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**PROPOSED DECISION**

Agenda ID #16439 (Rev. 1)

Quasi-Legislative

5/31/2018 Item #11

Decision **PROPOSED DECISION OF COMMISSIONER PICKER**

(Mailed 4/18/2018)

**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

**DECISION GRANTING IN PART A PETITION FOR  
MODIFICATION OF DECISION 16-09-055**

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**DECISION GRANTING IN PART A PETITION FOR  
MODIFICATION OF DECISION 16-09-055****Summary**

This decision grants in part the Petition for Modification of Decision (D.) 16-09-055, the Phase II Decision, filed by Jerry Hill<sup>1</sup> (Hill or Petitioner). In the Phase II Decision, the Commission adopted improvements and refinements to the Commission's electric and gas citation programs addressing, in part, Senate Bill 291,<sup>2</sup> which required the Commission to develop and implement safety enforcement programs for gas corporations and electrical corporations by July 1, 2014 and January 1, 2015, respectively. Hill seeks to modify the decision to restore Resolution ALJ-274's mandatory utility reporting provisions of self-identified potential violations, and other related changes. Hill also requests that the Commission reconsider its interpretation of the comments of the Coalition of California Utility Employees regarding the Federal Aviation Administration's confidential reporting system, while recognizing the current record is inadequate to adopt the proposal.

This decision grants the Petition for Modification to the extent that a utility must now mandatorily report self-identified potential violations that pose a significant safety threat under Citation Rules I.G.3.b.i, and I.G.3.c.i, and shall make such reports, at the latest, in a Monthly Report to the Commission's Safety and Enforcement Division (SED). The utilities shall submit this Monthly Report

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<sup>1</sup> Petitioner Jerry Hill is a member of the California State Senate, representing the 13th District. He filed this Petition as an individual, rather than in his official capacity as a State Senator. The full title of the filed document is "Jerry Hill Petition for Modification of D.16-09-055 Adopting Changes To The Gas And Electric Citation Programs."

<sup>2</sup> Stats. 2013, Ch. 601.

to SED by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month. The utilities may also submit an individual report earlier if they believe that the event may warrant more immediate staff attention, and must also include this individual report in the next Monthly Report. In all other respects, the Petition for Modification is denied. This proceeding is closed.

### **1. Factual Background**

On May 15, 2014, the Commission on its own initiative opened this rulemaking proceeding to further implement the Commission's gas and electric safety enforcement programs. The Order Instituting Rulemaking (OIR) stated that this proceeding "provides a forum for making improvements and refinements to the Commission's natural gas and electric safety citation programs." (OIR at 2.)

The OIR was broadly served on all gas and electric corporations, who were designated as respondents, as well as on the service lists of eleven recent large gas and electric rate or safety-related cases, as well as on the service list for Resolution ALJ-274 and the Commission's Safety and Enforcement Division's (SED) informal service list used for the follow-up workshops for Resolution ALJ-274. (OIR at 15-16, and 22, Ordering Paragraph 7.) Staff from Senator Hill's office and many local government representatives were on these initial service lists, which cumulatively were designated as the temporary service list.

We received and considered comments at various points throughout the proceeding from Pacific Gas and Electric Company (PG&E), Southwest Gas Corporation (Southwest Gas), Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (Edison), the Office of Ratepayer Advocates (ORA), the Energy

Producers and Users Coalition, the Coalition of California Utility Employees (CUE), PacifiCorp, d/b/a Pacific Power (PacifiCorp), Bear Valley Electric Service, a division of Golden State Water Company (Bear Valley), and Liberty Utilities, (CalPeco Electric) LLC (Liberty Utilities).

At the time Decision (D.) 16-09-055, the Phase II Decision, issued, Petitioner Jerry Hill (Hill or Petitioner) was not a party to this rulemaking proceeding.<sup>3</sup> However, as stated above, various staff members of Senator Hill were served with the initial OIR, and one of Senator Hill's staff members was on the service list for the proceeding (state service list) as early as September 26, 2014, when the Phase I Scoping Memo issued.

In its Phase I Decision, D.14-12-001, adopted December 4, 2014, the Commission adopted an electric safety citation program, which also satisfied the requirement in Senate Bill (SB) 291 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, which the OIR found satisfied the requirements of SB 291.) On September 29, 2016, the Commission adopted the Phase II Decision, incorporating improvements and refinements to the electric and gas citation programs adopted in the Phase I Decision, and closed the proceeding.

## **2. Brief History of the Requirements on Self-Identified Potential Violations**

This brief history of the requirements on self-identified potential violations provides context to the Petition's request. Resolution ALJ-274, Appendix A, I.F

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<sup>3</sup> With the filing of this Petition, Hill is now a party to this proceeding. (See Rule 1.4(a)(1) of the Commission's Rules of Practice and Procedure (Rules) which states that a person may become a party by, among other things, filing a petition.)

requires that gas corporations provide notification of violations to Commission Staff and local authorities within 10 days of self-identification. The OIR established a forum for making improvements and refinements to the Commission's natural gas and electric safety citation programs. The Phase I Decision, at Appendix A, I.E, requires electrical corporations to provide notification of violations to Commission Staff within 30 days of self-identification, with a statement of when the violation will be corrected. In the Phase I Decision at 37-38, the Commission also stated that "Phase II will also establish additional self-reporting requirements to the 30-day reporting requirement, which shall encompass reporting process and criteria." The October 1, 2015 Phase II Scoping Memo, among other things, requested the parties to comment on 18 detailed issues. Several of those issues fell under the broad category of the "requirements for self-reporting of potential violations." (See Section 2.2 of the Phase II Scoping Memo.) The June 15, 2016 Amended Phase II Scoping Memo attached SED's Report of the Safety and Enforcement Division on Self-Identified Potential Violations (SED Report) and amended the scope of Phase II to encompass the additional developed issues on self-identified potential violations set forth in the SED Report. The Phase II Scoping Memo also requested party comment on the SED Report.

Among other things, the SED Report recommended that the Commission specify whether reporting self-identified potential violations will be voluntary or mandatory. The SED Report set out the rationale for each option but did not make a recommendation as to which option the Commission should adopt. (SED Report at 15-19.) All commenting parties agreed that reporting self-identified potential violations should be voluntary.

