during emergencies; and
- **GO 174, Rules for Electric Utility Substations.** This GO was first adopted in 2012, in D.12-10-029, and prescribes the rules governing the design, construction and maintenance of electric substations.

Additionally, the Commission enforces the Public Utilities Code, and has enacted various decisions and resolutions related to electrical supply facilities.

Section 7 allows the Commission to delegate certain tasks to Commission staff. The Commission may lawfully delegate to its staff the performance of certain functions, including the investigation of facts preliminary to agency action and the assessment of specific penalties for certain types of violations. (D.09-05-020 at 8.) The primary purpose of an effective enforcement program should be to deter misbehavior or illegal conduct by utilities and other entities subject to Commission jurisdiction, thereby ensuring that both the employees of the corporation and the public it serves are properly protected from the inherent

hazards of providing their services. To increase the effectiveness of the Commission's safety program, it is reasonable to provide staff with an additional enforcement procedure to ensure that corporations owning or operating electrical supply facilities adhere to their statutory and service obligations.⁵

2.2. The San Bruno Explosion and Subsequent Reports

On September 23, 2010, the Commission established an Independent Review Panel (Panel) to gather and review facts related to the causes of the September 9, 2010 San Bruno explosion, and to make recommendations for the safe management of natural gas transmission lines going forward. Among other things, the Panel recommended that the Commission "should seek to align its ... enforcement authority with that of the Office of the State Fire Marshal's (OSFM) by providing ... staff with additional enforcement tools modeled on those of the OSFM and the best from other states."⁶ The Panel noted that the Pipeline Safety Division of the OSFM had the authority to initiate and conclude enforcement actions and to assess civil penalties, without resorting to the formal procedures that were then the only option at the Commission.

On August 30, 2011, the National Transportation Safety Board (NTSB) adopted its Pipeline Accident Report on the San Bruno explosion, which also

⁵ The Commission's jurisdiction to create citation programs is well-established. The Commission has adopted similar citation programs in several other areas. See the Commission Resolutions delineated in Resolution ALJ-299 including but not limited to Resolution ALJ-187 (appeal procedures for household goods carriers, charter party carriers, and passenger stage corporations), Resolution E-4195 (resource adequacy), Resolution E-4257 (renewables portfolio standard filing requirements), ROSB-002 (transportation/railroad), Resolution UEB-002 (telecommunications), Resolution USRB-001 (propane), Resolution ALJ-274 (gas), Resolution W-4799 (water and sewer), and Resolution E-4550 (failure to comply with Permits to Construct or Certificates of Public Convenience and Necessity issued pursuant to the California Environmental Quality Act (CEQA)).

⁶ Independent Review Panel Report, Recommendation 6.7.3.1 at 104.

made recommendations regarding the Commission's enforcement authority and procedures. Similar to the Independent Review Panel Report, the NTSB recommended that the Governor of the State of California expand the Commission's Pipeline Safety Division staff enforcement authority and ensure that Commission staff has the authority to issue fines and penalties.

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

In response to the recommendations in these reports, the Commission adopted Resolution ALJ-274 on December 1, 2011, instituting a gas safety citation program. Resolution ALJ-274 delegated specified authority to the Commission's Safety and Enforcement Division (SED)⁷ or other staff designated by the Executive Director to issue citations to all gas corporations to enforce compliance with the Commission's GO 112-E, including federal regulations that the GO incorporates by reference.⁸

Under Resolution ALJ-274, staff is delegated the authority to require immediate correction of violations and to levy fines for violations in the amounts prescribed by § 2107. Each violation is a separate and distinct offense, and each day of an ongoing violation may be cited as a separate and distinct offense,

⁷ SED was then known as the Consumer Protection and Safety Division (CPSD).

⁸ GO 112-E contains specific rules governing the design, construction, testing, maintenance, and operation of utility gas gathering, transmission, and distribution pipeline systems and supplements compliance with the federal standards set forth in the Code of Federal Regulations Title 49, Parts 190, 191, 192, 193, and 199.

consistent with § 2108. Resolution ALJ-274 also requires the gas corporations to notify local authorities when a citation is issued in their jurisdiction, and sets forth the process for appealing a citation.

A proposed electric safety citation program (designated as Draft Resolution ESRB-4), which was scheduled to appear on the agenda of the February 5, 2014 Commission meeting, would have instituted a similar citation program for electrical supply facilities, but was withdrawn by staff in anticipation of a possible rulemaking implementing SB 291.

2.3. SB 291

As stated above, SB 291 requires the Commission to develop and implement a safety enforcement program for gas corporations and electrical corporations by July 1, 2014, and January 1, 2015, respectively:

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

In the OIR, the Commission stated that because SB 291 sets a relatively short deadline for the Commission to implement an electric safety citation program, the first priority of this proceeding is to develop and implement that program, consistent with the requirements of SB 291, which includes various requirements, including that the citation program: 1) consider voluntary utility

reporting and resolution of violations, as well as the gravity of the violation and the prior history of violations; 2) provide reasonable notice of violations; 3) include an administrative limit on the amount of monetary penalties; 4) have an appeals process, and 5) conclude safety enforcement actions within a reasonable amount of time.⁹

In the OIR, the Commission stated that in developing and implementing the electric safety citation program (and in improving and refining both the electric and gas safety citation programs), the Commission intended for these programs to be similar in structure and process. Although acknowledging differences between the gas and electric systems and their operations, potential hazards, and regulatory regimes, the Commission stated that making safety citation programs similar simplifies the practical implementation and application of those programs and should be helpful to both regulated entities and the Commission's safety enforcement staff. Accordingly, the Commission concluded that the initial electric safety citation program should be generally similar to the existing gas safety citation program, and 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.¹⁰

⁹ The OIR found that because the existing ALJ-274 gas safety citation program complies with SB 291, the Commission does not need to address development and implementation of an SB 291-compliant gas safety citation program. (OIR at 8.) This decision does not address in any way the Commission's gas safety citation program.

¹⁰ The Commission stated that improvements derived from its experience with the gas safety citation program can be incorporated, along with elements unique to the electric system, but the overall structure and processes should not be radically different from those applicable to gas. (OIR at 9.)

The Commission further found that, consistent with its goal of meeting the SB 291 statutory deadline, and consistent with its previously approved gas safety citation program, staff will have the same scope of delegated authority for implementing and applying the electric safety citation program as with the gas safety citation program. After the issuance of the interim decision on the electric safety citation program, the Commission stated that issues relating to the improvement and refinement of the gas and electric safety citation programs and related issues may be addressed.

2.4. Further Need for an Electric Safety Citation Program

As the draft electric safety citation program stated, the potentially hazardous nature of electrical supply facilities is not speculative. There have been a number of incidents in the past decade involving electrical supply facility failures, including:

- The Southern California Witch, Rice, and Guejito Fires of 2007 respectively allegedly caused by two overhead electrical conductors that came into contact with each other; by a tree limb falling on two electrical conductors, knocking them to the ground; and by communication lashing wires contacting overhead electrical conductors (Investigation (I.) 08-11-006 and I.08-11-007);
- The Malibu Canyon Fire of 2007 allegedly caused by overloaded electrical supply facilities which collapsed during windy conditions (I.09-01-018);
- The January 2011 Acacia Avenue incident in San Bernardino County in which a broken overhead electrical conductor allegedly resulted in three fatalities; and the fall 2011 windstorm in Southern California (I.14-03-004);
- The 2011 North Fork incident near Yosemite in which two overhead electrical conductors came into contact allegedly because of inadequate clearance, injuring a utility employee who was working on them;

- The 2012 Templeton incident near the Central Coast in which a utility compliance inspector was injured allegedly when he made contact with energized facilities;
- The 2012 Ridgecrest incident in Southern California in which a bird allegedly caused an overhead conductor to fail, resulting in a child suffering burns;
- The 2012 Whittier incident in which a power line broke allegedly due to a tree growing between the primary lines, resulting in a fatality; and
- The 2012 San Mateo incident in which an overhead conductor failed allegedly due to animal contact, resulting in a fatality.

3. Delegation of Citation Authority to Commission Staff

The delegated authority approved today is designed to allow SED staff, or such other staff as may be designated by the Executive Director, to issue citations as part of their duties to help ensure the safety of electric facilities and operating practices. The Commission delegates this authority to staff to require the immediate cure of the cited violations and requires staff to levy penalties for violations as discussed more fully below. Such authority does not in any way diminish the primary responsibility of the electrical corporations owning or operating electrical supply facilities to operate and maintain their facilities in a safe manner.

