

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17601
June 21, 2018**

R E S O L U T I O N

Resolution T-17601. Approval of a Citation Program To Enforce Compliance by Telecommunications Carriers With The Commission's Resolutions, Decisions, Orders, and The Public Utilities Code and Authorizes Staff To Issue Citations; Procedures For Appeal Of Citations

SUMMARY

Resolution T-17601 (Resolution) authorizes the Communications Division Staff (Staff) to implement a citation program for enforcing compliance by telecommunications carriers with the Commission's Resolutions, Decisions, Orders and the Public Utilities Code. This Resolution also adopts a citation procedure, a list of specific violations, and the corresponding amount of penalties as detailed in Appendix A, as well as an appeal procedure outlined in Appendix B.

BACKGROUND

The Commission has broad regulatory authority, as set forth in Article XII of the California Constitution and Public Utilities Code Sections 701, 702, 2101, and 2107. Specifically, these codes provide as follows:

- Public Utilities Code § 701

The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

- Public Utilities Code § 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 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 § 2101

The commission shall see that the provisions of the Constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the State therefor recovered and collected, and to this end it may sue in the name of the people of the State of California. Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county shall aid in any investigation, hearing, or trial had under the provisions of this part, and shall institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this State affecting public utilities and for the punishment of all violations thereof.

- Public Utilities Code § 2107

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

Public Utilities Code § 7 states that the any public office of the Commission may authorize Staff to exercise powers and perform duties granted to the officer, unless expressly provided otherwise.¹ These may include the investigation of facts preliminary to agency action, and the issuance of citations for particular kinds of violations, up to specified amounts, subject to appeal to the Commission.² The Commission has

¹ The term "Staff" refers to the portion of the Commission's Staff designated by the Executive Director to carry out the particular function involved.

² See Decision 09-05-020, 2009 Cal. PUC LEXIS 250, at p. *4 [approving safety citation program for rail carriers].

exercised this authority by adopting citation programs in the following areas: household good movers, charter party carriers, passenger stage corporations, propane gas distribution system operators, power plant operators, telecommunication providers, and energy service providers, and the establishment of a pilot citation appeal program. This Resolution is consistent with these other approved citation programs.

DISCUSSION

As outlined above, the Commission has the jurisdiction to adopt a citation program and authorize Staff to issue citations to public utilities³. The Communications Division oversees compliance of telecommunications carriers. Therefore, we specifically authorize the Communications Division Staff issue citations and levy penalties consistent with the rules we adopt here, as set forth in Appendix A.

Delegating authority to Staff to issue citations for the violations listed in Appendix A is necessary to ensure that telecommunications carriers comply with the Commission's Resolutions, Decisions, Orders, and the Public Utilities Code. Our adoption of a citation program will provide Staff with an additional tool to address non-compliance issues in a more efficient manner. Although carriers currently are informed of their non-compliance, the existing process requires issuance of a Commission resolution, which takes time to prepare and bring before the Commission for a formal vote. By establishing a citation program, more immediate action can be taken at the Staff level to address and correct non-compliance, while simultaneously providing a clear process for a carrier to contest or appeal violations identified.

The citation program we adopt here would allow Staff to issue citations for violations of Commission compliance requirements. All citations will be authorized by Communications Division Management prior to issuance. Each violation would trigger issuance of a notice and would be considered an "event" for purposes of assessing a penalty. A carrier's failure to correct a violation would trigger another notice sent out after the expiration of the 30-day compliance deadline, potentially resulting in the imposition of additional penalties. For instance, if a carrier receives multiple notices for the same violation, each subsequent notice would increase the penalty amount.⁴ With the exception of operating without authority, the intent is that no other penalties will exceed \$3,000. If a carrier does not comply within six months, the company's license would be subject to revocation via Commission Resolution.

Staff proposes the citation process include the following violations and penalties:

³ Pursuant to Public Utilities Code § 216 (a) "Public Utility" includes telephone corporations.