The Phase II Decision modified both the gas and electric safety citation programs to make utility reporting of self-identified potential violations voluntary. The Phase II Decision noted that Pub. Util. Code<sup>4</sup> § 1702.5(a)(1) states in part that, when considering the issuance of citations and the assessment of penalties, the Commission shall take into account, among other things, voluntary reporting of potential violations. The Phase II Decision weighed the arguments on both sides and stated:

The citation programs will take into account such voluntary reporting as a factor in both issuing a citation in the first instance and in the amount of penalties. If such reporting is mandatory, rather than voluntary, such reports might not properly be considered a mitigating factor in whether to issue a citation and in determining an appropriate penalty. Additionally, our gas and electric safety programs establish and refine rules and procedures for issuance of such citations, but do not establish new rules, the violation of which can cause additional citations to issue. (Phase II Decision at 45-46.)

The Phase II Decision reasoned that in addition to being consistent with the specific language in Section 1702.5, a voluntary self-reporting requirement is also consistent with the practices of several other regulatory agencies, including the Federal Energy Regulatory Commission and the Federal Aviation Commission (FAA).

As pointed out in the SED Report at 16, “a commonly-described objective of such voluntary reporting programs is that offering regulated entities an incentive of reduced or waived penalties if they voluntarily identify, correct, and report possible regulatory violations will induce those entities

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

to be more proactive in their audit and inspection regimes, and will improve their compliance with the agency's regulations." (Phase II Decision at 46.)

Importantly, the Phase II Decision did not eliminate any mandatory utility reporting requirements established by other means (e.g., Decisions, General Orders, Resolutions, etc.), nor did the Phase II Decision state that the Commission will not establish mandatory reporting requirements by such other means. The Phase II Decision only stated that the citation program will not establish new mandatory reporting requirements, but will take into account a utility's voluntary reporting of a self-identified potential violation (in situations where a mandatory reporting requirement does not exist) in determining whether to issue a citation and in determining penalties. (*See generally* Phase II Decision at 45-48.)

The Phase II Decision also modified the notification requirement and does not require the utility to notify city and county officials of a self-identified potential violation unless Commission Staff requires such notification. If Staff so requires, the utility shall notify the local officials as soon as reasonable and necessary, and no later than 10 days after Commission Staff gives the utility such notice. This modified rule addressed concerns that reporting every self-identified potential violation may cause confusion with local authorities, but still retained the ability for the authorities to obtain prompt notification if Commission Staff believes it necessary. (Phase II Decision at 60.)

### **3. Parties' Positions on Petition for Modification of D.16-09-055**

#### **3.1. Petitioner Jerry Hill**



On February 21, 2017, Hill filed this Petition for Modification of D.16-09-055, the Phase II Decision, pursuant to Rule 16.4 of Commission's Rules.<sup>5</sup>

In his Petition, Hill requests the Commission modify the Phase II Decision to:

1. Maintain the mandatory reporting requirements for self-identified potential gas safety violations established in Resolution ALJ-274, but keep electric safety reporting requirements voluntary, deferring determination of those reporting requirements to Rulemaking (R.) 16-12-001;
2. Reinstigate mandatory notification to local governments of potential gas safety violations by utilities, and provide such notice within 30 days, rather than the 10 days required in Resolution ALJ-274, of self-identification of the potential violation; and
3. Reconsider its interpretation of CUE's comments regarding the Federal Aviation Administration's confidential reporting system, while recognizing the current record is inadequate to adopt the proposal.

Petitioner also argues the proposed modifications are necessary to eliminate inconsistencies within the Phase II Decision and ensure its consistency with strategic safety policy directives and statutory requirements.

### **3.2. Office of the Safety Advocate (OSA)**

On March 23, 2017, OSA filed a motion for party status and a response to Hill's Petition. On April 10, 2017, the assigned Administrative Law Judge (ALJ)

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<sup>5</sup> Petitioner argues that local governments did not participate in the proceeding prior to the Commission modifying the self-reporting requirements. Petitioner states his Petition is served "in the interest of broad notice" on several other Commission proceedings, commenters on and workshop participants for draft Resolution ALJ-274, as well as the service list for R.14-05-013. (Petition at 2.) As noted in Section 1 above, many local governments were on the temporary service list to the OIR and had the opportunity to participate in this proceeding but chose not to. Additionally, no local governments requested leave to file comments or reply comments in this proceeding concerning this Petition for Modification prior to the issuance of the proposed decision, despite the additional notice Petitioner provided.

issued a ruling granting OSA's Motion for party status. In its comments on the Petition, OSA states:

1. While OSA generally agrees with the SED Report and those parts of the Phase II Decision regarding the types of potential violations that should be reported, OSA disagrees with the provisions of the Phase II Decision which allow voluntary reporting of self-identified safety-related violations for gas and electric utilities that "pose a significant safety threat ..."<sup>6</sup> and believes reporting of such incidents should be mandatory.
2. OSA believes the Commission should modify the Phase II Decision to require reporting to the Commission and local authorities within 10 days of safety-related potential violations that pose a significant safety threat to the public and within 30 days for the other potentially serious safety threats identified in the Decision.<sup>7</sup>
3. OSA agrees that the Commission should reconsider CUE's proposal as stated in the Petition, but at this time takes no position on the specific modifications requested by the Petition.<sup>8</sup>

It should be noted that OSA was not a party to the proceeding and unable to participate in the proceeding sooner because that Office "was formed after the initiation of this proceeding and the issuance of D.16-09-055. [the Phase II Decision]"<sup>9</sup>

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<sup>6</sup> OSA Comments at 3.

<sup>7</sup> *Ibid.* at 8.

<sup>8</sup> *Ibid.* at 12.

<sup>9</sup> *Ibid.* at 2.

**3.3. SoCalGas and SDG&E (Joint Comments)**

On March 23, 2017, SoCalGas and SDG&E filed joint comments on Hill's Petition. The SoCalGas/SDG&E comments urge the Commission to deny the Petition on the grounds that it is "procedurally defective and substantively deficient,"<sup>10</sup> specifically that it "fails to present any new evidence or changed facts that support the request for modification"<sup>11</sup> as required by Rule 16.4. "The Petition does not explain how the decision impacted the Petitioner, or provide a persuasive explanation why Petitioner did not participate as a party in the proceeding earlier."<sup>12</sup>

SoCalGas/SDG&E argue that, despite Petitioner's argument that removing safety-related reporting requirements had never been within the scope for nearly the entire course of the proceeding, Petitioner "had ample notice that the Commission intended to modify the self-reporting requirements and ample opportunity to participate in the proceeding before the Commission rendered its final decision."<sup>13</sup> These utilities state that Petitioner could have moved to become a party to the proceeding as of June 15, 2016, when the Phase II Amended Scoping Memo was issued, after opening comments were filed on July 15, 2016, and after reply comments were filed on August 5, 2016. According to SoCalGas/SDG&E, the Proposed Decision issued August 29, 2016, "provided explicit notice of the Commission's proposal to modify the reporting

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<sup>10</sup> SoCalGas/SDG&E Comments at 2.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.* at 3.

