

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Wildfire Safety And Enforcement Branch****RESOLUTION WSEB-1
September 21, 2023****R E S O L U T I O N**

Resolution WSEB-1. This Resolution adopts a citation program for enforcing compliance with the Commission's Public Safety Power Shutoff (PSPS) guidelines.

SUMMARY

This Resolution approves a citation program to be administered by the Commission Staff (Staff), as designated by the Commission's Executive Director, to enforce electric investor-owned utility (IOU or utility) compliance with the Commission's Public Safety Power Shutoff (PSPS) Guidelines. The Commission's PSPS Guidelines are comprised of resolutions and decisions regulating the IOUs' implementation of PSPS, including: Resolution ESRB-8,¹ Decision (D.) 19-05-042, D.20-05-051, D.21-06-034, and D.21-06-014.²

The scope of this Resolution and PSPS Citation Program is limited to establishing fines for certain violations of the PSPS Guidelines. As we stated in D.21-06-034, the Commission's Safety Enforcement Division (SED) staff reviews each IOU's compliance with the PSPS Guidelines and evaluates the utilities' implementation of PSPS. This PSPS Citation Program is established consistent with such authority and does not diminish or affect Staff's or the Commission's authority to utilize other enforcement activities pursuant to the Commission's Enforcement Policy,³ or the Commission's authority to review the reasonableness of a utility's decision to initiate a PSPS event (i.e., a utility's decision to shut off power).

¹ "ESRB" is the Safety Enforcement Division's Electric Safety and Reliability Branch of the Commission.

² Such PSPS Guidelines may, from time to time, be updated by subsequent Commission resolutions or decisions.

³ See Res. M-4846.

This PSPS Citation Program⁴ will apply to all IOUs. We delegate authority to Staff to draft and issue citations to levy fines for specific violations as set forth in this PSPS Citation Program. Nothing in this Resolution diminishes, alters, or reduces the Commission's authority to regulate PSPS.

BACKGROUND

Electric investor-owned utilities that use preemptive power shutoffs as a measure of last resort to mitigate catastrophic wildfire risks must do so in a manner consistent with their statutory obligations under Public Utilities Code⁵ Sections 451⁶ and 399.2 and related orders of the Commission. Since 2008 the Commission has developed a comprehensive policy framework to regulate the IOU use and implementation of PSPS and has enforced those rules.

In 2008, the Commission expressly recognized the authority of San Diego Gas & Electric Co. (SDG&E) under Public Utilities Code Sections 451 and 399.2(a)⁷ to shut off power when necessary to protect public safety.⁸ The Commission also recognized that de-energization can leave communities and essential facilities without power, which brings its own risks and hardships, particularly for

⁴ The PSPS Citation Program consists of Appendices A and B herein.

⁵ All code references are to the California Public Utilities Code unless otherwise stated.

⁶ Pursuant to § 451, each California public utility must:

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

⁷ Pursuant to § 399.2(a):

- (1) It is the policy of this state, and the intent of the Legislature, to reaffirm that each electrical corporation shall continue to operate its electric distribution grid in its service territory and shall do so in a safe, reliable, efficient, and cost-effective manner.
- (2) In furtherance of this policy, it is the intent of the Legislature that each electrical corporation shall continue to be responsible for operating its own electric distribution grid including, but not limited to, owning, controlling, operating, managing, maintaining, planning, engineering, designing, and constructing its own electric distribution grid, emergency response and restoration, service connections, service turnons and turnoffs, and service inquiries relating to the operation of its electric distribution grid, subject to the commission's authority.

⁸ D.09-09-030 at 61.

vulnerable communities and individuals.⁹ Although the Commission denied SDG&E's application to shut off power during periods of high fire danger, it directed SDG&E to collaborate with relevant stakeholders to develop a comprehensive fire-prevention plan based on a cost-benefit analysis that demonstrates (A) the program will likely result in a net reduction in wildfire ignitions, and (B) the benefits of the program outweigh any costs, burdens, or risks the program imposes on customers and communities.¹⁰ The Commission further asserted its authority to review any decision by SDG&E to shut off power for reasonableness, and whether it qualifies for exemption from liability under Tariff Rule 14.¹¹

In 2012, the Commission modified its 2009 decision to require SDG&E to provide advanced notice and mitigation to customers, to the extent feasible and appropriate, whenever SDG&E shuts off power for public-safety reasons.¹² Notably, the Commission declined to establish a minimum windspeed threshold below which SDG&E would be prohibited from shutting off power.¹³ Instead, the Commission left de-energization decision-making to SDG&E's discretion as it has the detailed knowledge of its facilities necessary to make this decision in real time given contemporaneous weather conditions.¹⁴ But it advised SDG&E "should shut-off power only as a last resort."¹⁵ The Commission also articulated factors it would consider to assess the reasonableness of SDG&E's decision to shut off power.¹⁶

In July 2018, the Commission adopted Resolution ESRB-8, extending the PSPS guidelines applied to SDG&E to all California IOUs and strengthening those requirements.¹⁷ The extended and strengthened requirements focused on: (1) public reporting, (2) public noticing, (3) other mitigating effects of de-energization, (4) and factors that would guide the Commission in undertaking a

⁹ *Id.* at 55.