The Commission finds it is reasonable and necessary to delegate to staff the ability to issue citations to any electrical corporation owning or operating electrical supply facilities for violations of GOs 95, 128, 165, 166, 174, or other related decisions, codes or regulations applicable to electrical supply facilities. Such authority will significantly enhance the procedural enforcement tools available to staff and should help to ensure prompt correction of violations.

This decision gives staff¹¹ the authority to issue a written citation to any electrical corporation owning or operating electrical supply facilities for violations that occurred both before and after the date of this decision. This is to allow staff to issue citations for events that occurred prior to the date of this decision, not to impose new penalties for previously-issued notices of violations. The primary purpose of this citation authority is to provide staff with the ability to issue citations for violations on a going forward basis, including those identified through audits, incident investigations, and customer complaints.

In issuing a citation, SED staff (or other designated staff) is required to state the specific violation, the number of offenses, and the amount of the penalty, and to provide information about how to appeal the citation, consistent with the provisions set forth in Appendix A to this decision. This decision grants staff the authority to issue such written citations to help implement its existing authority to require that the violation be corrected at, or soon after the time staff identifies a violation, notwithstanding any existing utility schedule for repairs. Citations may be issued for violations, and penalties levied, regardless of the status of the corporation's schedule for repairs.

In assessing a penalty, staff shall determine penalties for each violation at the maximum set out in § 2107. Pursuant to § 2108, each violation is a separate and distinct offense and to the extent that a violation is ongoing, each day's continuance is a separate and distinct citable offense which staff may cite. Thus, staff shall initially determine potential penalties based on the number of days

¹¹ As stated above, "staff" is defined as SED staff or other staff as may be designated by the Commission's Executive Director. See Section 6.4 below for a discussion on which Commission staff can issue a citation under this program.

that the violation has taken place. However, staff then has the discretion to assess penalties on something 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 issued April 20, 2012.

Payment of a citation or filing a Notice of Appeal does not excuse the electrical corporation from curing the violation, nor does it prevent staff or the Commission from taking other remedial measures, including but not limited to issuing corrective orders and other compliance orders, such as an expedited order to show cause (OSC) and/or proposing or issuing an OII.

The Commission has a mandate to ensure that utilities provide safe and reliable service at reasonable rates; authorizing staff to issue citations will help to fulfill that mandate. Consistent with that mandate, the Commission requires that cited electrical corporations correct any violations as soon as feasible, consistent with maintaining a safe and reliable system and prioritizing the safety of the public and electrical corporation employees.

Violations that constitute immediate safety hazards shall be corrected immediately. Violations that do not constitute immediate safety hazards shall be corrected in 30 calendar days. If other violations that do not constitute immediate safety hazards cannot be corrected within 30 calendar days after the citation is served, then the respondent 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 violations. In addition, notwithstanding a

Compliance Plan or a repair schedule, penalties may continue to accrue for each day of an ongoing violation until the violation is corrected.

The penalty payments pursuant to these citations shall be the responsibility of the shareholders of the electrical corporations and are not to be recovered in rates or otherwise directly or indirectly charged to their ratepayers.

The respondent recipient of the citation may either pay the penalty or file a Notice of Appeal. The specific procedures for issuing citations and for filing a Notice of Appeal are set forth in Appendix A to this decision. In short, the respondent has 30 days to appeal the citation, the citation shall state how an appeal is filed (consistent with Resolution ALJ-299), and the citation shall notify the respondent of its right to have a hearing, to have a representative at the hearing, to request a transcript and to request an interpreter. Penalties are stayed during the appeal process, but filing a Notice of Appeal does not excuse the respondent from curing the violation.

Pursuant to Resolution ALJ-299, all citation appeals shall be filed with the Commission's Docket Office as of January 1, 2015; thus, the docket card for these citation appeals will be publicly available.

We note that nothing in the citation program approved today interferes with an electric corporation's obligation to maintain and operate its systems safely, nor with staff's ability to enforce those requirements, including invoking any necessary emergency response procedures to address immediate safety hazards, or any other procedures necessary to ensure that immediate safety hazards are promptly corrected. To the extent that staff discovers violations that constitute immediate safety hazards, staff has existing authority to ensure that those violations are promptly corrected.

Further, nothing in this decision limits or interferes with the Commission's ability to institute a formal proceeding regarding any alleged violations and to pursue additional enforcement action, regardless of any enforcement action taken at the staff level. (See e.g., § 1702.5(c).) The electric safety citation program approved today is cumulative to all other applicable provisions of state and federal law that provide for sanctions against violators, including but not limited to §§ 2112 and 2113, and does not affect or limit the tort liability of the electrical corporation.

4. Compliance with SB 291

In the OIR initiating this proceeding, the Commission stated that in developing and implementing the electric safety citation program, the Commission intends for this program to be similar in structure and process to the gas safety citation program. The electric safety citation program we adopt today is similar to the gas safety citation program we adopted in Resolution ALJ-274.

In the OIR, we found that the existing gas safety enforcement program is in compliance with SB 291. With today's adoption of the electric safety citation program, we find the electric safety enforcement program is in compliance with SB 291.

SB 291 requires the electric safety enforcement program to include (a) procedures for monitoring, data tracking and analysis and investigations; and (b) a staff citation program, under the direction of the Commission's Executive Director. (Section 1702.5(a).) In its ongoing implementation of the statutes and GOs relating to electrical supply facilities listed in Section 2 above, the Commission already has procedures for monitoring, data tracking and analysis, and investigations of electric safety. The electric safety citation program we

approve today establishes a citation program to enable designated Commission staff to issue citations to electrical corporations for violations concerning operation on their electrical supply facilities as more fully described in this decision.

SB 291 also requires that the Commission use a variety of enforcement mechanisms to improve electric safety, including the issuance of corrective actions, orders and citations by designated Commission staff, and recommendations for action made to the Commission by designated Commission staff. (Section 1702.5(a).) Again, under this electric safety citation program, designated staff has the authority to require immediate correction of the violations, and to levy fines for violations in the amounts prescribed by § 2107. Furthermore, staff can make other recommendations for action to the Commission (e.g., issuing an expedited OSC or an OII) when necessary, such as when an underlying violation is unresolved or becomes part of a pattern and practice. (*See* Section 3 above.)

SB 291 requires the Commission to do a number of other things such as: when considering the issuance of citations and assessment of penalties, to take into account voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, the prior history of violations, the gravity of the violation, and the degree of culpability (§ 1702.5(a)(1)); provide notice of violation within a reasonable period of time after discovery of the violation (§ 1702.5(a)(2)); develop and implement an appeals process (§ 1702(b)); conclude a safety enforcement action within a reasonable period of time (§ 1702.5(c)); and adopt an administrative limit on the amount of monetary penalty that may be set by Commission staff (§ 1702.5(a)(3)).

The electric safety citation program meets the above requirements. Staff is to take into account if a utility timely self-identifies 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. Further refinements to the self-reporting requirements will be established in Phase II. (*See* Section 5 below.) The program sets a limit (the statutory maximum as set forth in § 2107) on the amount of penalties staff should assess per violation, and also delegates 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. (*See* Section 6.7 (Monetary Limit of Citation) for a further discussion and a response to utility arguments on this issue.)

Thus, similar to our conclusions in the OIR with respect to the gas safety enforcement program, we conclude that with today's adoption of the electric safety citation program, the Commission's electric safety enforcement program satisfies the requirements of SB 291. However, we note that this decision does not conclude our inquiry on these issues. The Commission intends to further improve and refine the Commission's gas and electric safety citation programs and address related issues in Phase II of this proceeding.

5. Self-Reporting

Section I.E of the draft electric safety citation program states that:

Staff shall establish Self-Identified reporting requirements, which shall encompass what violations shall be self-reported. Those requirements shall be established by staff after holding workshops with interested parties and shall be posted on the Commission's website. To the extent that an electrical infrastructure provider corporation self-identifies and self-corrects violations and no injury or damage has occurred,

staff shall consider such facts, in addition to those factors set forth in California Public Utilities Code § 2104.5 and Commission Decision No. 98-12-075, in determining whether a citation should be issued and the amount of the penalty if a citation is issued. The electrical corporation shall provide notification of such violations to Commission staff within thirty days of self-identification of the violation.