<sup>13</sup> SoCalGas/SDG&E Comments at 3-4.

requirements.”<sup>14</sup> Finally, these parties argue that there is insufficient evidence to support Petitioner’s requested modifications because the requests are unsupported by facts and the considerations that led the Commission to approve D.16-09-055 remain valid.<sup>15</sup>

### **3.4. Petitioner’s Response to Comments**

On March 24, 2017, Petitioner Hill filed a motion for leave to file a reply to the comments of the OSA. On March 27, 2017, the assigned ALJ issued a ruling granting Hill’s Motion. The ruling permitted Petitioner to reply to all filed comments.

On April 3, 2017, Hill filed a reply to the comments of OSA, SoCalGas and SDG&E. Based on OSA’s comments, Petitioner modified the relief sought in his Petition. In general, Hill found OSA’s arguments in support of OSA’s suggestions persuasive.<sup>16</sup> Petitioner states that Criterion One for gas reporting, (reporting gas self-identified potential violations that pose a significant safety threat to the public and/or utility staff, contractors, or subcontractors):

... is most important of the three notification criteria in I.G.3(b) [of the citation rules] for public, employee, and contractor safety is the first. The Petition had argued that the three criteria in I.G.3(b) are significantly narrow to avoid over-reporting of less relevant potential violations to the Commission and local elected officials. By recommending narrowing the criteria for mandatory reporting further to only one criterion one potential violation, OSA ensures that such

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<sup>14</sup> *Ibid.* at 2.

<sup>15</sup> *Ibid.* at 5.

<sup>16</sup> Hill Reply at 2.

reporting will be neither onerous nor excessive. Petitioner supports this suggestion.<sup>17</sup>

Petitioner also supports the OSA's suggestions to reduce the time to report a violation that poses a significant safety threat to the public to 10 days, and of aligning the reporting requirements for electric violations to that of gas safety violations, but defers to the Commission's judgment as to the appropriate procedural vehicle to do so.

Regarding the joint comments of SoCalGas & SDG&E (generally opposing the Petition), Petitioner disagrees with joint commenters' statement that Hill failed to state how he was impacted by the decision he seeks to modify. Petitioner's response to the joint commenters refers to a statement in the Petition that "the Decision must be modified because failing to do so would imperil the long-term safety of Californians" and that he is a Californian.<sup>18</sup>

Petitioner also takes issue with joint commenters' interpretation of Rule 16.4(b). They contend that a petition for modification is required to be supported by allegations of "new or changed facts which must be supported by an appropriate declaration or affidavit."<sup>19</sup> Petitioner contends that "[t]he plain language of Rule 16.4(b) does not support this assertion, as the phrase SoCalGas and SDG&E cites is conditional on factual allegations being presented, and factual allegations are not required. The Petition includes exactly the same

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.* at 4.

<sup>19</sup> *Ibid.* at 2.

number of facts requiring affidavit as SoCalGas and SDG&E – or any party – presented during the course of R.14-05-013 – and that is zero.”<sup>20</sup>

#### 4. Petitions for Modification

Section 1708 gives the Commission the authority to modify our past decisions. The language of the statute is permissive. The Commission “may at any time” modify past decisions, including at a time after they have become effective. Decisions interpreting § 1708 hold that we exercise this authority as a matter of discretion. A proper exercise of discretion is not legal error.<sup>21</sup> Our past decisions state that we will exercise our authority under § 1708 only as an “extraordinary remedy” that must be sparingly and carefully applied.<sup>22</sup>

Rule 16.4 governs petitions for modification of a Commission decision. This Rule requires, in relevant part, that:

- A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications of the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit. (Rule 16.4(b).)
- If the petitioner was not a party to the proceeding in which the decision proposed to be modified was issued, the petition must state specifically how the petitioner is affected by the

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<sup>20</sup> *Ibid.* at 3.

<sup>21</sup> See 15-12-053 at 4-5, citing *Northern Cal. Ass’n to Preserve Bodega Head v. Public Utilities Commission* (1964) 61 Cal.2d 126, 135.

<sup>22</sup> D.15-12-053 at 8, citing *Decision Denying Petition to Set Aside Submission (1980) [D.92058]*, 4 Cal.P.U.C.2d 139, 149-150.

decision and why the petitioner did not participate in the proceeding earlier. (Rule 16.4(e).)

“Under normal circumstances, we exercise discretion under § 1708 to ensure that settled expectations remain undisturbed, and parties are insulated from re-litigation of decided matters – as required by § 1709, which accompanies § 1708. Consistent with this policy, our Rules establish that a party must properly justify requests made via petitions for modification.”<sup>23</sup> “Only a persuasive indication of a major change in material facts and circumstances, which would create a strong expectation that we would make a different decision based on those facts or circumstances, would cause us to reopen the proceedings.”<sup>24</sup>

## **5. Procedural Discussion**

Absent new or changed facts or circumstances, properly supported, the desire for a re-litigation of the issues and a different result alone is insufficient to warrant granting the petition for modification. We are concerned that Petitioner failed to demonstrate why he did not participate in the proceeding at an earlier time, despite the fact that a member of his staff had been on the state service list as early as when the Phase I Scoping Memo issued in September 2014. The Amended Phase II Scoping Memo, issued on June 15, 2016, provided clear notice of the Commission’s intent to review and possibly modify the self-identified potential violations reporting requirements, included the text of the SED Report, and invited comment on the SED Report. Petitioner could have offered his argument prior to the issuance of the Phase II Decision (either by commenting

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<sup>23</sup> D.15-12-053 at 5, internal citations omitted.