¹⁰ *Id.* at 59.

¹¹ *Id.* at 62.

¹² D.12-04-024 at 2.

¹³ *Id.* at 32.

¹⁴ *Id.* at 29.

¹⁵ *Id.* at 30.

¹⁶ *Id.* at 30-32.

¹⁷ Res. ESRB-8 at 1-2.

reasonableness review of an IOU's de-energization decision-making.¹⁸ The Commission again recognized the statutory authority of the IOUs to de-energize electric facilities when necessary for public safety, acknowledging that such decision-making is complex and dependent on many factors.¹⁹

Later in 2018, the Commission opened an Order Instituting Rulemaking²⁰ to consider refining the policies established by Resolution ESRB-8.²¹ Orders issued from this rulemaking have continued to develop the Commission's regulation of PSPS consistent with the utilities' obligation to protect public safety.²² The rulemaking has culminated in decisions establishing three phased sets of guidelines, expanding and refining the existing reporting, noticing and mitigation requirements.²³

In response to the three large IOUs' implementation of PSPS events in late 2019, the Commission opened two proceedings and ultimately found that those PSPS events were improperly implemented. First, it opened an Order Instituting Investigation (OII) to explore implementation problems from a ratemaking perspective.²⁴ This culminated in a decision that established certain corrective actions applicable to those utilities, including additional reporting and mitigation requirements.²⁵ The Commission also opened an Order to Show Cause (OSC) within R.18-12-005 that culminated in a Presiding Officer's Decision penalizing Pacific Gas and Electric Company (PG&E) approximately \$106 million for its 2019 PSPS failures.²⁶

¹⁸ *Id.* at 5-7.

¹⁹ *Id.* at 8.

²⁰ R.18-12-005.

²¹ *Id.* at 7.

²² D.21-06-014 at 10-11.

²³ See D.19-05-042 (Phase 1), D.20-05-051 (Phase 2), D.21-06-034 (Phase 3). In July 2022, the Commission established an unofficial staff compendium of the Commission's PSPS Guidelines within R.18-12-005. See D.21-06-034 at 25. The unofficial staff compendium of the Commission's PSPS Guidelines can be found at: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M493/K760/493760712.PDF>.

²⁴ See I.19-11-013.

²⁵ See D.21-06-014.

²⁶ D.21-09-026.

In June 2022, SED proposed Administrative Enforcement Orders (AEOs) pursuant to Resolution M-4846 citing PG&E, Southern California Edison (SCE), SDG&E and PacifiCorp for alleged failures associated with their implementation of PSPS in 2020. PacifiCorp and SDG&E's uncontested AEOs culminated in Resolution M-4862 fining SDG&E \$24,000 and M-4863 requiring corrective actions by PacifiCorp. PG&E and SCE requested hearings to contest the respective \$12 million and \$10 million fines proposed to be levied against them.²⁷ On June 14, 2023, the Commission issued Administrative Law Judge (ALJ) Resolution 440 approving SCE and SED's settlement resolving its AEO for \$7 million. On October 14, 2022, PG&E and SED proposed a settlement to resolve its AEO for \$8 million but the AEO is unresolved as of this writing.

DISCUSSION

The Commission has utilized an array of tools to enforce compliance with the PSPS Guidelines, including an OII, OSC and Administrative Enforcement Orders (AEOs). A citation program will complement these efforts and equip the Commission's SED Staff, acting on delegated authority, with a useful tool to timely ensure compliance with and deter violations of the PSPS Guidelines. The Commission has authority to establish such a tool.

1. Legal Authority to Establish Citation Program.

The Commission's jurisdiction to create citation programs is well-established, and it has adopted citation programs in many areas.²⁸ The Commission has broad regulatory authority, as set forth in Article XII of the California

²⁷ PG&E's AEO proceeding is Hearing (H.) 22-07-010, and SCE's AEO proceeding is H.22-07-009.

²⁸ See Res. ALJ-377 at 2-3.

Constitution²⁹ and Public Utilities Code Sections 701,³⁰ 702³¹ and 2101.³² Section 7 allows the Commission to delegate certain tasks to Commission Staff,³³ including the investigation of facts preliminary to agency action and the assessment of specific penalties for certain types of violations.³⁴ The primary purpose of an effective enforcement program should be to deter utility misbehavior or illegal conduct, ensuring in part that the public it serves are protected from the inherent hazards of providing utility services.³⁵

The Commission has leveraged this authority in numerous areas, including charter party carriers; passenger stage corporations; maintenance and operation of power plants; slamming by telecommunications providers; and compliance

²⁹ The California Supreme Court described the Commission as a state agency authorized by the California Constitution with far reaching duties, functions and powers, and conferred with broad authority to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. *Consumers Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, 905-906; Cal. Const., art. XII, §§ 1-6.