We affirm that 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, that staff shall consider such facts, in addition to those factors set forth in § 1702.5(a)(1), § 2104.5, D.98-12-075 and Resolution ALJ-277, in determining whether a citation should be issued and in 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.

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. In Phase II, we will also further address the issue of the period within which a utility must correct a self-identified and self-corrected violation. We do not intend to revisit the 30 day reporting requirement for self-identified violations in Phase II. We modify the draft electric safety citation program to provide that the assigned Commissioner and Administrative Law Judge (ALJ) will provide further direction for developing these self-reporting requirements, including the possibility of workshops, comments on various proposals or workshop report, etc. Self-identified reporting requirements should encourage

electrical corporations to proactively identify and repair violations to avoid penalties, and to self-report violations, in order to avoid greater penalties.

6. Response to Arguments Raised Opposing the Proposed Electric Safety Citation Program

As set forth in Appendix B which summarizes the parties' comments to the proposed electric safety citation program, many parties commented and argued against implementing the proposed program. We address the chief concerns below. As stated in the Scoping Memo issued September 26, 2014, and in Section 7 (Next Steps) below, in Phase II, the Commission intends to review and refine certain elements of the electric safety citation program and the gas citation program, and address other issues as necessary and appropriate, as defined by the Assigned Commissioner and ALJ. We therefore delineate below any of the issues we may revisit in Phase II.

6.1. Retroactivity and Statute of Limitations

PG&E, Edison and SDG&E all argue that the electric safety citation program should apply prospectively only and that application of the citation program to violations that occur before the program is implemented violates the cited legal principle that statutes (in this case SB 291) should have only prospective application. PG&E also believes that issuing citations for violations which occur before the Commission adopts the electric safety citation program is contrary to SB 291, which states that the utility should receive notice of the violation within a reasonable period of time. SDG&E suggests implementing a one year statute of limitations from the date of discovery of the violation.

As stated in Section 2 above, the authority for implementing the electric safety citation program is broad; it is not limited to SB 291. The Commission implemented Resolution ALJ-274 establishing the gas safety citation program

relying on these broad authorities and prior to SB 291's enactment. The gas safety citation program applies to alleged violations which occurred before and after Resolution ALJ-274's enactment. Similarly, many of the other citation programs that the Commission has established are not limited to a prospective application. (See e.g., Resolution ALJ-299 and many of the citation programs listed therein.)¹²

The Commission has many enforcement tools, including initiating an OII, to enforce alleged violations of the rules subject to the electric safety citation program. This citation program is another tool to enforce applicable law. As ORA points out, the electric safety citation program establishes another enforcement tool to ensure utility compliance with safety requirements; any application of this tool is necessarily retrospective. It would not make sense to preclude the issuance of a citation for a violation that occurred two days before this decision was voted out.

As discussed above, the intent is to allow staff to issue citations for events that may have occurred prior to the date of this decision, not to impose new penalties for previously-issued notices of violations. For similar reasons, we also reject SDG&E's argument regarding establishing a one year statute of limitations for enforcement purposes.

6.2. Burden of Proof

Section II.B.6 of the proposed electric safety citation program contains the following burden of proof if a utility appeals a citation, similar to the burden of

¹² The purpose of SB 291 is to enhance safety procedures. It would be ironic and contrary to the intent of SB 291 to interpret this statute as somehow limiting the authority the Commission already possessed prior to SB 291's enactment.

proof set forth in the gas safety citation program established by Resolution ALJ-274:

Staff has the burden to prove a *prima facie* case supporting its issuance of the citation for the alleged violation; the burden then shifts to Respondent/ Appellant to demonstrate that a violation did not occur and that the citation should not issue or that the penalty amount is inappropriate.

PG&E, Edison and SDG&E argue that the above burden of proof is inappropriate, and that staff should have the burden of proof in an appeal of the citation.

We revise the burden of proof set forth in the draft electric safety citation program to clarify that in an appeal, staff has the burden of proof by a preponderance of the evidence. This is similar to staff's burden in other enforcement proceedings before the Commission. Generally, the citation and supporting materials should satisfy this burden, but such determination will be based on the individual case. For example, in the gas safety citation program, a citation was issued and upheld on appeal for self-reported violations. (See e.g. Resolution ALJ-277.) We also note that once staff meets its burden, respondent has the burden to prove any affirmative defenses it might raise. (See e.g., *Mathis v. Morrissey* (1992) 11 Cal.App.4th 332, 347, n. 9 [13 Cal.Rptr.2d 819]: "...defendant normally bears the burden of proof with respect to affirmative defenses." (citations omitted).)

Because this burden of proof differs somewhat from that articulated in the gas safety citation program, we will further address and refine this issue in Phase II, so as to harmonize the standard applicable for both programs.

6.3. Meet and Confer Requirement and Opportunity to Cure Prior to the Issuance of a Citation

PG&E, SDG&E and Edison argue for a mandatory meet and confer requirement between staff and the utility prior to issuance of a citation. These utilities also believe that the utility should have an opportunity to cure the problem before the citation issues. For example, PG&E believes the Commission should establish a pre-citation process with an opportunity for the utility to meet and confer with staff and to respond to any initial findings, stating that this is consistent with the practices at the Federal Energy Regulatory Commission and the Pipelines and Hazardous Materials Safety Administration, as well as the procedure the Commission used to adopt its CEQA citation program through Resolution E-4550.

PG&E also recommends the utility be given the chance to cure the problem before the citation issues. PG&E notes that the CEQA citation program does not provide such an opportunity to cure, because the Commission noted that a failure to comply with CEQA construction requirements often results in an immediate impact that cannot be cured. PG&E argues that this is not often the case with electric issues, except possibly those in the Level 1 category of GO 95, Rule 18A.

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.

6.4. Which Commission Staff Can Issue a Citation?

PG&E recommends that the Commission should require either the Director or Deputy Director of SED, or the Executive Director of the Commission, to approve the issuance of a citation and that an internal process should be established to close out issues raised in audits or self-reporting in a timely manner. A similar argument was raised in response to Resolution ALJ-274, implementing the gas safety citation program.

We modify the proposed electric safety citation program to adopt a requirement that Commission management at the Deputy Director level or higher must sign off on a citation issued under the electric safety citation program. For example, the Director and Deputy Director of SED would have such authority, as well as the Executive Director or Deputy Executive Director. This requirement ensures management approval of the issuance of a citation, while still giving the Executive Director the flexibility to designate the appropriate staff to implement this citation resolution process. Because this designation differs somewhat from that articulated in the gas safety citation program, we will further address and refine this issue in Phase II, so as to harmonize both programs.

Concerning PG&E's argument to set a specific deadline for resolving issues raised in audit or self-reporting, we reject adopting a statute of limitations for citing violations for the reasons set forth in our discussion on Retroactivity and Statutes of Limitations (Section 6.1 above).

6.5. Which Violations Should Be Subject to a Citation?

Several of the utilities argue that not all violations of safety GOs should be subject to citation. For example, CASMU and PG&E, Edison, and SDG&E all believe that the Commission should now exempt activities under GO 95 which permit correction of certain problems within a specified timeframe. SDG&E goes further, and believes the proposed electric safety citation program needs to describe with specificity the nature of the conduct that will be subject to citation by Commission staff and that the current draft is too vague. Specifically, SDG&E recommends limiting the program to redress violations where the acts, errors or omissions pose a demonstrable and unreasonable threat to public safety.

Staff will use the electric safety citation program as a tool to enforce laws and GOs which govern the electrical supply facilities for California. Many of these laws are embodied in the Commission's multiple GOs pertaining to electric supply facilities which have been in existence for years. (*See* Section 2.1 above discussing many of the applicable GOs relating to electrical supply facilities, with the first version of the oldest GO (GO 95) adopted in 1941.)

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).

6.6. Citation or Order Instituting Investigation?

SDG&E questions the provision in the electric safety citation program which states that nothing in the program interferes with the Commission's ability to institute a formal proceeding regarding alleged violations and to pursue additional enforcement action, and that the program is cumulative to all other provisions of law. SDG&E believes that if staff issues a citation and penalty for a specific action, this citation and penalty should preclude the Commission's independent right to pursue any additional action under § 1702.5(c).

Section 1702.5(c) addresses this issue and states that the Commission "may institute a formal proceeding regarding the alleged violation, potentially resulting in additional enforcement action, regardless of any enforcement action taken at the staff level."