⁴ See Appendix C for hypothetical penalty calculations

- Failure to Obtain Authority to Operate in California: \$1,000 per month for each month the carrier has been operating without authority;
- Failure to Submit Specified Filings, Notices, Reports and Other Items as Directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code as Listed in Appendix A: \$1,000 per event. Each subsequent Staff notice or event increases the penalty amount by an additional \$200;
- Failure to report and remit surcharge payments for at least six months as directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code: \$1,000 per event up to a maximum \$3,000;⁵
- Failure to report and remit user fee payments for at least 30 days: 25% of user fees due on delinquent payments;⁶
- Late-filed contracts: Subject to GO 96-B Section 8.2.1 and D.91-07-010: Between ¼% and 10% of the total contract revenues, depending on lateness of filing.

This proposed citation program ensures that the Commission is properly notifying telecommunications carriers in writing of compliance problems. In addition, the carriers would be given the opportunity to pay the penalty, correct violations and to advise Staff of any errors in Staff's evaluation and conclusions. Finally, carriers would have the opportunity to contest within 30 days the violation and the penalty amount. A carrier may request an extension of the 30-day deadline to achieve compliance. The Communications Division is authorized to grant a one-time extension of up to 60 days for additional time for carriers to achieve compliance if the carrier makes a written request to the Communications Division before the expiration of the 30-day compliance deadline. A carrier must demonstrate good cause for the additional time requested to correct violations and show a good-faith effort to correct violations. Staff may defer or suspend issuing citations, consistent with the process set forth in Appendix A. If Staff grants an extension, a new compliance deadline will be set. The lists of violations and the corresponding penalty amounts are shown in Appendix A. The penalty amounts selected are based on historical amounts that were imposed in previous Commission

⁵ The \$1000 penalty amount is in addition to the interest rate assessed on late filed surcharges. Surcharge funds must be reported and remitted no later than 40 days following the close of a reporting period. Carriers that report and/or remit surcharge funds after the due date will be charged interest equal to an annual rate of 10%. The 10% rate will be assessed on the surcharge amount due, including any adjustments, starting from the 41st day after the close of the reporting period to the date that the carrier remits the surcharge (See General Order 153 Section 11.4 on Universal Service and D.98-01-023.)

⁶ Pursuant to Public Utilities Code section 405, the Commission may assess a penalty not to exceed 25% of user fees due on delinquent payments.

Resolutions⁷. The penalty amount for the violation is due on the date stated in the Notice, or on the extension date. Penalties assessed on carriers cannot be recovered from customers via Commission rate setting proceedings.

Nothing in this Resolution affects the Commission's existing Constitutional and statutory authority to pursue enforcement actions for non-compliance by public utilities with any Commission order, decision, rule, direction, or requirement. More specifically, the establishment of a citation program does not prevent the Commission from taking other remedial measures, including, but not limited to the revocation of a carrier's Certificate of Public Convenience and Necessity and/or registration licenses. The citation program also does not affect a subscriber's right to file his or her own action pursuant to the Public Utilities Code and Commission rules and regulations.

The following procedures would govern the issuance and appeal of these citations. Such procedures would be consistent with other citation programs approved by the Commission.

- 1) *Contents*. The citation served upon the telecommunications carrier (Respondent) by the Staff will include:
 - (a) A specification of each alleged violation, including citation of the Resolution, Decision, Order, or Public Utilities Code Section allegedly violated;
 - (b) A statement of the facts upon which each alleged violation is based, including supporting documents;
 - (c) The amount of the fine;
 - (d) A statement that the Respondent may correct the violation and pay the amount of the penalty set forth in the citation and the conditions for payment, and alternatively, the Respondent may file an appeal of the citation within 30 days pursuant to Resolution ALJ-299 Appendix B;

⁷ These resolutions include: Res. T-17558 Imposing Fines on those Voice over Internet Protocol (Digital Voice Service) Providers Who Have Failed to Report and Remit California's Public Purpose Program Surcharges in Accordance with Public Utilities Code Section 285 Approved on September 14, 2017; Res. T-17571 Conditionally Approving the Wireless Identification Registration Application of Republic Wireless, Inc., Subject to the Payment of Past Due Surcharges and User Fees Including Penalties and a Fine for Operating Without Authority Approved on September 14, 2017 ; Res. T-17578 Conditionally Approving The Wireless Identification Registration Application of Redding MSA Limited Partnership DBA Verizon Wireless, Subject To The Payment Of Past Due User Fees Including Penalties And A Fine For Operating Without Authority Approved on October 12, 2017; .Res. T-17597 Imposing Fines and Subsequently Revoking the Operating Authority of Telephone Corporations for their Failure to Comply with User Fee, Public Purpose Program Surcharge and Performance Bond Requirements Approved on March 22, 2018 .