³⁰ Section 701 authorizes the Commission to:

... supervise and regulate every public utility in the State . . . and do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

³¹ Section 702 mandates:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in 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.

³² Section 2101 directs the Commission:

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

³³ The term “Staff” refers to the portion of the Commission’s staff designated by the Executive Director to carry out the particular function involved.

³⁴ Section 7 provides:

Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

³⁵ Res. ALJ-377 at 3.

with resource adequacy requirements for electric power.³⁶ This proposed resolution is consistent with these other approved citation programs.

2. PSPS Citation Program Considerations.

Establishment of a citation program is desirable for many reasons. First it establishes a tool that the Commission may use when appropriate to swiftly cite the utilities for lack of compliance with the PSPS Guidelines through delegated authority to Staff. The PSPS Citation Program will help to encourage complete and timely compliance with the PSPS Guidelines and deter violations. The citation program will also ascribe clear penalties for those infractions. For these reasons, a citation program will help to clarify expectations around enforcement.

The issuance of a citation for a specified violation is not mandatory. Rather, the Commission may initiate formal proceedings or pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. The Commission's enforcement of PSPS Guidelines pursuant to this resolution by informal proceedings, formal proceedings, or otherwise, does not bar or affect the remedies otherwise lawfully available to other persons or government agencies.

The PSPS Citation Program does not cover all violations of the PSPS Guidelines that may occur, nor is it intended to. Nothing in this resolution diminishes, alters, or reduces the Commission's authority over PSPS events, including the Commission's discretion to determine the reasonableness of a utility's decision to shut off power or its implementation efforts.

The Commission has declined to adopt rigid thresholds to dictate when utilities must proactively shut off power. Instead, we defer to IOUs to determine when to shut off power, and have established factors we may consider to assess the reasonableness of a utility's de-energization decision-making.³⁷ Accordingly, this citation program does not adopt penalties associated solely with a utility's decision to call a PSPS event.

³⁶ *Ibid.*

³⁷ See Res. ESRB-8.

We have distinguished the difference between a utility's reasonableness in calling a PSPS event from a utility's reasonableness in implementing a PSPS event.³⁸ Pursuant to the PSPS Guidelines, a utility's proper implementation of a PSPS event includes mitigating the harmful effects of PSPS by reporting about these events, providing timely public notices (especially to sensitive populations), maintaining community resource centers, and providing PSPS information online. The utilities' past implementation failures have involved these themes, and so we include them here within the PSPS Citation Program to equip Staff with tools to address similar future implementation failures.

We acknowledge the obstacles to establishing a broad PSPS citation program considering the subjective and deferential nature of the current PSPS Guidelines. Some criteria contained within the current PSPS Guidelines contain inherent subjectivity. For example, the standard echoed throughout the Commission's decision establishing Phase 1 PSPS Guidelines is that noticing should occur "whenever possible."³⁹ However, we find sufficiently objective criteria in the PSPS Guidelines to delegate Staff the authority to penalize utilities through citations for certain PSPS implementation failures. The failure to timely file a PSPS report or to include the necessary reporting information can be objectively measured and is included in the citation program. There are other PSPS mitigation measures that the utilities are required to undertake, and that can be objectively measured. Among those included in this citation program are the failure to properly operate a Community Resource Center (CRC) and the failure to maintain a utility's PSPS website as required. Although PSPS noticing is required "whenever possible," we find that missing a notice is an objective fact and delegate to Commission Staff the discretion to determine whether to pursue and calculate an appropriate penalty according to the Scheduled Fines under the PSPS Citation Program for missed notices, where Staff determines noticing was possible based on the utilities' post-event reporting.

3. Assessment of Penalties.

Utilities that violate the rules covered by this resolution may be subject to penalties. The penalty provisions available to the Commission include those in

³⁸ D.21-06-034 at 22-25.

³⁹ D.19-05-042 at 125; Appendix A-7, A-8, A-18, A-20.

sections 2106,⁴⁰ 2107,⁴¹ and 2108.⁴² Each citation, which might constitute multiple offenses, may not exceed \$8 million.⁴³ The Commission articulated its criteria to assess penalties for violations of Commission rules in D.98-12-075, and restated these factors in its Enforcement Policy, adopted in Resolution M-4846.⁴⁴ These criteria are as follows: severity of the offense, conduct of the utility, financial resources of the utility, totality of circumstances in furtherance of public interest, and the amount of the fine in relationship to prior Commission decisions.⁴⁵ The Commission considered these criteria when establishing the penalty structure for this PSPS Citation Program.

A. Severity of the Offense.

This criterion considers the physical and economic harms of the offenses, harm to the regulatory process, and the number of people affected by the offense.

The Commission has addressed the critical importance of the timeliness and substance of PSPS reporting. In D.19-05-042, the Commission described reporting as “imperative” and stated it “views post-event reporting as a means of facilitating learning and improvement across utilities, state and local public safety agencies and local jurisdictions.”⁴⁶ In D.21-06-014 the Commission underscored that the importance of the post event reporting requirement “cannot

⁴⁰ Section 2106 allows the Commission broad authority to impose penalties on any public utility that “fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission.”