<sup>24</sup> D.09-02-032 at 8-9 (citing D.03-010-057), internal citations omitted.

and/or filing reply comments on the SED Report), or could have filed comments on the proposed decision modifying reporting requirements. Petitioner chose not to. Petitioner's comments would have been most helpful if made in a timely fashion.

However, the record concerning this Petition contains new facts and circumstances. OSA was not in existence at the time the Phase II Decision issued. While ORA participated in this proceeding, ORA did not file comments on the issues presented in the Commissioner's Amended Phase II Scoping Memo dated June 15, 2016 concerning the SED Report on self-identified potential violations. Thus, the only commenting parties on the Phase II Scoping Memo were the utilities. We therefore consider the merits of this Petition for Modification with a more balanced presentation of views, and grant the Petition in part as discussed below.

It should be noted that this decision is not precedent for granting a petition for modification in each proceeding in which OSA could not participate because it was not yet formed. However, here, because of the general lack of an opposing or different viewpoint on the issues presented by the Petition, and the more balanced record created by the Petition, we grant it as set forth below.

## **6. The Substantive Modifications**

The principal relief requested by the Petition, as modified in Petitioner's response to comments, is that the Commission require the utilities mandatorily to report electric and gas self-identified potential violations which pose "a significant safety threat to the public and/or utility staff, contractors, or



subcontractors” as set forth in the Citation Rules I.G.3.b.i and I.G.3.c.i.<sup>25</sup> The other self-reporting requirements in that Rule for other potentially serious safety threats would continue to remain voluntary. We agree with the Petition, as modified, in this regard.

Making this modification is consistent with Section 1702.5(a)(1), which states that when considering the issue of citations and assessment of penalties, the Commission staff shall take into account, among other things, the voluntary reporting of potential violations. The Citation Rules still retain voluntary reporting requirements for other self-identified potential violations. However, given the severity of this self-identified potential violation, we believe requiring mandatory reporting of this potential violation is appropriate. As the SED Report stated, SED can still consider the quality of the utility report, that is, whether it is a minimal report or whether it is robust, in deciding whether to issue a citation. (See Phase II Decision at 48.)

Failing to mandatorily report self-identified potential violations involving a significant safety threat under Citation Rules I.G.3.b.i, and I.G.3.c.i would also in itself be a separate violation of Commission rules. Thus, depending on the charging authority (likely SED), the utility can be separately charged for such violation of the reporting requirements, or this fact can be used as an aggravating factor in determining the penalty of the underlying violation. While the Phase II Decision stated we did not want to use this proceeding as a forum to establish new rules of substantive reporting, nothing procedurally or substantively prevents us from so doing. These types of self-identified potential violations that

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<sup>25</sup> Petitioner differs slightly from OSA in that he defers to the Commission’s judgment as to the appropriate procedural vehicle to make this change for potential electric violations.

pose a significant safety threat are very serious, and we will not wait for a separate proceeding to establish this mandatory reporting requirement.

Initially the reporting period for self-identified potential violations was 10 days for gas and 30 days for electric. (*See* Resolution ALJ-274 at Rule I.E. (gas) and the Phase I Decision, Rule I.E (electric).) The Phase II Decision established a consistent 30-day reporting period for all self-identified potential violations, and the utilities are required to notify city and county officials within 10 days after SED requires the utility to do so. The Petition, as modified by Petitioner's response to comments, seeks a 10-day reporting period for mandatorily reported self-identified potential violations that pose a significant safety threat, and requests that this type of violation be reported to the city and county officials at the same time as it is reported to the Commission.

We decline to shorten the reporting period for the mandatorily reportable self-identified potential violations to 10 days. In SED's Report that was attached to the Amended Scoping Memo for comment prior to the Phase II Decision, SED recommended harmonizing the reporting period to 30 days for all self-identified potential violations, in part, because the utility report should be robust and also contain a corrective action plan. (Phase II Decision, Appendix B (SED Report) at 24.) As we stated in the Phase II Decision at 57:

This additional time [30 days] will enable the utility to more fully investigate the matter and to provide a more thorough report. However, we agree with the SED Report that we encourage the utilities to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission. We also emphasize that a 30-day reporting period in no way relieves the utilities of their duty to implement corrective action and make their facilities safe as quickly as possible.

However, because we implement mandatory reporting of one category of self-identified potential violations, and such reporting possibly could be voluminous, we modify the reporting period as follows. As a default, the utilities shall submit to SED a Monthly Report which delineates mandatorily reportable potential violations that pose a significant safety threat to the public and/or utility staff under Citation Rules I.G.3.b.i, and I.G.3.c.i. The utilities shall submit this Monthly Report to SED by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month. This would mean that the utilities may have no less than 15 days, but up to 45 days after self-identification of a potential violation, to submit the Monthly Report. Thus, on balance, we believe this timeframe is reasonable. Also, organizing these self-identified potential violations in a single Monthly Report would be most useful for the Commission to review, especially if a high volume of reports are made.

This Monthly Report is the default reporting mechanism. If the utilities believe there is an event that may warrant more immediate staff attention, they can and are encouraged to make a report immediately, outside the monthly reporting process. The utilities shall also include such events in the next Monthly Report. And the utilities are encouraged to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission.

We do not change the Rule requiring utilities to voluntarily report self-identified potential violations under Citation Rules I.G.3.b.ii and iii, and I.G.3.c.ii and iii within 30 days of self-identification. However, the utilities may, at their discretion, also include any voluntary reports in the same Monthly Report.

And as we stated in Citation Rule I.G.5, SED has the discretion to define and refine the ministerial reporting process (i.e. designating an email address or other web based portal) that gas and electrical corporations use to self-report potential violations. We further grant SED the discretion to define and refine the ministerial reporting process in the Monthly Reports.

Under our current rules, the utilities would have 10 days after SED requires them to do so, to notify city and county officials of a mandatorily reported self-identified potential violation involving a significant safety threat. The Petition seeks to change this by requiring that the utilities notify city and county officials of such a potential violation at the same time that they notify the Commission (the Petition, as modified by Petitioner's response to comments, requests a 10-day notification period). We decline to change the Phase II Decision in this respect.