- (e) An explanation on how to file an appeal, including the Respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter;
- (f) The form for Notice of Appeal and the form for requesting an interpreter; and
- (g) A notation that CD Management has approved the citation.

2) *Service of Citation.*

Staff will issue citations by Certified Mail to the Respondent's designated regulatory contact. A copy of the citation will also be emailed to the Respondent's designated regulatory contact.

3) *Response.*

- a) Within 30 days after the date of the citation, Respondent shall correct the violation and remit the full amount of the penalty with notice to Staff, or serve a Notice of Appeal to Staff. Before the expiration of the 30-day deadline, Staff or an Administrative Law Judge (ALJ) may extend the time for response upon a showing of good cause.
- b) Unless otherwise specified, a requirement to notify Staff or to serve Staff means to send a written communication by U.S. Mail or an express mail service to the address specified in the citation. **These written communications should not be filed with the Commission's Docket Office.** In addition to communications by mail service, Staff may allow electronic submissions.

4) *Payment of penalty; default.*

- a) A carrier submitting payment of penalties shall mail or deliver the payment to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check or money order, payable to the California Public Utilities Commission. The Respondent's representative shall write on the face of the check or money order "For deposit to the State of California General Fund per Resolution T-17601."
- b) If Respondent pays the full amount of the penalty within the time allowed, the citation shall become final. Failure to pay the full amount of the penalty by the due date specified in the Notice or the extension date, 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. A late payment is subject to a penalty of 10 percent. Payments are considered late if they are received after the due date specified in the Notice or after the extension date.

5) *Appeal.*

Resolution ALJ-299 sets forth the appeals process for all CPUC citation programs unless otherwise noted in Resolution ALJ-299. Any appeal of a citation issued under this Resolution shall be in accordance with the procedures set forth in Resolution ALJ-299 (Appendix B).

SAFETY

By authorizing Staff to issue citations, we intend to assure that telecommunications carriers comply with all applicable Commission Resolutions, Decisions, Orders, and Public Utilities Code sections, including all safety related requirements that may be contained therein.

NOTICE AND PROTESTS

In compliance with Public Utilities Code § 311 (g), the Commission on May 1, 2018 provided notice to all telephone carriers that this draft Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comment. Additionally, Communications Division informed these parties of the availability of the conformed Resolution at the same website.

Notice of Draft Resolution T-17601 was published in the Commission Daily Calendar on May 1, 2018.

On May 21, 2018 the California Association of Competitive Telecommunications Companies (CALTEL), the Communications Industry Coalition (CIC), and the Utility Reform Network (TURN) submitted comments on six areas of the Draft Resolution. A summary of the comments and Staff responses to those comments are shown below.

1. List of Items Subject to Fines

Comments:

- CIC requested that the Resolution be modified to:
 - Clearly specify the grounds for potential fines; and
 - That the violation and penalty schedules in Appendices A and C be revised to reflect these proposed modifications.
- CALTEL requested that the Resolution be modified to:
 - State that penalties subject to the "catch-all" requirement will only be applied after a provider has failed to respond to an initial notice of failure to comply.

Responses:

- Staff finds the comments of CIC and CALTEL reasonable and has updated Appendices A and C to provide clarity and simplicity.

2. Penalty Amounts

Comments:

- CALTEL requested that the Resolution be changed to:
 - Adopt a sliding scale based on provider revenues.
- CIC requested that the Resolution be modified so that:
 - For all categories except for failure to obtain authority and late-filed contracts the maximum penalty amount is \$3,000.
- TURN:
 - Requested that the Resolution be modified to either increase the penalties related to citations or at a minimum revise the timeframe and penalty amounts listed for failure to pay surcharges; and
 - Stated twelve months is too long for the Commission to wait before issuing a citation for failure to pay surcharges.