⁴¹ Section 2107 states:

Any public utility 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 one hundred thousand dollars (\$100,000) for each offense.

⁴² Section 2108 states:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense.

⁴³ See D.18-05-023, Appendix A; D.16-09-055.

⁴⁴ Res. M-4846 at 16 (Appendix I, Penalty Assessment Methodology).

⁴⁵ See D.98-12-075 at 9, 54-56; Res. M-4846 at 16-21.

⁴⁶ D.19-05-042 at 106; D.21-06-014 at 230.

be overstated.”⁴⁷ In absence of adequate reporting, a utility cannot assure the Commission or the public that it is acting in a manner that promotes public safety by relying on PSPS as a measure of last resort.⁴⁸ Reporting tardiness and omissions may harm the regulatory process and harm customers, governments, businesses, and vulnerable populations.⁴⁹

The severity of harm caused by missed notices may be quantified by the number of notices missed, the repeated nature, the customer vulnerability and the costs incurred (monetary or otherwise). We consider the Commission’s discussion of the harm caused by missed PSPS notices and website failures in D.21-09-026 which discusses these factors.⁵⁰ These factors should also be considered in implementation of the PSPS Citation Program.

B. Conduct of the Utility.

In considering the conduct of the utility, the Commission assesses the “utility’s conduct in: (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation.”⁵¹

The PSPS Citation Program empowers Commission Staff to adjust penalties within the given range considering these factors. Repetitive or avoidable violations might constitute evidence of utility conduct within this criterion, as demonstrated in D.21-09-026.⁵²

C. Financial Resources of the Utility.

The Commission considers the financial resources of the utility to ensure that the degree of wrongdoing comports with the amount of the fine and is relative to the utility’s financial resources such that the amount will be an effective deterrence for that utility while not exceeding the constitutional limits on excessive fines.⁵³

The PSPS Citation Program considers the financial resources of the IOUs subject to regulation by the PSPS Guidelines. However, Commission Staff should

⁴⁷ D.21-06-014 at 69.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ D.21-09-026 at 51-52.

⁵¹ D.98-12-075 at 56.

⁵² *Id.* at 58-60.

⁵³ D.18-10-020 at 117; D.98-12-075 at 59.

further consider the utility at issue when deciding to issue citations and level penalties within the citation program's penalty range.

D. Totality of the Circumstances.

This criterion considers facts that may mitigate or exacerbate the degree of wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.⁵⁴

As the Commission did in D.21-09-026, we establish this PSPS Citation Program considering the PSPS Guidelines, the utilities' section 451 safety and other obligations, the Commission's and the public's interest in ensuring safe PSPS events.⁵⁵ We affirm the adequacy of including the violations included herein, along with the ascribed ranges of penalty amounts within this citation program.

E. Past Commission Decisions.

The Commission will consider the "amount of the fine in the context of prior Commission decisions."⁵⁶ This criterion considers the proposed outcome compared with "previously issued decisions which involve the most reasonably comparable factual circumstances and explain any substantial differences in outcome."⁵⁷

We looked to D.21-09-026 in establishing the Scheduled Fines in the PSPS Citation Program. While that decision does not offer guidance about fines for bad reporting, it calculates penalties for a failed PSPS website, and calculates missed notice penalties within a range of \$600 and \$10,000 per missed notice.⁵⁸ The multiplier within this range depended on the offense repeating, and the type of customer that missed notices.⁵⁹ Considering this decision, we find that a penalty range between \$500 and \$1,000 per missed notice is appropriate and reasonable for this citation program. Alternatively, it would be reasonable for Staff to calculate penalties considering the cumulative notices missed per event.

⁵⁴ D.98-12-075 at 59.

⁵⁵ D.21-09-026 at 64-65.

⁵⁶ D.18-10-020 at 117; D.21-09-026 at 65.

⁵⁷ D.21-09-026 *supra* [quoting *Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, 84 Cal. ATU.C.2d at 190].

⁵⁸ *Id.* at 75-76.

⁵⁹ *Ibid.* For the first PSPS event at issue, the decision fined PG&E \$600 per missed customer notice and \$2,000 per medical baseline customer. For the second PSPS event where repeat offenses occurred, the decision fined PG&E \$3,000 per customer and \$10,000 per medical baseline customer.

When issuing citations under this PSPS Citation Program, Commission Staff should explain its application of penalties using the D.98-12-075 penalty assessment methodology framework. In doing so, Staff should look to decisions including D.21-09-026 and those finalized AEOs.⁶⁰ Commission Staff should also consider a utility's explanations provided in its post-event reports or data request responses, and any reports that might focus its implementation of the PSPS Citation Program within the Scheduled Fines.