As the Commission reasoned in the Phase II Decision at 60, the current Rule [where the utilities would have 10 days after SED requires them to do so, to notify city and county officials of a reported self-identified potential violation] "addresses concerns that reporting every self-identified potential violation may cause confusion with local authorities, but still retains the ability for the authorities to obtain prompt notification if Staff believes it necessary. Moreover, nothing in this rule prohibits a utility from providing broader notification than the rule requires, pursuant to any request it might obtain from a local jurisdiction or otherwise."<sup>26</sup>

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<sup>26</sup> In comments on the SED Report prior to issuance of the Phase II decision, the utilities stated that based on their experience, a number of cities and counties are not interested in most self-reports of potential violations, whereas they would be interested in knowing about emergencies or ongoing safety issues (PG&E), and that city and county officials are less

*Footnote continued on next page*

We also note that the Citation Rule I.F requires the utilities to notify local authorities of a citation as soon as reasonable and necessary, and no later than ten days after service of the citation from this Commission. We make no changes to this Citation Rule.

Finally, the Petition asks that the Commission reconsider its interpretation of CUE's comments regarding the FAA's confidential reporting system, while recognizing the current record is inadequate to adopt the proposal. OSA agrees that the Commission should reconsider this proposal, but at this time takes no position on the specific modifications requested by the Petition. We make no further modifications to the Phase II Decision based on these requests, where Petitioner recognizes the record is inadequate to adopt the proposal, and OSA take no position on the specific modifications requested.

#### **7. Assignment of Proceeding**

Pursuant to Rule 13.2, President Michael Picker is the assigned Commissioner and Presiding Officer. Pursuant to Section 1701.4 and Rule 13.2, Dan H. Burcham is the assigned ALJ to this proceeding and acts as an assistant to the assigned Commissioner.

#### **8. Comments on the Proposed Decision**

The proposed decision (PD) of Commissioner Picker in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3. Comments were filed on May 8, 2018 by the Joint Utilities (PG&E, SoCalGas and SDG&E, Liberty Utilities,

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interested in receiving notifications of every self-reported potential violation and are more interested in knowing about significant incidents while they are occurring in real time (SoCalGas/SDG&E). (Phase II Decision at 58-59.)

PacifiCorp, Bear Valley, and Edison); Southwest Gas; and the OSA. No party filed reply comments.

The Joint Utilities do not oppose making mandatory self-reports of potential violations that pose a significant safety threat. The Joint Utilities' only concern with the PD is its adoption of the Monthly Report requirement, which would be due by the 15<sup>th</sup> of the following month, because the utilities state it could reduce the amount of time available for the utilities to provide the required information for some potential violations from 30 days to 15 days. The Joint Utilities therefore request that the Commission keep the current 30-day reporting requirement, because they do not believe the number of self-reports will significantly increase. Alternatively, the Joint Utilities request that the Monthly Report be due by the 30<sup>th</sup> of the following month, rather than the 15<sup>th</sup> of the month, so that they will have, at a minimum, 30 days, to report a potential violation.

Southwest Gas also does not oppose the PD, but requests the same changes in reporting requirements as do the Joint Utilities. Southwest Gas also encourages the Commission to continue its evaluation and pilot of a voluntary safety reporting system, as outlined in OSA's comments to the Petition, and as discussed by various parties at the Commission's recent Safety Banc hearing.

OSA agrees with the PD and states that the PD correctly requires mandatory reporting for the most serious potential violations. OSA also believes that the Monthly Reporting requirements are a reasonable alternative to the 10-day reporting period recommended by OSA and supports the Monthly Reporting Requirements.

We make no changes to the PD. As we state in Section 6 above, initially the reporting period for self-identified potential violations was 10 days for gas and

30 days for electric. (See Resolution ALJ-274 at Rule I.E. (gas) and the Phase I Decision, Rule I.E (electric).) The Phase II Decision established a consistent 30-day reporting period. The Petition under consideration here, as modified by Petitioner's response to comments, seeks a 10-day reporting period for mandatorily reported self-identified potential violations that pose a significant safety threat.

The PD establishes a Monthly Report by which the utilities will mandatorily report these potential violations that pose a significant safety threat. The utilities would submit the Monthly Report by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month. Under this reporting, the utilities may have no less than 15 days but up to 45 days after self-identification of a potential violation to submit the Monthly Report.

We established the Monthly Reporting process, in part, because of the possibility that the mandatory self-reports could be voluminous. The utilities state they do not expect any noticeable increase in self-reports based on the change from a voluntary to mandatory reporting process. Given that the utilities do not anticipate a large increase of reports, and given the recommendation of Petitioner and OSA that the reporting period be shortened to 10 days, we believe the Monthly Reporting process outlined in the PD continues to be a reasonable alternative so that the Commission can receive thorough reports as expeditiously as possible, because only a small percentage of the mandatorily reportable potential violations will fall within the 15-day reporting period. We therefore make no changes to the PD.

**Findings of Fact**

1. The OIR was broadly served on all gas and electric corporations, who were designated as respondents, as well as on the service lists of eleven recent large gas and electric rate or safety-related cases, as well as on the service list for Resolution ALJ-274 and the Commission's SED informal service list used for the follow-up workshops for Resolution ALJ-274. Staff from Senator Hill's office and many local government representatives were on these initial service lists, which cumulatively were designated as the temporary service list.

2. The Amended Phase II Scoping Memo issued on June 15, 2016, provided clear notice of the Commission's intent to review and possibly modify the self-identified potential violations reporting requirements, included the text of the SED Report, and invited comment on the SED Report.

3. Petitioner Hill was not a party to this proceeding at the time D.16-09-055 issued. Petitioner Hill's staff member was on the service list for this proceeding (state service) as early as September 26, 2014 when the Phase I Scoping Memo issued.

4. OSA was not in existence at the time the Phase II Decision issued. While ORA participated in this proceeding, ORA did not file comments on the issues presented in the Commissioner's Amended Phase II scoping memo dated June 15, 2016 concerning the SED Report on self-identified potential violations. Thus, the only commenting parties on the Phase II Scoping Memo were the utilities.

5. This decision is not precedent for granting a petition for modification in each proceeding in which OSA could not participate because it was not yet formed.



6. SED can still consider the quality of the utility report in a mandatorily reportable self-identified potential violation, that is, whether it is a minimal report, or whether it is robust, in deciding whether to issue a citation.

7. Failing to mandatorily report self-identified potential violations involving a significant safety threat under Citation Rules I.G.3.b.i, and I.G.3.c.i would also in itself be a separate violation of Commission rules. Thus, depending on the charging authority (likely SED), the utility can be separately charged for such violation of the reporting requirements, or this fact can be used as an aggravating factor in determining the penalty of the underlying violation.