Responses:

- To CALTEL's Comments:
 - Staff is not persuaded that a sliding penalty scale based on provider revenues is a more effective and efficient way to implement the citation program. The citation program proposed here is intended to be straight-forward in terms of implementation and uniform in application.
- To CIC's Comments:
 - With respect to CIC's comments that the maximum penalty amount be \$3,000 for many of the items listed in this Draft Resolution, Staff notes that most fines listed will be \$3,000 or less as shown in Appendix C and further edits are not needed to this Resolution.
- To TURN's Comments:
 - Staff has modified the Resolution to revise the timeframe that carriers are out of compliance with the surcharge requirement prior to issuing a citation from twelve months to six months.

3. Availability of Citation Information and Implementation of Comment Period

Comments:

- CALTEL stated:
 - A single webpage should be created in which compliance requirements are catalogued; and

- The citation program should only be implemented in conjunction with this streamlined information.
- TURN requested that the Resolution be modified to state:
 - Citations, carrier responses, and appeals will be web posted; and
 - A Notice of Availability of citations will be mailed to a standing service list.

Reponses:

- To CALTEL's Comments:
 - Staff did not adjust the proposed Resolution. The compliance requirements are already currently listed on the Commission's webpage. Further, Staff sends reminder notices for certain compliance requirements including annual performance bond filings, annual tariff filings, and annual and affiliate transaction report filings.
- To TURN's Comments:
 - Staff did not modify the Resolution to include provisions for the Notices of Availability, implementation of a comment period, posting citations, or carrier responses to citations. These processes are inconsistent with other citation programs adopted by the Commission. If a carrier chooses to appeal a citation, and a hearing is granted, the notice of an appeal hearing will appear on the Commission's Daily Calendar. At such time, other parties may seek to participate in the appeal hearings.

4. Authorization and Mailing of Citations

Comments:

- CIC:
 - Asserted that penalties should only be authorized by the Deputy Director or Director; and
 - Requested that the Resolution either be revised to indicate that citations will be served via both Certified Mail and email or that the time to remit the penalty or submit an appeal is 30 days from receipt of the citation.

Responses:

- To CIC's Comments:
 - Staff has modified the Resolution to clarify that Staff issued citations will be approved by CD Management, (i.e. the Communications Division Director, Deputy Director, or Program Managers); and
 - Staff has revised the Resolution to indicate that a courtesy copy of the citation will be emailed to the carrier's regulatory contact in addition to the copy that is sent via Certified Mail.

5. Subscribers' Rights to File Complaints

Comments:

- TURN recommended adding the following language to the Resolution:
 - "The citation program does not affect a subscriber's right to file his or her own action pursuant to the Public Utilities Code [and Commission rules and regulations]" in order to clarify that the CPUC does not intend to interfere with, prevent, or diminish a subscriber's private right of action.

Responses:

- To TURN's Comments:
 - Staff has modified the Resolution to incorporate TURN's suggestion about subscriber's rights.

6. Other Clerical Changes

Comments:

- TURN recommended:
 - Citing previous Commission Resolutions or providing a list of prior penalties assessed that were the basis for the penalties listed in the Draft Resolution.
- CIC requested:
 - That page 5 of the Draft Resolution be modified to indicate that carriers have the opportunity to correct violations, in order to make the language consistent with the language on page 4 of the Draft Resolution.

Responses:

- To TURN's Comments:
 - Staff notes that Footnote 7 in this Resolution lists prior CD Resolutions in which penalties were assessed.
- To CIC's Comments:
 - Staff has modified the Resolution to indicate that carriers have the opportunity to correct violations and to make the language consistent with the language on page 4 of the Draft Resolution.

CONCLUSION

The Commission finds that the proposed citation program in this Resolution is similar to other citation programs we have approved in the past and is within the Commission's regulatory authority. Therefore, we find it reasonable to authorize the

Communications Division to issue citations to telecommunications carriers as discussed herein, adopt the procedures for appealing citations set forth in Appendix B, and adopt the Specified Violations and Maximum Penalty Schedule set forth in Appendix A.