4. Other Commission Action.

In appropriate situations, Commission Staff may meet and confer with the utility, issue a Notice of Violation (NOV), require corrective action, and/or take whatever other appropriate action to best ensure compliance with the PSPS Guidelines. Whether it is cited or not, Staff should document each utility violation.

Utilities may request a hearing on a citation pursuant to the procedure adopted within Appendix A, the Citation Appellate Rules and Resolution ALJ-377. The Commission also has an Expedited Citation Appeal Procedure that applies to citation appeals where the total citation amount does not exceed the jurisdictional limit of the small claims court, as referenced by Public Utilities Code Section 1702.1. To ensure transparency, Staff shall publish citations and appeals on the Commission's website.

COMMENTS

Public Utilities Code Section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. However, given that this resolution is issued outside of a formal proceeding, interested stakeholders did not need to have party status in order to submit comments on the resolution.

On or before August 29, 2023, comments to draft Resolution WSEB-1 were submitted by PG&E, SCE, SDG&E, the Public Advocates Office (Cal Advocates), Small Business Utility Advocates (SBUA), Joint Local Governments (JLGs – on behalf of the Counties of Marin, Napa, San Luis Obispo, and Sonoma, and the City of Santa Rosa), and Richard Skaff. On September 5, 2023, joint reply

⁶⁰ See Res. M-4862 and M-4863.

comments were submitted by the IOUs, and reply comments were submitted by the Center for Accessible Technology (CforAT).

1. Processes to Inform Citations.

The IOUs want processes inserted preceding citation issuance to inform citations.

PG&E requested the citation program provide “a clearer process for ‘meeting and conferring’ or responding to a Notice of Violation prior to issuance of citations and penalties for Specified Violations containing vaguely defined terms and subjective criteria.”

SCE also argues that an NOV and IOU response should precede any citation.

SDG&E states that even those objective elements of the PSPS Guidelines “may involve some nuance or situation-specific circumstances....” SDG&E requests for the citation program to add language that would include Staff consideration of an IOU’s “explanations or justifications” before a citation is issued.

The Commission declined to impose meet and confer requirements when it approved citation programs in the past. For example, in D.14-12-001, we noted that staff has the discretion to meet and confer with the utility prior to issuing a citation but we did not adopt a requirement that it do so.⁶¹ We reasoned that a utility is charged with knowing the rules enforced by a citation program, that our priority is safety, and therefore we do not intend to layer onto the safety citation process “a complex mandatory pre-citation program.”⁶²

The same reasoning and justifications apply here. In addition, the IOUs have the opportunity and obligation to report on the PSPS events. The PSPS Citation Program notes that Staff's determination of a noticing failure will be informed by such reporting, which might include but is not limited to post event reporting. Staff may gather further information if, in its discretion, it chooses to meet and confer, issue an NOV, or conduct whatever evidence gathering it deems fit to meet its burden to prove the violation. Similarly, such reporting (or failure to report) would also form the basis of reporting violations, or violations related to CRCs or PSPS websites. Accordingly, we reject the IOUs' requests to impose

⁶¹ At 22.

⁶² *Ibid.*

mandatory requirements to meet and confer, issue NOV, or require consideration of "explanations or justifications" before a citation is issued.

2. Mandatory vs. Discretionary Requirements.

SCE asks for the citation program to be limited to mandatory PSPS requirements or at least distinguish between those that are mandatory and discretionary. SCE argues that Public Utilities Code Sections 702 and 2107 require citations to identify the mandatory requirement allegedly violated, that the noticing standards in the PSPS Guidelines are particularly subjective, and that these "discretionary notifications should be removed from the Citation Program and handled through other enforcement mechanisms that offer the utility an opportunity to explain the circumstances" before a penalty is issued.

SCE argues that the IOUs develop their own discretionary CRC plans that therefore should not be considered mandatory. PG&E similarly argues that given the discretionary components of the CRCs, "IOUs should not be subjected to an automatic fine of up to \$100,000 per day" if shorter than normal operational hours are coordinated with affected communities within such discretion.

CforAT "strongly disagrees" with SCE, stating that SCE "aggressively seeks to describe its notice obligations as 'discretionary' and to argue that no [citation program] penalties should be available...."

We also disagree with SCE's characterization of PSPS noticing requirements as discretionary. Although the noticing standards do provide some qualification that the notifications must occur "whenever possible," this does not render notifications as "discretionary". The PSPS Guidelines contain specific requirements regarding notification for customers that may be impacted by de-energization events and the information that must be conveyed to these customers. As we found in D.21-09-026, the lack of advanced notification may have significant health and safety consequences.⁶³ As stated above, we find that missing a notice is an objective fact and we delegate to Commission Staff the discretion to determine whether to pursue and calculate an appropriate penalty. An IOU is tasked with reporting noticing details and Staff may investigate the reasons for notification failures and determine whether such notifications were possible.

⁶³ At 35.

The citation program makes clear that the only CRC-related infraction that may be cited is a "[f]ailure to operate a CRC as required." An IOU's discretion in formulating CRC plans does not excuse it from meeting applicable CRC requirements. Staff has the discretion to cite any deviations from such plans and to determine the appropriate penalty amount within the citation program for related infractions.