8. A Monthly Report for mandatorily reportable self-identified violations, filed by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month, means that the utilities may have no less than 15 days, but up to 45 days after self-identification of a potential violation, to submit the Monthly Report. Thus, on balance, we believe this timeframe is reasonable. Also, organizing these mandatorily reportable self-identified potential violations in a single Monthly Report would be most useful for the Commission to review, especially if a high volume of reports are made.

9. This Monthly Report is the default reporting mechanism. If the utilities believe there is an event that may warrant more immediate staff attention, they can and are encouraged to make a report immediately, outside the monthly reporting process. The utilities shall also include this event in the next Monthly Report.

10. We do not change the Rule requiring utilities to voluntarily report self-identified potential violations under Citation Rules I.G.3.b.ii and iii, and I.G.3.c.ii and iii within 30 days of self-identification. However, the utilities may,

at their discretion, also include any voluntary reports in the same Monthly Report.

### **Conclusions of Law**

1. Because of the new circumstances in that OSA was unable to participate in this proceeding before the Phase II Decision issued because it was not yet formed, and the general lack of an opposing viewpoint (other than the utilities' viewpoint) on the issues presented in this Petition for Modification, we consider the merits of the Petition and grant it, as set forth in the Ordering Paragraphs below.

2. Requiring a utility mandatorily to report electric and gas self-identified potential violations which pose "a significant safety threat to the public and/or utility staff, contractors, or subcontractors" as set forth in the Citation Rules I.G.3.b.i and I.G.3.c.i, is consistent with Section 1702.5(a)(1), which states that when considering the issue of citations and assessment of penalties, the Commission staff shall take into account, among other things, the voluntary reporting of potential violations, as the Citation Rules still retain voluntary reporting requirements for other self-identified potential violations.

3. Given the severity of a self-identified potential violation that poses a significant safety threat under Citation Rules I.G.3.b.i, and I.G.3.c.i, requiring mandatory reporting of this potential violation is appropriate.

4. While the Phase II Decision stated the Commission did not want to use this proceeding as a forum to establish new rules of substantive reporting, nothing procedurally or substantively prevents us from so doing. Self-identified potential violations that pose a significant safety threat under Citation Rules I.G.3.b.i, and I.G.3.c.i are very serious, and we will not wait for a separate proceeding to establish this mandatory reporting requirement.

5. The reporting period for mandatorily reportable potential violations under Citation Rules I.G.3.b.i, and I.G.3.c.i should be as follows. The utilities should make such reports, at the latest, in a Monthly Report to the SED. The utilities should submit this Monthly Report to SED by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month. The utilities may also submit an individual report earlier if they believe that more immediate staff attention may be warranted, and must also include this incident later in the next Monthly Report. The utilities are encouraged to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission.

6. As the Commission stated in Citation Rule I.G.5, SED has the discretion to define and refine the ministerial reporting process (i.e. designating an email address or other web based portal) that gas and electrical corporations use to self-report potential violations. We further grant SED the discretion to define and refine the ministerial reporting process for these Monthly Reports.

7. We should make no further modifications to the Phase II Decision regarding utility notification to city and county officials of a mandatorily reportable self-identified potential violation.

8. We should make no further modifications to the Phase II Decision regarding the Commission's interpretation of CUE's comments regarding the FAA's confidential reporting system, where Petitioner recognizes the record is inadequate to adopt the proposal, and OSA takes no position on the specific modifications requested.

9. The Petition for Modification of D.16-09-055 should be granted to the extent that a utility must now mandatorily report self-identified potential violations that pose a significant safety threat under Citation Rules I.G.3.b.i, and

I.G.3.c.i, and should make such reports, at the latest, in a Monthly Report to SED. The utilities should submit this Monthly Report to SED by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month. The utilities may also submit an individual report earlier if they believe that more immediate staff attention may be warranted, and must also include this incident later in the next Monthly Report. The utilities are encouraged to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission.

10. The Findings of Fact and Conclusions of Law of the Phase II Decision and the Citation Rules (Appendix A to the Phase II Decision) are modified as set forth in the Ordering Paragraphs below.

11. R.14-05-013 should be closed.

## **O R D E R**

**IT IS ORDERED** that:

1. The “Jerry Hill Petition for Modification of Decision 16-09-055 Adopting Changes To The Gas And Electric Citation Programs” filed by Jerry Hill on February 21, 2017, is granted to the extent that a utility must now mandatorily report self-identified potential violations that pose a significant safety threat under Citation Rules I.G.3.b.i and I.G.3.c.i, and must make such reports, at the latest, in a Monthly Report to the Commission’s Safety and Enforcement Division (SED). The utilities must submit this Monthly Report to SED by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month. The utilities may also submit an individual report earlier if they believe that more immediate staff attention may be warranted, and must also

include this incident later in the next Monthly Report. In all other respects, the Petition for Modification is denied.

2. As the Commission stated in Citation Rule I.G.5, the Safety and Enforcement Division (SED) has the discretion to define and refine the ministerial reporting process (i.e. designating an email address or other web based portal) that gas and electrical corporations use to self-report potential violations. SED shall also have the discretion to define and refine the ministerial reporting process for these Monthly Reports.

3. The Findings of Fact, Conclusions of Law, and Ordering Paragraphs of Decision 16-09-055 are modified as follows:

- (a) The text of Finding of Fact 17 is eliminated. The numbering of the Findings of Fact will not change, and the text of Finding of Fact 17 will now read:

This finding of fact is eliminated by the decision on the 'Jerry Hill Petition for Modification of Decision 16-09-055 Adopting Changes To The Gas And Electric Citation Programs' filed by Jerry Hill on February 21, 2017.

- (b) The first sentence of Finding of Fact 19 is modified to read:

Under both the gas and electric safety citation program, Criteria 1 and 2 of the mandatorily (Criteria 1) and voluntarily (Criteria 2) reported self-identified potential violations do not include a near miss scenario.

- (c) The last sentence of Finding of Fact 20 is modified to read:

Therefore, if a qualifying matter is not reportable under another program within 30 days, it is reportable as a self-identified potential violation under Rule I.G. of the Citation Rules (Appendix A).