Furthermore, similar to our discussion above on which violations should be the subject of a citation, we decline here to address an unripe facial challenge to the electric safety citation program based on SDG&E's argument here. If staff issues a citation and the Commission later issues an OII or other enforcement action on the same issue (for example if the Commission discovers the incident triggering a citation is discovered to be part of a utility pattern and practice), the utility can make its case if it believes its constitutional rights are being violated

for being prosecuted twice for the same action and nothing more. We cannot and do not make such determination in absence of specific and concrete facts.

6.7. Monetary Limit of Citation

Pursuant to SB 291, § 1702.5(a)(3), the Commission shall adopt an administrative limit on the amount of monetary penalty that may be set by Commission staff. Resolution ALJ-274 establishing the gas safety citation program sets a limit per violation, based on the statutory maximum in § 2107. The proposed electric safety citation program sets a similar limit for each violation and gives staff the discretion to compute the number of violations as more fully described below.

Several parties suggest a different limit. CASMU believes there should be a cap on penalties, but does not suggest a specific amount. PG&E believes that the Commission should adopt an administrative limit on any amount of penalty that staff may impose and recommends \$200,000 per citation and per incident, which PG&E argues is the statutory limit for the Commission's citation program for propane, and the highest limit of the various Commission programs that have an administrative limit. PG&E also believes that the Commission should clarify that staff has the discretion to issue penalties below the maximum amount of \$50,000 per violation, and that the Commission should provide staff with detailed guidelines regarding the application of factors to adjust the amount of any fine, including the general principles of a risk-based approach. PG&E also believes that a more detailed risk-assessment mechanism should be developed in

a separate phase of this proceeding after the January 1, 2015 deadline for implementing the electric safety citation program.¹³

SDG&E also believes that there should be an administrative limit different than the statutory maximum for citations issued pursuant to the proposed electric safety citation program, and that the program should require staff to take into account voluntary reporting of the potential violation in determining the penalty.

Edison similarly believes that the electric safety citation program should set an administrative limit to be consistent with SB 291. Edison cites as examples other citation programs and recommends the Commission adopt a \$250,000 administrative limit on the total aggregate penalty per citation, which Edison states is slightly more than the maximum cap of the other Commission citation programs. Edison also believes that staff should have the discretion to impose penalties at less than whatever the maximum administrative limit is adopted, arguing that imposing a mandatory single penalty amount in every citation is arbitrary.¹⁴

In the OIR initiating this proceeding, we stated that Resolution ALJ-274 meets the requirements of SB 291. Regarding the provision requiring that the Commission adopt an administrative limit on the amount of the monetary penalty that may be set by the Commission staff, the OIR stated:

¹³ PG&E also believes that the Commission should address issues articulated in SED's Gas Safety Citation Program Standard Operating Procedure, Version 1.0 (dated September 20, 2013).

¹⁴ According to Edison, granting staff this discretion is also in keeping with staff's document *Quantifying Risk: Building Resiliency into Utility Planning*, Policy and Planning Division & Safety and Enforcement Division (CPUC, January 23, 2014).

Resolution ALJ-274 set a limit per violation, based on the statutory maximum in § 2107. Because there can be more than one violation per citation, this per-violation limit does not limit the total amount of penalty that could be imposed by a Commission staff-issued citation. It is not clear that SB 291 requires a per-citation limit, so the existing per-violation limit appears to comply with the statute. We will, however, consider as a policy matter in this proceeding whether a per-citation limit should also be implemented. (OIR at 6.)

In the electric safety citation program, we adopt the administrative limit set forth in Resolution ALJ-274, based on the statutory maximum in § 2107. However, staff has discretion in determining violations. Pursuant to § 2108, each violation is a separate and distinct offense and ongoing violations are separate and distinct offenses which are not cured until a satisfactory repair is made. 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.

6.8. Joint Users of Electrical Facilities

Edison argues that staff needs to take into account who is responsible for the alleged violation and that the electric utilities should not be cited for violations caused by communications corporations or third parties. Similarly, SDG&E argues that the electric safety citation program should be administered consistent with due process so as to assure that the electric utilities will not be

subject to citation or penalties for violations related to joint facility uses where a joint user is responsible for the violation. PG&E agrees with Edison and SDG&E that the Commission needs to address non-compliance issues caused by third parties, particularly telecommunications providers.

The electric safety citation program applies to any electrical corporation for violations at electrical supply facilities it owns or operates. These rules currently do not apply to other utilities such as telecommunications providers as these other entities were not made respondents to this OIR. The fact that these other entities are not currently subject to the electric safety citation program does not relieve either the electric utilities nor these other entities from complying with the law. The electric utilities are responsible for maintaining their facilities in a safe condition. Whether the electric utility has violated the cited statute or rule is a matter of fact and law and the subject of the particular citation which issues. Furthermore, nothing in these rules prohibits this Commission from extending this citation program in the future, nor does it prohibit the Commission from invoking other procedures against non-electric utilities to enforce compliance with the law.

6.9. Additional Items

Several parties requested workshops or hearings before the issuance of the electric safety citation program. Resolution ALJ-274 establishing the gas safety citation program was issued without hearings or workshops. Similarly, neither workshops nor hearings are necessary prior to issuing this decision. Parties were provided with the opportunity to file opening and reply comments on the proposed program and many parties did so. (*See Appendix B summarizing these comments.*)

PG&E argues that *ex parte* communications should be prohibited in the electric safety citation program from the time the appeal is filed, not from the time the citation issues. This argument is contrary to provisions in Resolution ALJ-274 as well as to Appellate Rule 19 adopted in Resolution ALJ-299 which applies procedurally to all Commission citation programs as of January 1, 2015. Resolution ALJ-299 prohibits *ex parte* communications in all citation appeals from the date the citation issues until a final order on the citation appeal issues, not from the date of an appeal. Therefore, we reject this proposal.

ORA notes that penalty payments pursuant to any citations issued under this program are the responsibility of shareholders, not ratepayers, and suggests it may be prudent to ensure that this occurs through an audit every three years by the Commission's Division of Water and Audits. Edison argues that this suggestion is moot as such audits occur in a utility's general rate case every three years. Whether this ORA proposal could be useful or is in fact unnecessary can be further considered in Phase II of this proceeding.

Several parties argue that we should consider other agencies' enforcement programs before adopting the electric safety citation program. An examination of other programs may be appropriate in Phase II of this OIR, if the assigned Commissioner and ALJ find it useful. However, we do not delay implementing this program pursuant to the deadline set forth in SB 291 to consider other agencies' programs.

Resolution ALJ-299 established a pilot program that requires, among other things, all citation appeals to be filed with the Commission's Docket Office and to comply with the Pilot Program Citation Appeal and GO 156 Appellate Rules, attached to Resolution ALJ-299 as Appendix A. These Rules are effective

January 1, 2015. We conform the appeal process set forth in Appendix A of this decision to that of Resolution ALJ-299.

Procedurally, this decision is effective immediately. However, because the Pilot Program Citation Appeal and GO 156 Appellate Rules adopted by Resolution ALJ-299 (which establish, among other things, a procedure to docket citation appeals with the Commission's Docket Office) apply on January 1, 2015, the electric safety citation program adopted today shall be implemented as of January 1, 2015.

7. Next Steps

This decision satisfies the requirement set forth in SB 291 for the Commission to establish a citation and appeals process as part of a safety enforcement program to correct and penalize the safety violations of electrical corporations. In subsequent phases of this proceeding, we will develop and implement improvements and refinements to the electric and gas safety citation programs, as well as address other related issues relevant to a robust safety enforcement program.

8. Comments on Proposed Decision (PD)

The PD of assigned Commissioner Picker in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 18, 2014 and reply comments were filed on November 24, 2014.

The following five parties filed opening comments on the PD: CUE, Edison, ORA, PG&E, and SDG&E. ORA and Pacificorp filed reply comments. The parties largely raise the same arguments they did in commenting on the draft electric safety citation program. Most parties reserve the right to argue

improvements and refinements to the gas and electric safety citation programs in Phase II, notwithstanding their comments to the PD.

We summarize the parties' comments below. We make one substantive change to the PD to clarify the period within which a utility must correct a self-reported violation, and make several other minor non-substantive changes for clarification, to improve the flow of the decision, and to correct typographical errors. We do not address arguments previously raised in the initial comments on the draft electric safety citation program, as the PD addressed those comments.