FINDINGS

1. Public Utilities Code § 701 authorizes the Commission to supervise and regulate every public utility in the State.
2. Public Utilities Code § 702 mandates every public utility to obey and comply with every Commission order, decision, direction, or rule.
3. Public Utilities Code § 2101 mandates the Commission shall ensure that the provision of the Constitution and statutes affecting public utilities are enforced and obeyed.
4. Public Utilities Code § 2107 mandates that utilities are subject to a minimum penalty of five hundred dollars (\$500) and a maximum penalty of fifty thousand dollars (\$50,000) for each compliance failure in cases in which a penalty has not otherwise been provided .
5. The Commission may authorize Staff to investigate and issue citations for particular types of violations up to specified amounts, subject to appeal to the Commission.
6. Since the Communications Division oversees compliance of telecommunications carriers, authority should be extended to include issuing citations.
7. Authorizing Staff to issue citations as proposed in Appendix A would assure that telecommunications carriers comply with the Commission's Resolutions, Decisions, Orders, and the Public Utilities Code.
8. A citation program will encourage compliance with Commission requirements, provide Staff with an additional tool to address non-compliance, and will allow the Commission to take prompt action.
9. Appendix A contains specified violations and a maximum penalty schedule, for which Staff may issue a citation. Staff is authorized to grant a one-time extension of up to 60 days for additional time for carriers to achieve compliance. A carrier must demonstrate good cause for the additional time requested to correct violations and show a good faith effort to correct violations.
10. When a telecommunications carrier fails to correct a violation by the expiration of the compliance deadline, Staff will send another notice to the carrier, which may result in the imposition of multiple penalties. Therefore, enhanced penalties may be

imposed for multiple violations. However, Staff must issue separate notices containing separate penalty amounts for each violation.

11. Appendix C contains hypothetical penalty calculations for the violations identified in Appendix A.
12. Telecommunications carriers bear responsibility for payment of penalties. Penalties assessed on carriers cannot be recovered from customers through Commission rate setting mechanisms or proceedings.
13. The establishment of a citation program does not prevent the Commission from taking other necessary enforcement actions including revoking a carrier's Certificate of Public Convenience and Necessity and/or registration licenses.
14. The citation program gives a cited carrier the right to appeal Staff's issuance of citations and penalties. The citation appeal process is approved by the Commission in Resolution ALJ-299 and is attached as Appendix B of this Resolution.
15. The citation program does not affect a subscriber's private right of action.
16. A cited telecommunications carrier may either correct the violation and pay the citation or file an appeal.

THEREFORE, IT IS ORDERED that:

1. We hereby adopt the citation program described above and in the Specified Violations and Maximum Penalty Schedule, attached as Appendix A, to govern the issuance and appeal of citations for non-compliance with the Commission's Resolutions, Decisions, Orders, and the Public Utilities Code.
2. We hereby adopt the citation appeal process described in Resolution ALJ-299, attached as Appendix B, to govern the appeal of citations for non-compliance with the Commission's Resolutions, Decisions, Orders, and the Public Utilities Code.
3. We authorize the Communications Division to issue citations and levy scheduled penalties as discussed in this Resolution and as set forth in Appendices A, B, and C.

APPENDIX

**APPENDIX A
 SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULE**

SPECIFIED VIOLATIONS	PENALTY SCHEDULE UP TO
Failure to obtain authority to operate in California	\$1,000 per month for each month that a carrier has been operating without authority.
<p>Failure to submit the following specified filings, notices, reports and other items as directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code :</p> <ul style="list-style-type: none"> • Financial Reports (Annual and Affiliate Transaction Reports Pursuant G.O. 104-A and D.93-02-019) • Initial Tariff Filings following issuance of a CPCN or other registration • Annual Tariff Filings • Performance Bonds (Includes both Initial and Annual Performance Bond Advice Letter filings and Advice Letter filings of updated or newly issued performance bonds) • Service Quality Reports as ordered in G.O 133-D • Advice Letters required to implement company name change, Transfer of Control, withdrawal of operating authority, or tariff changes • Regulatory Contact Information changes • License Acceptance Notification • Service Commencement Notification 	\$1,000 for the first event. Each subsequent notice increases the penalty amount by an additional \$200.