- (d) Finding of Fact 22 is modified to read:

A Monthly Report for the mandatorily reported self-identified violations, filed by the 15<sup>th</sup> of each month for

all mandatorily reportable potential violations identified in the prior calendar month, means that the utilities may have no less than 15 days, but up to 45 days after self-identification of a potential violation, to submit the Monthly Report, and on balance, is reasonable.

- (e) Conclusion of Law 9 is modified to read:

Both the gas and electric safety citation programs should be modified to make utility reporting of self-identified potential violations involving a significant safety threat listed in Citation Rule I.G.3.b.i and I.G.3.c.i, mandatory, and utility reporting of other self-identified potential violations listed in Rule I.G.3.b.ii and iii, and I.G.3.C.ii and iii voluntary. The citation programs will take into account such reporting as a factor in both issuing a citation in the first instance and in the amount of the penalty. Failure to mandatorily report a self-identified potential violation pursuant to these Citation Rules is a separate violation of Commission Rules.

- (f) Conclusion of Law 10 is modified to read as follows:

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

- (g) Conclusion of Law 13 is modified to read:

It is reasonable to focus the reporting of self-identified potential violations to those potential violations set forth in Citation Rule I.G.

- (h) Conclusion of Law 14 is modified to read:

It is reasonable to adopt the following criterion for a utility mandatorily to report self-identified potential violations

for the gas safety citation program: (a) a potential violation that poses a significant safety threat to the public and/or utility staff, contractors, or subcontractors; It is reasonable to adopt the following criteria for a utility voluntarily to report self-identified potential violations for the gas safety citation program: (b) a potential violation that caused a system wide impact or affected a large geographic region; and (c) any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's personnel, contractors, or subcontractors, that caused or could have caused a potential violation, regardless of the outcome.

- (i) Conclusion of Law 15 is modified to read:

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

- (j) The first sentence of Conclusion of Law 19 is modified to read:

The gas and electric safety citation program should be modified so that a utility must now mandatorily report self-identified potential violations that pose a significant safety threat under Citation Rules I.G.3.b.i and I.G.3.c.i, and shall make such reports, at the latest, in a Monthly

Report to the Commission's Safety and Enforcement Division (SED). The utilities shall submit this Monthly Report to SED by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month. The utilities may also submit an individual report earlier if they believe that more immediate staff attention may be warranted, and must also include this incident later in the next Monthly Report. And the utilities are encouraged to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission.

(k) Conclusion of Law 20 is modified to read:

As the Commission stated in Citation Rule I.G.5, SED has the discretion to define and refine the ministerial reporting process (i.e. designating an email address or other web based portal) that gas and electrical corporations use to self-report potential violations. SED shall also have the discretion to define and refine the ministerial reporting process for these Monthly Reports.

4. Appendix A (Citation Rules) to Decision 16-09-055 is modified as set forth in the attachment, and is adopted as modified.

5. Changes adopted by today's decision to the gas safety citation program and electric safety citation program will be in place for citations issued on or after the effective date of this decision.

6. Rulemaking 14-05-013 is closed.

This order is effective today.

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



## **APPENDIX A**

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

**APPENDIX A****Citation Rules - Procedures and Appeal Process****Applicable to Gas Corporations' and Electrical Corporations' Facility Violations****I. Citation Procedures****A. Issuance of Citation**

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

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

- Consideration of previously issued decisions that involve the most reasonably comparable factual circumstances

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

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

B. Contents of Citation

1. A specification of each alleged violation, including citation to the portion of GO 112-F and the federal regulations incorporated into the program (for gas) or GOs 95, 128, 165, 166, 174 (for electric), and other related applicable decisions, codes, or regulations allegedly violated;
2. A statement of the facts upon which each alleged violation is based. While the citation need not include all supporting evidence, Staff will make the evidence available for timely inspection upon request by the Respondent; see also Rule II.B.4 below.
3. The number of offenses, which may be counted on a daily basis, or something less, depending upon application of the factors set forth in Rule I.A.3 and I.A.4;

4. The penalty assessed for each offense, determined consistent with the factors set forth in Rule I.A.3 and I.A.4;
5. The total amount of the penalty;
6. A statement that the Respondent must, within thirty days<sup>27</sup> of the date of service of the citation, either pay the amount of the penalty set forth in the citation or appeal the citation. The citation shall also inform the Respondent that immediate safety hazards must be corrected immediately; that violations that do not constitute immediate safety hazards must be corrected within 30 days after the citation is served. The citation shall also inform Respondent that if other violations that do not constitute immediate safety hazards cannot be corrected within 30 days, then the Respondent must submit a detailed Compliance Plan to the Director of SED within 30 days after the citation issues, unless the utility and the Director of SED, before the expiration of the 30 day period, agree in writing to another date, reflecting the soonest that the Respondent can correct the violations. The citation shall also state that the Respondent will forfeit the right to appeal the citation by failing to do one of these things within 30 days. The citation shall also inform the Respondent that payment of a citation or filing a Notice of Appeal does not excuse the Respondent from curing the violation, that the amount of the penalty may continue to accrue until a Notice of Appeal is filed, and that penalties are stayed during the appeal process.
7. A Citation Payment Form;
8. An explanation of how to file an appeal, including the Respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, to request an interpreter, and a copy of or electronic reference to Resolution ALJ-299 Establishing Pilot Program Citation Appeal and General Order 156 Appellate Rules (Citation Appellate Rules).

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<sup>27</sup> The number of days stated are calendar days unless otherwise noted. See also 1.15 of the Commission's Rules of Practice and Procedure regarding computation of time.

9. A form for filing the appeal, which will be called a "Notice of Appeal"

C. Service of Citation

1. Service of the citation shall be effected either personally in the field or to an officer of the Respondent by electronic mail or by first-class mail within a reasonable period of time after the discovery of the violation.
2. Citations served by first class mail may be sent to the Respondent's business address, or the address for the service of process the Respondent has on file with the Secretary of State of California.
3. On the same date that Staff serves a citation in the field, Staff shall also serve a copy of citations issued in the field to an officer of the Respondent at the Respondent's business address.
4. Service is effective upon the date the citation is served personally in the field or on the Respondent by electronic mail or first-class mail.
5. No later than ten days following service of the citation, Staff shall publish each citation on the Commission's website. To the extent that a Respondent submits a Notice of Appeal of the Citation, Staff shall publish that Notice of Appeal on the Commission's website within ten days of the date the Notice of Appeal is submitted.