8.1. Summary of Parties' Comments

CUE

In its opening comments, CUE states it is pleased that the PD addresses the parties' concerns and allows Commission staff to consider several mitigating factors such as self-reporting and self-correction in determining whether a citation should issue and the amount of the penalty. CUE appreciates the opportunity to further craft the self-reporting requirements in order to encourage and give incentives to self-reporting. CUE also states it believes that the Commission must consider adopting a broader safety enforcement program in Phase II.

Edison

In its opening comments, Edison states it appreciates the PDs modification regarding the burden of proof standard and the requirement that Commission staff at the Deputy Director level or higher must sign off on a citation. Edison states it also supports the PD's suggestion that this citation program may be extended in the future to cover relevant non-electric utilities.

Edison believes that the PD must be corrected in several respects. First, Edison argues that the PD lacks a clear definition of what constitutes a citable violation, which Edison believes should be linked to the risk posed to public and worker safety. Edison proposes that the PD be revised to provide clear definitions of citable violations and to direct the staff to focus on violations with immediate safety impacts. Edison also believes the PD is inconsistent with GO 95, Rule 18A and the Commission approved utilities' existing maintenance and inspection programs. Edison argues that the PD should be revised to provide that citations carrying penalties should be reserved for clearly defined immediate safety hazards, and that utilities should be given the opportunity to cure all other violations pursuant to the timelines for corrective actions specified in GO 95, Rule 18A. According to Edison, the PD also errs because it fails to set an administrative limit on penalties that may be assessed by citation. Edison states the PD should grant staff the discretion to impose penalties at less than whatever the administrative maximum is adopted. Edison argues that the PD's self-reporting requirements do not focus on violations with immediate safety impact, with meaningful consequences that give the utility an incentive to self-report, and that are consistent with current reportable incident requirements, citing D.06-04-055. Edison also believes that the PD would give staff the ability to issue citations for conduct that occurred prior to the adoption of the citation program, which in Edison's view is improper. Edison also argues that the PD should be revised to require a meet and confer requirement between staff and the utility prior to issuance of the citation. Edison also requests the PD clarify the procedures that the Executive Director will follow to delegate citation authority to Commission staff (other than to the Director and Deputy Director of SED), stating that not knowing the identity of the designated individuals may chill

communications between the utility and Commission staff, since the utility would not know if such communications could lead to a citation.

ORA

In its opening comments, ORA states it generally supports the PD and that its comments should be taken in that context. ORA supports the PD's statement that further review of the burden of proof standard will occur in Phase II to harmonize this standard between the gas and electric safety citation programs. ORA notes that in an OSC, the utility is generally required to appear and provide evidence that it should not be sanctioned for the alleged violations. According to ORA, the OSC is an enforcement tool that effectively forces the utility to divulge information and documentation that the Commission and its staff are legally entitled to discover. Thus, ORA states that if the burden of proof differs in a citation program and OSC proceeding, staff may be forced to elect pursuing the OSC, which takes more time and may be more burdensome. ORA also notes that access to evidence is another practical consideration on the burden of proof standard, and often the utility overzealously will claim privileges to hinder Commission staff's access to critical information. ORA therefore looks forward to a further review on the burden of proof standard in Phase II so as to harmonize the standards between the gas and electric safety citation programs.

In its reply comments, ORA urges that the Commission refrain from adopting all of the changes recommended by PG&E and Edison's opening comments, and particularly addresses several points. ORA notes that the PD appropriately addresses the issues of retroactivity and administrative limit on penalties. ORA states that the PD also provides staff with appropriate direction in setting penalties. Finally, in response to Edison's argument that the PD should promote utility-to-Commission-staff communications by further clarifying the

procedures that the Executive Director will follow to delegate citation authority to Commission staff, ORA states that the utility has a duty to cooperate with all Commission staff, regardless of its fear of a potential citation.

PG&E

In its opening comments, PG&E states it appreciates the PD's revisions to the draft electric safety citation program on the burden of proof standard and the requirement that Commission management at the Deputy Director level or higher must sign off on a citation issued under the electric safety citation program.

PG&E opposes the PD on three issues. First, PG&E believes the PD violates SB 291 in that it has not adopted an administrative limit different from the statutory limit for penalties issued pursuant to the electric safety citation program. PG&E recommends the PD be revised to adopt an interim administrative limit of \$200,000 per citation per incident, consistent with its initial recommendations on the draft citation program. PG&E also recommends that the Commission explore developing a tiered, risk-based set of administrative limits in Phase II. Second, PG&E argues that the PD fails to provide fair notice about the kinds of utility conduct that would be subject to sanction under the new electric safety citation program, and is thus an unduly vague and facially unconstitutional regulation. PG&E singles out the self-reporting requirements and states that they are unclear or internally inconsistent; PG&E's example is that the PD states that Phase II will address reporting processes and criteria, yet the PD also requires a utility to provide notification of self-identified violations within 30 days of their discovery. PG&E believes the PD should be revised to state that the electric safety citation program should be focused on systemic issues and violations involving significant safety issues rather than minor,

technical issues, particularly those that are included as part of an ongoing maintenance schedule, and that the language on self-reporting and correction be deleted. Alternatively, PG&E argues that the PD should stay implementation of the citation program pending the development in Phase II of a tiered, risk-based delineation of electric violations that would be subject to the program. Third, PG&E states the PD should be revised so that the electric citation program is prospective only, consistent with its initial comments on the draft citation program.

SDG&E

In its opening comments, SDG&E commends the Commission for taking the first steps to implement an electric safety citation program to satisfy the requirements of SB 291. SDG&E does not believe that the PD contains any factual, legal or technical errors as it relates to the Phase 1 scope and recognizes that Phase II will consider and determine both improvements and refinements to the gas and electric safety citation programs in compliance with SB 291. Therefore, SDG&E does not propose any changes at this time but urges the Commission to restrict staff's authority to issue citations and penalties in circumstances where the safety standard or proscribed conduct is clear and unambiguous.

PacifiCorp

As stated above, PacificCorp did not file opening comments on the PD but filed reply comments. PacifiCorp agrees with Edison and PG&E that the PD needs to be reconciled with existing enforcement provisions, especially the timelines set forth in GO 95, Rule 18A. PacifiCorp also does not believe every "nonconformance" pursuant to GO 95 should be self-reported. PacifiCorp also

believes that the PD inappropriately sets penalties at the maximum amount under § 2107.

8.2. Discussion

As stated above, we make one substantive change to the PD to clarify the period within which a utility must correct a self-reported violation, and make several other minor non-substantive changes for clarification, to improve the flow of the decision, and to correct typographical errors.

PG&E and Edison raise alleged problems with the self-reporting requirements, arguing that all self-reporting issues should be considered in a subsequently scheduled workshop and that the 30 day requirement to self-report violations should be eliminated. Alternatively, the utilities argue that this requirement is contrary to GO 95, Section 18A, which provides for a repair schedule that may exceed 30 days, and to D.06-04-055, which requires certain incidents to be reported in fewer than 30 days.

We do not eliminate the 30 day requirement for an electrical corporation to provide notification of a self-identified violation. We also recognize that GO 95 provides for a longer repair schedule for some items than 30 days. In order to provide consistency between GO 95 and the electric safety citation program, we clarify that the utility's self-report of the violation (made within 30 days of self-identifying the violation) should also state when the violation will be corrected, consistent with the time period in GO 95. This is in contrast to the corrective action a utility must take if cited for a violation. (See e.g. Ordering Paragraph 7 and Section I.C of the Citation Procedures and Appellate Process set forth in Appendix A.) Furthermore, in Phase II, we will further address the issue of the period within which a utility must correct a self-identified and self-reported violation. We clarify that Phase II will also establish additional

self-reporting requirements to the 30 day reporting requirement, which shall encompass reporting process and criteria. This is consistent with the language in Conclusion of Law 14 of the draft PD. We do not intend to revisit the 30 day reporting requirement for self-identified violations in Phase II.

We disagree with Edison and PG&E that D.06-04-055 somehow requires a different outcome. D.06-04-055 addresses incident reporting rules. Utility incident notifications, and self-identifying and reporting a violation pursuant to the electric safety citation program, are two separate procedures and serve different purposes. Utility incident notifications serve the purpose of notifying Commission staff in a timely manner of safety related issues (often accidents), thus enabling SED to send an inspector into the field to initiate an investigation when necessary. There are some instances where incidents may happen without an underlying utility violation, such as third party dig-ins. When a utility reports an incident, in many cases this report is made quickly (often within two hours of a reportable incident), and thus before the utility can determine if there is a potential violation. However, there may be other instances that are not incidents that nonetheless constitute violations. Thus, if a utility identifies a violation, it should self-report it pursuant to the provisions of the electric safety citation program. To the extent that there has been a related incident that was reported, the utility can refer to this incident in its self-report provided pursuant to the electric safety citation program.

9. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Dan H. Burcham is the assigned ALJ in this proceeding.

Findings of Fact

1. The electrical safety citation program for electrical corporations owning and operating electrical supply facilities, as provided for in this decision and in Appendix A hereto, will help to ensure effective, prompt, and efficient enforcement of Commission decisions and orders to ensure the public safety.

2. The electric safety citation program for electrical corporations owning and operating electrical supply facilities, as provided for in this decision and in Appendix A hereto, is similar to citation programs previously adopted by the Commission for other industries.

3. The electric safety citation program for electrical corporations owning and operating electrical supply facilities, as provided for in this decision and in Appendix A hereto, is reasonable, and will facilitate improved compliance with Commission decisions and orders to protect public safety and will help to deter future violations.

4. The potentially hazardous nature of electrical supply facilities is not speculative. There have been a number of incidents in the past decade involving electrical supply facility failures.

5. It is reasonable to grant staff authority to issue citations for violations that have occurred both before and after the date of this decision.

6. It is reasonable to assess penalties for each violation at the maximum amount set forth in Section 2107; this approach is consistent with the Commission's broad regulatory powers to protect public safety and to ensure compliance with the Commission's orders and the Public Utilities Code.

7. The Commission needs the flexibility for its Executive Director to designate SED staff or such other staff who may be most appropriate to carry out

the various functions involved in the electric safety citation program adopted by this decision, as more fully set forth in Ordering Paragraphs 1 and 2 below.

8. In its ongoing implementation of the statutes and GOs relating to electrical supply facilities listed in Section 2 above, the Commission already has procedures for monitoring, data tracking and analysis and investigations of electric safety. The electric safety citation program adopted today establishes a citation program to enable designated Commission staff to issue citations to electrical corporations for violations concerning operation on their electrical supply facilities as more fully described in this decision.

Conclusions of Law

1. Section 701 authorizes the Commission to supervise and regulate very public utility in the State.

2. Section 702 mandates every public utility to obey and promptly comply with every Commission order, decision, direction, or rule.

3. Section 2101 directs the Commission to see that the provisions of the State Constitution and statutes dealing with public utilities are addressed and obeyed.

4. California law, including Pub. Util. Code § 7, authorizes the Commission to delegate certain powers to its staff, including the investigation of acts preliminary to agency action, and the issuance of citations for certain types of categories of violations up to specified amounts.

5. The Commission's authority for implementing an electric safety citation program is broad; it is not limited to SB 291.

6. SB 291 requires the Commission to develop and implement a safety enforcement program for electrical corporations by January 1, 2015.

7. Staff should determine penalties for each violation at the maximum amount set forth in § 2107. Section 2108 provides that each violation is a separate and distinct offense; to the extent that a violation is ongoing, each day's continuance is a separate and citable offense. Given Section 2108, staff has the authority to assess penalties on a daily basis, but staff should have the discretion to assess penalties on something less than a daily basis based upon consideration of the factors set forth in Section 1702.5(a)(1) and 2104.5 and D.98-12-075 and Resolution ALJ-277, issued April 20, 2012.

8. Citations may be issued for violations, and penalties levied, regardless of the status of the electrical corporation's schedule for repairs.

9. The electric safety citation program should allow a respondent who receives a citation to appeal staff-issued citations.

10. 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, and does not preclude the Commission from taking other remedial measures.

11. Penalty payments should be the responsibility of shareholders of the electrical corporation owning or operating electrical supply facilities and should not be recovered in rates or otherwise directly or indirectly charged to ratepayers.

12. The Commission's Executive Director should designate Commission management at the Deputy Director level or higher to sign off on a citation issued under the electric safety citation program.

13. To the extent that violations are self-identified, self-corrected, reported to Commission staff, and no injury or damage has resulted from these violations, staff should take these factors into account, in addition to those factors set forth

in § 1702.5(a)(1), § 2104.5, D.98-12-075, and Resolution ALJ-277, in deciding whether to cite such violations and the amount of a penalty if a citation issues. The electrical corporation should 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 should also state when the violation will be corrected, consistent with the time period in GO 95.

14. In Phase II, the Commission should address, review, and approve additional self-reporting requirements which shall encompass reporting process and criteria after a record on this issue is developed. The assigned Commissioner and ALJ will provide further direction for developing the self-reporting requirements.

15. Nothing in the electric safety citation program we approve today interferes with the existing requirements that electrical corporations owning and operating electrical supply facilities must maintain and operate their systems safely, including invoking any necessary emergency response procedures to address immediate safety hazards, or any other procedures necessary to ensure that immediate safety hazards are promptly corrected.

16. Nothing in the electric safety citation program we adopt today limits or interferes with the Commission's ability to institute a formal proceeding regarding any alleged violations and to pursue additional enforcement action, regardless of any enforcement action taken at the staff level.

17. To the extent that staff discovers violations that constitute immediate safety hazards, staff has existing authority to ensure that violations are promptly corrected.

18. SB 291 requires the electric safety enforcement program to include:

(a) Procedures for monitoring, data tracking and analysis and investigations; and

(b) A staff citation program, under the direction of the Commission's Executive Director.

19. With today's adoption of the electric safety citation program, the Commission's electric safety enforcement program satisfies the requirements of SB 291.

20. This proceeding should remain open to consider Phase II issues.

21. This decision should be effective immediately so that the electric safety citation program can be operational on January 1, 2015, in compliance with SB 291.

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 electrical corporations owning or operating electrical supply facilities to enforce compliance with General Orders 95, 128, 165, 166, 174 and other related applicable decisions, codes, or regulations.

2. Staff shall have the authority to issue citations for violations that have occurred both before and after the date of this decision. The Commission's Executive Director shall designate Commission management at the Deputy Director level or higher to sign off on a citation issued under the electric safety citation program.

3. The Citation Procedures and Appeals Process set forth in Appendix A are adopted to govern the issuance and appeal of citations to electrical corporations for violation of statutes, orders or rules relating to electrical systems.

4. Penalty payments for citations issued pursuant to the electric safety citation program are the responsibility of shareholders of the electrical corporations who are cited and must not be recovered in rates or otherwise directly or indirectly charged to ratepayers.

5. Electrical corporations owning or operating electrical supply facilities must cure any cited violation as soon as feasible, pursuant to the procedures described in Appendix A.

6. Payment of the penalty or submitting a Notice of Appeal does not exempt the electrical utility from curing any cited violation.

7. Violations that constitute immediate safety hazards must be corrected immediately. Violations that do not constitute immediate safety hazards shall be corrected in 30 calendar days. If other violations that do not constitute immediate safety hazards cannot be corrected within 30 calendar days after the citation is served, then the respondent receiving the citation shall submit a detailed Compliance Plan to the Director of the Safety and Enforcement Division (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 violations. In addition, notwithstanding a Compliance Plan or repair schedule, penalties may continue to accrue for each day of an ongoing violation until the violation is corrected.

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

9. This decision is effective today. The electric safety citation program adopted by today's decision is implemented as of January 1, 2015.

10. Rulemaking 14-05-013 remains open.

This order is effective today.

Dated December 4, 2014, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners

APPENDIX A

Citation Procedures and Appeal Process

Applicable to Electrical Corporation's Electrical Facility Violations

I. Citation Procedures

A. Contents of Citation

1. A specification of each alleged violation, including citation to the portion of General Orders 95, 128, 165, 166, 174, or other decision, code or regulation allegedly violated;
2. A statement of the facts upon which each alleged violation is based;
 - (a) While the citation need not include all supporting evidence, Staff will make the evidence available for timely inspection upon request by the Respondent;
3. The number of offenses, which may be counted on a daily basis, or something less, depending upon application of the factors set forth in California Public Utilities Code §§ 1702.5 and 2104.5, Commission Decision (D.) 98-12-075 and Resolution ALJ-277;
4. The penalty assessed for each offense;
5. The total amount of the penalty;
6. A statement that the Respondent shall, within thirty calendar days of the date of service of the citation, either pay the amount of the penalty set forth in the citation or appeal the citation. The citation shall also inform the Respondent that immediate safety hazards must be corrected immediately; that violations that do not constitute immediate safety hazards must be corrected within 30 calendar 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 calendar days, then the Respondent shall submit a detailed Compliance Plan to the Director of the Safety and Enforcement Division (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 calendar 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 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".