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Failure to report and remit surcharge payments for at least six months as directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code ⁸	\$1,000 per event up to a maximum \$3,000.																						
Failure to report and remit user fee payments for at least 30 days as directed in Commission Resolutions, Decisions, Orders, and the Public Utilities Code	Subject to Public Utilities Code Section 405. The Commission may assess a penalty not to exceed 25% of user fees due on delinquent payments.																						
Late filed contracts	<p>Subject to GO 96-B and D.91-07-010. The penalty amounts are as follows:</p> <table border="1" data-bbox="802 743 1317 1499"> <thead> <tr> <th data-bbox="802 743 1062 869">Lateness of Filing in Months</th> <th data-bbox="1062 743 1317 869">Penalty Amount to Be Applied to Total Contract Revenues</th> </tr> </thead> <tbody> <tr> <td data-bbox="802 869 1062 932">1 or fraction</td> <td data-bbox="1062 869 1317 932">1/4/%</td> </tr> <tr> <td data-bbox="802 932 1062 995">2</td> <td data-bbox="1062 932 1317 995">1/2/%</td> </tr> <tr> <td data-bbox="802 995 1062 1058">3</td> <td data-bbox="1062 995 1317 1058">1%</td> </tr> <tr> <td data-bbox="802 1058 1062 1121">4</td> <td data-bbox="1062 1058 1317 1121">4%</td> </tr> <tr> <td data-bbox="802 1121 1062 1184">5</td> <td data-bbox="1062 1121 1317 1184">5%</td> </tr> <tr> <td data-bbox="802 1184 1062 1247">6</td> <td data-bbox="1062 1184 1317 1247">6%</td> </tr> <tr> <td data-bbox="802 1247 1062 1310">7</td> <td data-bbox="1062 1247 1317 1310">7%</td> </tr> <tr> <td data-bbox="802 1310 1062 1373">8</td> <td data-bbox="1062 1310 1317 1373">8%</td> </tr> <tr> <td data-bbox="802 1373 1062 1436">9</td> <td data-bbox="1062 1373 1317 1436">9%</td> </tr> <tr> <td data-bbox="802 1436 1062 1499">10 or more</td> <td data-bbox="1062 1436 1317 1499">10%</td> </tr> </tbody> </table>	Lateness of Filing in Months	Penalty Amount to Be Applied to Total Contract Revenues	1 or fraction	1/4/%	2	1/2/%	3	1%	4	4%	5	5%	6	6%	7	7%	8	8%	9	9%	10 or more	10%
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6	6%																						
7	7%																						
8	8%																						
9	9%																						
10 or more	10%																						

(End of Appendix A)

⁸ Amount is in addition to interest equal to an annual rate of 10% assessed on surcharge funds reported and/or remitted after the due date.

APPENDIX B CITATION APPEAL PROCESS

Resolution ALJ-299 ALJ/JJJ/lil

Pilot Program Citation Appeal and General Order 156 Appellate Rules

1. Applicability

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

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

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

2. Definitions

"Appellant" means the cited entity initiating the appeal.

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

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

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

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

3. Filing the Notice of Appeal

Appellant must file a Notice of Appeal with the Commission’s Docket Office for a Citation Appeal by the time specified in the Citation Program or, for a General Order 156 Appeal, by the date set forth in General Order 156. The title page must comply with Rule 1.6 of the Commission’s Rules of Practice and Procedure. The caption of the appeal shall read: “Appeal of [who] from [Citation 12345] or [Clearinghouse Decision 12345] issued by [Commission Division which issued the citation] or [the Clearinghouse].”