3. Administrative vs. Safety-Related Violations.

PG&E points out the draft resolution does not distinguish between administrative violations and violations implicating safety whereas the Commission's Enforcement Policy notes that administrative violations imposing no immediate health or safety risk may not warrant imposition of a penalty. PG&E says: "Further discussion of these classifications should be addressed more appropriately through the meet and confer or Notice of Violation process rather than fines." SCE also points out the citation program does not distinguish between administrative violations and safety-implicated violations.

The citation program need not distinguish between administrative and safety-related violations. Staff has the discretion to determine whether to issue a citation, and Staff need not cite every utility infraction.

4. More Precisely Defined Terms.

SCE states that the vagueness of some of the citation program definitions raises substantive due process concerns. SCE points out that the draft resolution does not address how multiple alleged offenses may be captured within an \$8 million capped citation and recommends revising the resolution to clarify that violations related to one PSPS season would be combined. SCE also proposes that an "accumulation" of missed notices be defined "more precisely" to limit Staff's interpretation of what missed notices are "reasonably related" within the drafted definition.

We intend for Staff to have discretion to include those violations as may be reasonably related within a citation. Similarly, Staff has the discretion to determine how an accumulation of missed notices is organized. We will not hypothetically weigh factors for and against bundling violations within a citation, or bundling missed notices within an accumulation when Staff is appropriately tasked with such determinations depending on the evidence and considering Staff's burden to prove the infractions.

5. Multiple Fines Applicable to Reporting Failures.

SCE finds it “unclear what ‘objective criteria’ Staff would apply to determine whether filing a report one day late (or not ‘in the manner required’)” warrants a \$500 versus a \$100,000 penalty. SCE argues an “incomplete” report should not also be considered untimely and fined \$100,000 per day because this would allow one violation to be penalized for being late and incomplete, inappropriately in excess of the \$100,000 maximum. SCE asks for the citation program to acknowledge some information might not be available to complete all required reports when due, and the citation program should only include reporting information that is mandatory for IOUs to provide.

Staff has the discretion to determine the appropriate penalty amount within the citation program. We will not carve out separate penalties for SCE's hypothetical scenarios, for example, conceiving of reports that are one day late. We note that the IOUs already have the ability to request that a report be filed late considering forthcoming information. We also highlight that the citation program does intend the result illustrated by SCE's hypothetical \$110,000 citation for an incomplete report that results in it being filed late. The late filing is indeed a separate infraction from the failure to include required reporting information, and layered penalties might be appropriate.

6. Cal Advocates Comments.

Cal Advocates asks for the Commission to modify the draft resolution to describe how the public may engage with the citation, as well as how public comment will be considered when issuing citations. The public has opportunities to engage with the utilities and the Commission regarding the PSPS events by commenting on the post-event reports and otherwise participating in the PSPS rulemaking. As the joint utilities point out in their reply and as we point out above, the Citation Appellate Rules⁶⁴ establish that the parties to the appeal will be appellant and Staff which issued the citation being appealed. We have also found that "enforcement cases are fundamentally a prosecutorial matter between Enforcement Staff and the respondent entity; there is no automatic role for third parties."⁶⁵

⁶⁴ Resolution ALJ-377, Appendix A at 6. ("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.")

⁶⁵ D.22-04-057 at 12.

Cal Advocates also recommends modifying the draft resolution to direct that a portion of any penalty issued through the citation program be refunded back to those customers impacted by the cited IOU's compliance failures in the form of bill credits. We decline to mandate that fines collected pursuant to this citation program be directed in any particular way.

Finally, Cal Advocates argues the draft resolution should clarify that legal costs stemming from appeals be born exclusively by IOU shareholders, not included in customer rates. It is beyond the scope of this citation program to impose such a requirement.

7. SBUA Comments.

SBUA requests that the resolution clarify that "while Staff will not investigate the reasonableness of IOU decision-making in this citation process, they will ensure the thoroughness of mandatory reporting concerning the reasonableness of decision-making." We recognize and respect the importance of Staff ensuring the thoroughness of mandatory reporting, but we need not clarify the necessary diligence associated with every Staff function in implementing the citation program.

SBUA further requests that this resolution include a statement that Staff may initiate investigations based on public complaints. This may be done whether or not stated here.

Thirdly, SBUA argues that notices of citation and citation decisions should be served on R.18-12-005. As stated above, only Staff and the cited utility may be directly involved in the citation.

8. JLG Comments.

JLGs are concerned that the citation program will have minimal impact because the IOUs' PSPS programs have reached operational equilibrium minimizing the type of errors addressed, or the PSPS programs are no longer the primary de-energization tool for wildfire risk mitigation. We are cognizant of JLGs' concerns and are committed to ensuring public safety and service reliability. However, these concerns do not negate the benefit of establishing a citation program for PSPS events so that Staff may have an additional tool to address compliance issues, while conserving limited staff resources.