B. Service of Citation

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

C. Response to Citation

1. Violations that constitute immediate safety hazards shall be corrected immediately. Violations that do not constitute

immediate safety hazards shall be corrected within 30 calendar days after the citation is served. If other violations that do not constitute immediate safety hazards cannot be corrected within 30 calendar days, then the Respondent shall 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 shall include:
 - a. The name of the person and that person's position that the Chief Executive Officer relied upon for this declaration, and
 - b. An explanation of why the time taken to correct the violation will not affect the safety or integrity of the operating system or endanger public safety.
4. Unless otherwise specified, a requirement to "notify Staff" or "serve Staff or the Director of SED" means to send a written communication by first-class mail or an express mail service to the address specified in the citation.
 - a. Such written communications are not filed with the Commission's Docket Office.
 - b. Staff may specify an e-mail address in order to allow electronic submissions in addition to, or instead of communications by mail service.

D. Payment of Penalty or Default

1. All cited violations must be cured, as set forth in Section I.C.1. Payment of penalties shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the California Public Utilities Commission.
 - a. The Respondent shall include the citation number and shall include a completed Citation Payment Form.
 - b. Upon payment, the penalty will be deposited in the State Treasury to the credit of the State General Fund.
2. If Respondent pays the full amount of the penalty within the time allowed, the citation shall become final.
3. Failure to pay the full amount of the penalty or to file a Notice of Appeal will place Respondent in default, the citation shall become final, and the Respondent will have forfeited its right to appeal the citation.
4. A late payment is subject to a penalty of 10 percent per year, compounded daily and to be assessed beginning the calendar day following the payment-due date.

E. Self-Identified and Self-Corrected Violations

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.

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 calendar 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 ALJ (with an electronic copy to: [ALJ Div Appeals Coordinator@cpuc.ca.gov](mailto: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](mailto: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.

(END OF APPENDIX A)

APPENDIX B

Summary of Comments to the Proposed Electric Safety Citation Program Opening Comments Filed June 20, 2014; Reply Comments Filed July 7, 2014

Coalition of California Utility Employees (CUE), Opening Comments Only

Senate Bill (SB) 291 requires the Commission to develop a safety enforcement program, not just a citation program. Regardless of the citation program adopted, CUE believes the Commission must create a safety enforcement program which includes procedures for monitoring, data tracking and analysis and investigations.

According to CUE, the safety citation program should provide an incentive for self-reporting and foster an improved safety culture within the utilities. CUE suggests the Commission should use as a model the Federal Aviation Administration (FAA) program which has an anonymous self-reporting program, and also uses a third party neutral (NASA) to evaluate safety reports.

Energy Producers and Users Coalition (EPUC), Opening Comments Only

EPUC supports the Commission's efforts to deter future safety incidents and agrees that citation authority will empower Commission staff to quickly address safety violations.

EPUC urges the Commission to clarify that the Safety Enforcement Division (SED) will investigate and subject to potential citation the following: any outage that directly or indirectly results in harm to person or property; repeated outages on the same circuit; outages occurring on circuits serving essential customers. EPUC also believes that the Commission should also consider as grounds for citation violations of tariffs and industry standards.

According to EPUC, service outages may have serious consequences for customers and failures in reliability and unplanned electric delivery outages may cause environmental harm. EPUC therefore argues that the Commission should consider as grounds for enforcement violations of utility tariffs and industry standards.

Office of Ratepayer Advocates (ORA), Opening and Reply Comments

Opening Comments:

ORA believes that the Commission should ensure that the utilities are paying fines through shareholder funds by having the Commission's Division of Water and Audits conduct an audit of the utilities in this regard every three years.

Reply Comments:

ORA does not support any of the utility proposals that seek material modification of the electric citation program. ORA's reply comments respond to some of the utilities' opening arguments. ORA believes that the utilities due process arguments should be rejected, as they similarly were rejected when the Commission adopted the gas citation program (quoting from Resolution ALJ-274). ORA does not believe the Commission needs to set further administrative limits on the monetary penalty that may be set by staff, and believes the existing range of penalties are necessary as a deterrent. ORA believes the penalty amount should be high enough to provide an incentive for utilities to inspect, repair and improve their facilities consistently, and that the citation program offers the flexibility to reduce the maximum daily amount consistent with the factors set forth in SB 291.

ORA also believes that SB 291 offers another enforcement tool to ensure utility compliance with safety requirements, and that any application of this tool is necessarily retrospective. ORA does not believe the Commission should apply a statute of limitations to these violations or apply SB 291 only prospectively. ORA also does not support a mandatory meet and confer requirement between staff and the utility prior to issuance of a citation. ORA argues that staff can meet and confer when feasible but due to safety concerns, staff should not be required to do so in all instances. Finally, ORA does not believe that the citation program is impermissibly vague, as argued by some utilities; the General Orders (GOs) have been in existence for many years and the utilities are on notice of their mandates. With respect to the culpability of third parties, ORA does not believe the Commission needs to wait until an Order Instituting Investigation is completed in order to have electric utilities promptly rectify unsafe conditions, regardless of

the actions taken by other providers. ORA recognizes that communication infrastructure providers are not currently covered by the draft electric citation program but believes this should not relieve the electric utility, for example, from maintaining adequate clearances.

PacificCorp, d/b/a Pacific Power, Bear Valley Electric Service, a division of Golden State Water Company and Liberty Utilities (CalPeco Electric) LLC, collectively CASMU, Opening Comments Only

CASMU believes that the proposed citation program inappropriately renders the existing enforcement mechanisms meaningless. An example, CASMU states that some GOs address what it cites as “nonconformance” issues and have a schedule for repair (Citing GO 95, Rule 18-A). CASMU believes it is unnecessary to override such schedules.

According to CASMU, the citation program should be clear and narrowly focused and voices concern over the applicability of this program not only to violations of specific GOs, but to “other related decisions, codes or regulations applicable to electrical supply facilities,” as set forth in the draft electric citation program.

CASMU also argues that the Commission should establish a cap on penalties issued pursuant to the citation program.

Pacific Gas and Electric Company (PG&E), Opening and Reply Comments

Opening Comments:

PG&E strongly supports the Commission’s efforts to improve and enhance public and employee safety. PG&E believes that developing an effective safety enforcement program merits broad consideration and input of a variety of other agencies safety enforcement approaches and that immediate focus should not be on Appendix B to the OIR. PG&E believes that the Commission should hold workshops and hearings this year on the interim electric citation program, and could still achieve the January 1, 2015 deadline for adopting the interim electric citation program.

PG&E focuses its comments on the issues needing to be addressed to have an interim electric citation program in place by January 1, 2015. PG&E believes that the electric citation program should focus on systemic issues and violations involving significant safety issues, prioritized on the basis of risk. PG&E believes the program should be consistent with GO 95, Rule 18.A in that citations should be issued for only Level 1 issues (immediate safety and reliability risks) and not Level 2 or Level 3 issues of which GO 95 permits correction within a certain timeframe.

PG&E believes the Commission should establish a pre-citation process with an opportunity for the utility to meet and confer with staff and to respond to any initial findings or cure the problem before a citation issues, stating that this is consistent with the practices at the Federal Energy Regulatory Commission (FERC) and the Pipelines and Hazardous Materials Safety Administration (PHMSA), as well as the procedure the Commission used to adopt its California Environmental Quality Act (CEQA) citation program. PG&E also cites to other Commission citation programs which PG&E states require staff to give the utility notice of and a chance to cure a violation before a citation is issued.

PG&E also believes the Commission should adopt an administrative limit on any amount of penalty that staff may impose and recommends \$200,000, which PG&E argues is the statutory limit for the Commission's citation program for propane, and the highest limit of the various Commission programs that have an administrative limit. PG&E also believes that the Commission should clarify that staff has discretion to issue penalties below the maximum amount of \$50,000 per violation, and that the Commission should provide staff with detailed guidelines regarding the application of factors to adjust the amount of any fine, including the general principles of a risk-based approach. (PG&E believes the Commission should address issues articulated in SED's Gas Safety Citation Program Standard Operating Procedure, Version One.) PG&E also believes that a more detailed risk-assessment mechanism should be developed in a separate phase of this proceeding after the January 1 deadline. Procedurally, PG&E recommends that the Commission should require either the Director or Deputy Director of SED, or the Executive Director of the Commission, to approve the issuance of a citation,

and that an internal process should be established to “close out” issues raised in audits or self-reporting in a timely manner.