4. Extension of Time to File the Notice of Appeal

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

5. Minimum Content of the Notice of Appeal

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

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

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6. Minimum Service Requirements for the Notice of Appeal

The Notice of Appeal for a Citation Appeal must be served, at a minimum, on the Chief Administrative Law Judge (with an electronic copy to:

[ALJ Div Appeals Coordinator@cpuc.ca.gov](mailto:ALJ_Div_Appeals_Coordinator@cpuc.ca.gov)), on the Director of the Safety and Enforcement Division, and on the Director of the Commission Division issuing the citation if the Safety and Enforcement Division does not issue the citation, on the same day that the Notice of Appeal is filed. The appellant must file a proof of service to this effect at the same time appellant files the Notice of Appeal. The Notice of Appeal must also be served on other entities if required by the Citation Program.

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

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

7. Compliance Filing

For a Citation Appeal, no later than seven business days after the Notice of Appeal is filed, Staff issuing the citation must file with the Commission's Docket Office a Compliance Filing which includes a complete copy of the citation, including all attachments, which is appealed. The Compliance Filing must be served on the Chief Administrative Law Judge (with an electronic copy to: [ALJ Div Appeals Coordinator@cpuc.ca.gov](mailto:ALJ_Div_Appeals_Coordinator@cpuc.ca.gov)) and appellant on the same day the Compliance Filing is filed. Staff must file a proof of service to this effect at the same time it files the Compliance Filing.

For a General Order 156 Appeal, no later than seven business days after the Notice of Appeal is filed, the Clearinghouse must file with the Commission's Docket Office a Compliance Filing which includes a complete copy of the decision, including all attachments, which is appealed. The Compliance Filing must be served on the

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Chief Administrative Law Judge (with an electronic copy to: [ALJ Div Appeals Coordinator@cpuc.ca.gov](mailto:ALJ_Div_Appeals_Coordinator@cpuc.ca.gov)) and appellant on the same day the Compliance Filing is filed. The Clearinghouse must provide a proof of service to this effect at the same time it files the Compliance Filing.

8. Service List and Parties to an Appeal

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

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

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

9. Exchange of Information

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

10. Commencement of Hearing

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

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

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11. Burden of Proof

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

12. Hearing Venue

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

13. Party Representative/Evidence

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

14. Obtaining a Transcript

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

15. Obtaining an Interpreter

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

16. Submission of the Record

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

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

17. Issuance Date of Draft Resolution

The Administrative Law Judge will issue a draft resolution resolving the Citation Appeal or General Order 156 appeal expeditiously, and no later than 60 days after the Citation Appeal or General Order 156 appeal is submitted. The draft resolution will be placed on the first available agenda consistent with the Commission's applicable rules.

18. Issuance of Draft Resolution for Comment

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

19. Ex Parte Communications

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

A final order means the date when the period to apply for rehearing of the Commission resolution on the appeal has expired and no application for rehearing has been filed, or if an application for rehearing is filed, the date when the period to seek judicial review of the decision finally resolving the application for rehearing has passed without any party seeking judicial review; or if judicial review is sought, the date any court cases are finally resolved.

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20. Rehearing

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

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

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

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

22. Applicable Procedure when Pilot Program Appellate Rules Are Silent

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

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

(End of Appendix B)

**APPENDIX C
 HYPOTHETICAL PENALTY CALCULATIONS**

Violation	1 st Notice	2 nd Notice	3 rd Notice
Failure to obtain authority to operate in California	\$1000/month	\$2000/month	\$3000/month
Failure to submit Financial Reports	\$1000	\$1200	\$1400
Failure to submit Initial or Annual Tariff Filings	\$1000	\$1200	\$1400
Failure to submit Performance Bonds	\$1000	\$1200	\$1400
Failure to submit Service Quality Reports as ordered in G.O. 133-D	\$1000	\$1200	\$1400
Failure to submit Advice Letters required to implement company name change, Transfer of Control, withdrawal of operating authority, or tariff changes	\$1000	\$1200	\$1400
Failure to submit Regulatory Contact Information Changes	\$1000	\$1200	\$1400
Failure to submit License Acceptance Notification	\$1000	\$1200	\$1400
Failure to submit Service Commencement Notification	\$1000	\$1200	\$1400
Failure to report and remit surcharge payments for at least 6 months *	\$1000	\$2000	\$3000

*Maximum penalty is \$3000

(End of Appendix C)

(End of Appendix C)