9. Richard Skaff Comments.

Richard Skaff calls for action to protect Californians with disabilities and vulnerable seniors from PSPS and fast trip power outages. By adopting this citation program, we will empower Staff with another tool to hold the IOUs accountable for PSPS infractions potentially involving such vulnerable populations.

FINDINGS OF FACT:

1. The Commission is authorized to enforce compliance with the PSPS Guidelines.
2. The Commission has the power to act as an enforcement agency and to ensure that penalties are promptly prosecuted and collected pursuant to Public Utilities Code Section 2101.
3. Public utilities are subject to Commission enforcement action and penalties pursuant to Public Utilities Code Sections 2102-2105, 2017, 2108 and 2114.
4. Public Utilities Code Section 702 mandates every public utility to obey and comply with every Commission order, decision, direction, or rule.
5. Under California law, including Public Utilities Code Section 7, the Commission may delegate authority to its Staff to perform certain functions.
6. Delegation of authority to Commission Staff to issue citations and levy Scheduled Fines for Specified Violations will encourage compliance with the PSPS implementation requirements.
7. The Scheduled Fines set forth in Appendix B are reasonable, will encourage: complete and timely filings of PSPS reports, proper noticing within the PSPS Guidelines, and operation of CRCs and PSPS websites as required.
8. The proposed procedures for the citation program ensure due process, fairness, and efficiency in the application of the PSPS Citation Program.

THEREFORE, IT IS ORDERED THAT:

1. The PSPS Citation Program and the Scheduled Fines for the Specified Violations as described in Appendices A and B, are hereby adopted.
2. Authority is delegated to Commission Staff to issue citations and levy Scheduled Fines for the Specified Violations set forth in Appendices A and B, to enforce compliance with the PSPS Guidelines.
3. The issuance of a citation for a Specified Violation is not mandatory, and, in the alternative, the Commission may initiate any formal proceeding authorized by the California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission's Rules of Practice and Procedure, or prior Commission orders, decisions, rules, directions, demands or requirements, and pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity.
4. Nothing in this Resolution bars or affects the rights or remedies otherwise lawfully available to other persons or government agencies.
5. Resolution WSEB-1 is enacted.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 21, 2023; the following Commissioners voting favorably thereon:

RACHEL PETERSON
Executive Director

APPENDIX A
Public Safety Power Shutoff (PSPS) Citation Program

1.0 Definitions.

- 1.1 A “CRC” is a PSPS Community Resource Center as defined in Decision (D.) 20-05-051, Appendix A at 5-6, or any Commission update thereto, and required therein to be operable at least 8 AM-10 PM during an active de-energization event, with actual hours of operation to be determined by the local government in cases in which early closure of a facility is required due to inability to access a facility until 10 PM.
- 1.2 The “PSPS Guidelines” are the Commission’s resolutions and decisions regulating the Investor-Owned Utilities’ (IOUs) implementation of PSPS, including Resolution ESRB-8, D.19-05-042, D.20-05-051, D.21-06-034, D.21-06-014, and any Commission updates thereto.
- 1.3 A “PSPS Notice” is any notice required by the PSPS Guidelines, whether required “whenever possible” or otherwise.
- 1.3.01 An “accumulation” of PSPS Notices or missed PSPS Notices is a batch of such notices that are reasonably related and can be cited as a group rather than individually.
- 1.4 A “PSPS Report” includes any report required to be filed with the Commission by the PSPS Guidelines.
- 1.5 A “PSPS Website” is an IOU’s PSPS information required to be posted online by the PSPS Guidelines.¹

2.0 Specified Violations and Scheduled Fines

- 2.1 “Specified Violation” means the failure, absent an approved extension: (a) to file a PSPS Report at the time or in the manner required by the PSPS Guidelines; (b) to include the required reporting information in a PSPS Report as required by the PSPS Guidelines; (c) to send a PSPS Notice or accumulation of PSPS

¹ Including D.19-05-042, Appendix A at A18, D.20-05-051, Appendix A at 3-4, and D.22-06-034, Appendix A at A2 and A12.

Notices at the time or in the manner required by the PSPS Guidelines; (d) to operate a CRC as required by the PSPS Guidelines; and (e) to operate a PSPS Website as required by the PSPS Guidelines.

B. 1.2 “Scheduled Fines” for Specified Violations are set forth in Appendix

1.3 Modification of Scheduled Fines. The Scheduled Fines set forth in Appendix B may be modified by Resolution.

2.0 Procedures for Citation Program

2.1 Citations for Specified Violations. After appropriate informal investigation and verification that a Specified Violation defined in this Resolution has occurred, Commission Staff is authorized to issue a citation in accordance with this Resolution. The Specified Violations and the corresponding Scheduled Fine that may be levied are described in these Appendices.

2.2 Service of Citations. Citations shall be sent by Commission Staff by first class mail or by electronic mail (e-mail) with confirmed receipt to the Respondent at the address of the agent for service of process.