PG&E believes the burden of proof should be revised so that the appeal is a de novo review and staff has the burden of proof, including the amount of the fine. PG&E also states that the prohibition on ex parte communications should commence when the appeal is filed, and not when the citation issues.

PG&E also argues that the Commission should eliminate the proposed retroactivity of the electric citation program, and should clarify that citations can only be issued for violations that occur after the adoption of the safety citation program. PG&E believes that permitting citations to issue for violations which occurred before the Commission adopts the electric citation program is contrary not only to the general legal principle that statutes should have a prospective application, but also contrary to SB 291, which states that the utility should receive notice of the violation within a reasonable period of time.

PG&E supports a workshop to address self-reporting requirements and to explore further utilization of self-reporting to reduce safety risk. PG&E also anticipates that workshops can cover a host of topics, such as “how enforcement can be risk based and proportionate, how an overarching enforcement policy can improve clarity and consistency with a long term road map, opportunities for enforcement to maximize effectiveness and efficiency in use of resources, and how execution can be most objective, evidence based, transparent, focused on outcomes and promote compliance.” (PG&E Opening Comments at 20.)

Reply Comments:

PG&E notes that many parties raise concerns PG&E raised in its opening comments, and lists them. PG&E also agrees with several of the other parties’ points that PG&E did not initially raise in its opening comments. PG&E supports CUE’s recommendation that the safety enforcement program should create an incentive for self-reporting to improve the safety culture. PG&E also agrees with Edison and SDG&E that the Commission needs to address non-compliance issues caused by third parties, particularly telecommunications providers. PG&E disagrees with EPUC’s position that any outage on a circuit

serving essential customers or repeated outages on the same circuit should be subject to citation, arguing that the focus on this proceeding should be on issues that have the largest impact on public safety.

San Diego Gas & Electric Company (SDG&E), Opening and Reply Comments

Opening Comments:

SDG&E believes that the electric safety citation program should be modified to provide reasonable substantive and procedural notice to the utilities. (SDG&E notes that the Sempra Utilities raised this point in response to the gas citation program and that the Commission dismissed such arguments as hypothetical and speculative, and stated that Commissions staff could be presumed to exercise its discretion reasonably and the Commission could be expected to review penalties fairly.) SDG&E believes that the proposed electric citation program needs to describe with specificity the nature of the conduct that will be subject to citation by Commission staff, and that the current draft is too vague and does not do so. Specifically SDG&E recommends the Commission consider limiting the program to redress violations where the acts, errors or omissions pose a demonstrable and unreasonable threat to public safety. SDG&E also recommends that the Commission should specify that Commission staff should have to prove that the violation posed an unreasonable threat to public safety by a preponderance of the evidence if this issue is disputed on appeal.

SDG&E incorporates its prior response to the OIR and reiterates its request for evidentiary hearings to consider the scope of the electric safety citation program. SDG&E also reiterates its earlier comments that the citation program be reconciled with GO 95. Particularly, SDG&E believes that, under the proposed citation program, if a utility implements a higher standard in excess of what the rules require, that the utility could be subject to a higher form of liability for taking a this more proactive approach to safety. SDG&E cites to specific rules in GO 95, particularly Rules 18 and 18.A and states these GO provisions need to be reconciled with the electric citation program in order for the utility to be adequately apprised as to which acts, errors and omissions may be subject to penalties.

SDG&E also believes the electric safety citation program should be modified to adopt reasonable limitations on the safety-enforcement authorities delegated to the Commission staff. SDG&E questions the provision in the proposed electric citation program which states that nothing in the program interferes with the Commission's ability to institute a formal proceeding regarding the alleged violations and pursuing additional enforcement action, and that the program is cumulative to all other provisions of law. SDG&E believes that if staff issued a citation and penalty for a specific action, this citation and penalty should preclude the Commission's independent right to pursue any additional action under Section 1702.5(c). SDG&E also argues that the proposed electric citation program cannot be retroactively applied to utility actions that predate the passage of SB 291, because such retroactive application of the statute would be unconstitutional. SDG&E also believes that there should be an administrative limit different than the statutory maximum for citations issued pursuant to the proposed electric citation program, and that the program should require staff to take into account voluntary reporting of the potential violation in determining the penalty. SDG&E also believes there should be a reasonable statute of limitations imposed on staff for assessing penalties under the electric citation program as a one year limitations from when the violation was discovered. SDG&E states that this one year statute would not bar issuing a citation for a continued violation but that one could only calculate penalties for the year prior to issuing the citation.

SDG&E also argues that the electric safety citation program should be administered consistent with due process so as to assure that the electric utilities will not be subject to citation or penalties for violations related to joint facility uses where the joint user is responsible for the violation. SDG&E also recommends an additional meet and confer process be added to the citation program.

Reply Comments:

SDG&E focuses its reply comments on EPUC's comments and argues that such issues are outside the scope of this proceeding. SDG&E also believes that

EPUC's recommendations create vague and ambiguous standards for the utilities to meet.

Southern California Edison Company (Edison), Opening and Reply Comments

Opening Comments:

Edison believes that the proposed electric citation program should set an administrative limit to be consistent with SB 291. Edison cites as examples other citation programs which include administrative limits and recommends the Commission adopt a \$250,000 administrative limit on the total aggregate penalty per citation, which Edison states is slightly more than the maximum cap of the other Commission citation programs.

Edison also believes that staff should have the discretion to impose penalties at less than whatever administrative maximum is adopted. Edison argues that imposing a mandatory single penalty amount in the case of every citation is arbitrary and barring any supporting findings of fact and conclusions of law, illegal. According to Edison, granting staff this discretion is also in keeping with staff's document *Quantifying Risk: Building Resiliency into Utility Planning, Policy and Planning Division & Safety and Enforcement Division (CPUC, January 23, 2014)*. Edison also believes that staff should be required to meet and confer with the utility prior to issuing a citation and that the Commission should convene workshops so that stakeholders can recommend appropriate criteria to be used in determining citation penalties depending upon the severity of the violation and its potential consequences.

Edison also states that a respondent has the right to contest a citation and that the proceeding before the Commission should not be termed an appeal. According to Edison, staff should have the burden of proof in this proceeding, not just the burden of proving a prima facie case that the citation should issue and the reasonableness of the penalty.

Edison believes that the OIR should address gas and electric safety enforcement programs, not just a program limited to the issuance of citations, and that the electric citation program should permit utility corrective action without penalty within the timeframes already allowed in GO 95. Edison believes the citation

program should be limited to clearly defined immediate safety hazards, and that utilities should have the opportunity to cure all other violations pursuant to the timelines for corrective action specified in GO 95, Rule 18A.

Edison argues that the program should recognize the impact of self-reporting and violations caused by communication corporations and third parties. Edison states that staff should establish self-reporting requirements only after holding workshops and recommends that staff should take into account self-reported and self-corrected violations when deciding which to cite. Edison also believes staff needs to take into account who is responsible for the violation and that the electric utilities should not be cited for violations caused by communication corporations or third parties.

Finally, Edison believes that the electric citation program should be limited to violations identified by staff, which occur following adoption of the electric citation program, and that retroactive application of this citation program is legally impermissible.

Reply Comments:

Edison states it agrees with the Opening Comments of PG&E, SDG&E, CASMU and CUE on the points it enumerates in its reply. Edison also supports PG&E's recommendation to use the NERC enforcement program as a model, especially considering the fact that Edison states that the NERC transitioned from a zero tolerance policy to a program focused on the risks and consequences of non-compliance. Edison also says that the NERC program is consistent with Edison's argument that a successful safety enforcement program must permit notice and an opportunity to cure non-immediate safety hazards and reserve the issuance of citations for immediate safety hazards. Edison also agrees on the recommendation to require a meet and confer with staff prior to the issuance of a citation.

Edison states that ORA's request for regular audits is moot, because audits of the investor owned utilities are statutorily required once every three years and those audits already occur in the electric utilities' general rate case. Finally, Edison states that EPUC's request that the Commission authorize SED to issue citations

for impacts from outages and reliability issues is imprudent, because SED already has the authority to investigate if it chooses, and to require such investigation in all instances could be at the expense of more important work, including investigations of safety incidents. Edison also argues that EPUC's request is outside the scope of this OIR, because outages are not violations of the Commission's GOs.

(END OF APPENDIX B)