D. Response to Citation

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

methodology to be utilized, and a statement supported by an declaration from the Respondent's Chief Executive Officer or appropriate designee (CEO Declaration) stating that in the Respondent's best judgment, the time that will be taken to correct the violation will not affect the safety or integrity of the operating system or endanger public safety.

2. If the citation is for a continuing violation, the amount of the penalty may continue to accrue on a daily basis until the violation is corrected, notwithstanding the existence of a Compliance Plan, CEO Declaration, or existing repair schedule.
3. Any CEO Declaration must include:
  - a. The name of the person and that person's position that the Chief Executive Officer relied upon for this declaration, and
  - b. An explanation of why the time taken to correct the violation will not affect the safety or integrity of the operating system or endanger public safety.
4. Unless otherwise specified, a requirement to "notify Staff" or "serve Staff or the Director of SED" means to send a written communication by first-class mail or an express mail service to the address specified in the citation.
  - a. Such written communications are not filed with the Commission's Docket Office.
  - b. Staff may specify an e-mail address in order to allow electronic submissions in addition to, or instead of communications by mail service.

E. Payment of Penalty or Default

1. All cited violations must be cured, as set forth in Rule I.D.1. Payment of penalties must be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the California Public Utilities Commission.
  - a. The Respondent must include the citation number and shall include a completed Citation Payment Form.

- b. Upon payment, the penalty will be deposited in the State Treasury to the credit of the State General Fund.
  2. If Respondent pays the full amount of the penalty within the time allowed, the citation shall become final.
  3. Failure to pay the full amount of the penalty or to file a Notice of Appeal will place Respondent in default, the citation shall become final, and the Respondent will have forfeited its right to appeal the citation.
  4. A late payment is subject to a penalty of 10 percent per year, compounded daily and to be assessed beginning the calendar day following the payment-due date.
- F. Notification of Local Authorities  
As soon as is reasonable and necessary, and no later than ten days after service of a citation is effected, each Respondent gas or electrical corporation must notify the Chief Administrative Officer or similar authority in the city and county where the violation occurred for which the citation is issued, and within ten days of such notification must notify the Director of SED that the local authorities have been notified by serving an affidavit that lists the date of notification and the name and contract information of each local authority so notified.
- G. Self-Identified and Self-Corrected Potential Violations
1. To the extent that a gas or electrical corporation mandatorily self-identifies a potential violation pursuant to the criteria set forth in Rules 1.G.3.b.i and I.G.3.c.i, or voluntarily self-identifies a potential violation pursuant to the criteria set forth in Rules I.G.3.b.ii and iii, and I.G.3.c.ii and iii, Staff shall consider such facts, in addition to those factors set forth in Rules I.A.3 and I.A.4 above, in determining whether a citation should be issued and the amount of the penalty if a citation is issued. Failure to mandatorily report a self-identified potential violation pursuant to these Rules is a separate violation of Commission Rules.
  2. If a gas or electrical corporation mandatorily provides notification of such potential violation to



Commission Staff pursuant to Rules 1.G.3.b.i and I.G.3.c.i, it must do so, at the latest, in a Monthly Report to SED. The gas or electrical corporation must submit this Monthly Report to SED by the 15<sup>th</sup> of each month for all mandatorily reportable potential violations identified in the prior calendar month. This Monthly Report for mandatorily reportable self-identified potential violations is the default reporting mechanism. If the gas or electrical corporation believes there is an event that may warrant more immediate Staff attention, it can and is encouraged to make a report immediately outside the monthly reporting process. A gas or electrical corporation must also include this event in the next Monthly Report. If a gas or electrical corporation voluntarily provides notification of such potential violations to Commission Staff under Rules I.G.3.b.ii and iii, and I.G.3.c.ii and iii, it must do so within 30 days of self-identification of the potential violation. Additionally, a gas or electrical corporation may also include this voluntary notification in its Monthly Report. The notification of a mandatorily or voluntarily reportable self-identified potential violation must also state when the violation will be corrected. A gas or electrical corporation reporting under this Rule is encouraged to consult with SED Staff regarding a mandatorily or voluntarily reportable potential violation as soon as possible, even if it is only an initial cursory report with subsequent official submission. This reporting period in no way relieves the gas or electrical corporation of its duty to implement corrective action and make its facilities safe as quickly as possible

3. Criteria for self-reporting potential violations:
  - a. A “potential” violation is a potential violation of GO 112-F, including the federal regulations incorporated into the program, CFR Title 49, Parts 190, 191, 192,

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

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

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

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

Additionally, self-identification and reporting of any potential violation or safety-related condition does not relieve an electrical or gas corporation of its existing responsibility to correct such violations and safety-related conditions as soon as feasible.

## II. Appeal

### A. Notice of Appeal

1. If Respondent wishes to appeal a citation, Respondent (now Respondent/Appellant) must file a Notice of Appeal with the Commission's Docket Office, pursuant to Resolution ALJ-299, within 30 days from the date service of the citation is effected. Respondent/Appellant must serve the Notice of Appeal on the Commission's Executive Director, the Chief Administrative Law Judge (ALJ) (with an electronic copy to: [ALJ\\_Div\\_Appeals\\_Coordinator@cpuc.ca.gov](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.

**Attachment 1 to Citation Rules - Procedures and Appeal Process****Applicable to Gas Corporations' and Electrical Corporations' Facility Violations**

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

**(b) Fines**

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

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

**i. Severity of the Offense**

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

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

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

“Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.” Public Utilities Code § 702.

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

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

#### ii. Conduct of the Utility

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

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

#### (1) The Utility’s Actions to Prevent a Violation

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

#### (2) The Utility’s Actions to Detect a Violation



The Commission expects public utilities to monitor diligently their activities. Where utilities have for whatever reason failed to meet this standard, the Commission will continue to hold the utility responsible for its actions. Deliberate as opposed to inadvertent wrong-doing will be considered an aggravating factor. The Commission will also look at the management's conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management personnel. The Commission will closely scrutinize any attempts by management to attribute wrong-doing to rogue employees. Managers will be considered, absent clear evidence to the contrary, to have condoned day--to-day actions by employees and agents under their supervision.

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

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

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

#### iii. Financial Resources of the Utility

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

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

Setting a fine at a level which effectively deters further unlawful conduct by the subject utility and others requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case. The

Commission will review facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

v. The Role of Precedent

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

**(END OF APPENDIX A)**