2.3 Content of Citations. Citations shall state the alleged violation(s), the evidence supporting the alleged violation(s), and the proposed Scheduled Fine(s). The citation may summarize the evidence and Commission Staff shall make the evidence available for timely inspection upon request by the Respondent. Citations also shall include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative present at the hearing, and to request a transcript.

2.4 Response to Citation. A Respondent may either: (1) accept the citation and the Scheduled Fine(s); or (2) appeal the citation.

2.5 Filing with Commission Staff. Unless otherwise specified, “notify Commission Staff,” “filing,” or “file” means to send a written communication by the U.S. Mail or an express mail service to the address specified in the order or citation that requires the filing or notification. These written communications are not filed with the Commission’s Docket Office. In addition to or instead of

communications by mail service, Commission Staff may allow e-mailed submissions.

- 2.6 Acceptance of Scheduled Fine. In the event the proposed Scheduled Fine is accepted, the Respondent shall notify Commission Staff in writing and shall pay the Fine in full as set forth in subsection 2.8, below within thirty (30) days of the date that the citation is issued.
- 2.7 Appeal of Citation. In lieu of accepting the Scheduled Fine(s), a Respondent may appeal the citation and request a hearing. In the event of an appeal, any remedy available may be imposed, and the remedy shall not be mandated by or limited to the Scheduled Fine(s).
- 2.7.1. Notice of Appeal. To appeal a citation, the Respondent must file a written Notice of Appeal. The Notice of Appeal must state the grounds for appeal and be filed with Commission Staff within thirty (30) days of the date that the citation is issued.
- 2.7.2. Referral to Administrative Law Judge. Upon receipt of a timely Notice of Appeal, Commission Staff shall promptly provide a copy of the Notice of Appeal to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall promptly designate an Administrative Law Judge to hear the appeal.
- 2.7.3 Time of Hearing. No less than ten (10) days after the Notice of Appeal is filed, the assigned Administrative Law Judge shall set the matter for hearing promptly. The Administrative Law Judge, may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- 2.7.4 Location of Hearing. Appeals of citations shall be heard in the Commission's San Francisco courtroom or virtually (as allowed) on regularly scheduled days.
- 2.7.5 Transcripts. The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's specified procedures.

- 2.7.6 Representation at Hearing. The Respondent may be represented at the hearing by an attorney or other representative, but any such representation shall be at the Respondent's expense.
- 2.7.7. Evidentiary Hearing. At an evidentiary hearing, Commission Staff bears the burden of proof and, accordingly, shall open and close. The Administrative Law Judge may, in his or her discretion to better ascertain the truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received at the discretion of the Administrative Law Judge.
- 2.7.8 Submission. Ordinarily, the matter shall be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.
- 2.7.9 Decision. The Administrative Law Judge shall issue a draft Resolution resolving the appeal not later than thirty (30) days after the appeal is submitted in accordance with subsection 2.7.8, and the draft Resolution shall be placed on the first available agenda, consistent with the Commission's applicable rules.
- 2.7.10 Communications. From the date that a citation is issued to and including the date when the final decision is issued, neither the Respondent nor Commission Staff, or any agent or other person on behalf of the Respondent or Commission Staff, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or Administrative Law Judge.
- 2.8 Payment of Scheduled Fines. Payment of any Scheduled Fines shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the Public Utilities Commission for the credit of the State General Fund.

- 2.9 Default. If the Respondent: (a) notifies Commission Staff of acceptance of a Scheduled Fine and fails to pay the full amount of the Scheduled Fine within thirty (30) days of the date of the written acceptance of the Scheduled Fine; or (b) fails to notify Commission Staff of acceptance of a Scheduled Fine or fails to file a written Notice of Appeal in the manner and time required, then the citation and fine shall become final and the Respondent is in default. Upon default, any unpaid balance of a Scheduled Fine shall accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.
- 2.10 Reporting. Commission Staff shall regularly report to the Commission summarizing actions taken pursuant to this Resolution. The report shall include a summary of the citations and penalties imposed, fines paid, and the disposition of any appeals.

APPENDIX B
TABLE OF SPECIFIED VIOLATIONS AND SCHEDULED FINES

SPECIFIED VIOLATION	SCHEDULED FINE
Failure to file ¹ a PSPS Report at the time or in the manner required.	\$500 to \$100,000 per PSPS Report, per day that the filing was late.
Failure to fully include the required reporting information in a PSPS Report.	\$500 to \$10,000 per instance of incomplete or missing reporting information.
Failure to send a PSPS Notice or accumulation of PSPS Notices at the time or in the manner required, where Staff determines noticing was possible based on the IOU's reporting.	\$500 to \$1,000 per missed PSPS Notice, or \$500 to \$100,000 per accumulation of missed PSPS Notices.
Failure to operate a CRC as required.	\$500 to \$100,000 per infraction per day.
Failure to operate a PSPS Website as required.	\$500 to \$100,000 per infraction per day.

¹ Where applicable, report filings must contain all completed sections of the Staff-provided template to be considered on time.