

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 27, 2024

Agenda ID #22957
Alternate to Agenda ID #22450

TO PARTIES OF RECORD IN ALTERNATE DRAFT RESOLUTION ALJ-458:

Enclosed is the alternate draft resolution of Commissioner Darcie L. Houck on K.18-03-008 Edison's Appeal of Citation and Amended Citation E.18-02-001 issued by SED. The proposed resolution and the alternate proposed resolution will not appear on the Commission's agenda for at least 20 days after the date it is mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the draft resolution. The digest of the alternate draft resolution is attached.

When the Commission acts on these agenda items, it may adopt all or part of the resolution as written, amend or modify them, or set them aside and prepare its own resolution. Only when the Commission acts does the decision become binding on the parties.

Parties may serve comments on the alternate draft resolution by October 21, 2024. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge Kimberly Kim at kimberly.kim@cpuc.ca.gov, and Commissioner Houck's advisor Karin Sung at karin.sung@cpuc.ca.gov.

 /s/ MICHELLE COOKE
Michelle Cooke,
Chief Administrative Law Judge

MLC:sgu
Attachment

ATTACHMENT

**DIGEST OF DIFFERENCES BETWEEN
ADMINISTRATIVE LAW JUDGE KIM'S PROPOSED RESOLUTION
AND THE ALTERNATE PROPOSED RESOLUTION
OF COMMISSIONER HOUCK**

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the proposed resolution of Administrative Law Judge Kim mailed on March 22, 2024, and the proposed alternate resolution of Commissioner Houck mailed on September 27, 2024, 2024.

- Administrative Law Judge Kim's Proposed Resolution admonishes SED for abuse of the Commission's process. Commissioner Houck's Proposed Alternate Resolution does not recognize an abuse of process by SED; and
- Administrative Law Judge Kim's Proposed Resolution bars SED from reinstating any future actions against SCE based upon the same facts relating to the underlying 2015 Accident. Commissioner Houck's Proposed Alternate Resolution proposes a final disposition of SED's enforcement action against SCE regarding the 2015 accident but does not otherwise explicitly bar SED from instituting future actions against SCE.

With the exception of the above two differences, there are no other differences between the two proposed resolutions.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Alternate Resolution ALJ-458
Administrative Law Judge Division
[Date]

RESOLUTION

ALTERNATE RESOLUTION ALJ-458. Resolves and closes Proceeding K.18-03-008, and grants the unopposed motion to withdraw the Appeal of Southern California Edison Company (U338E) from Citation and Amended Citation E.18-02-001 issued by the Safety and Enforcement Division of the California Public Utilities Commission on February 12, 2018, and October 3, 2018, respectively.

SUMMARY

This Resolution resolves proceeding K.18-03-008, the appeal of Southern California Edison Company (U338E) from Citation and Amended Citation E.18-02-001 issued by the Safety and Enforcement Division of the California Public Utilities Commission on February 12, 2018, and October 3, 2018, respectively. On November 29, 2023, Southern California Edison Company (SCE) and Safety and Enforcement Division (SED) filed a joint motion to withdraw SCE's appeal given SED's withdrawal of the associated Amended Citation. This resolution closes proceeding K.18-03-008.

FACTUAL BACKGROUND

The Commission regulates electric utilities. SED is authorized to issue citations to electric utilities for alleged violations of the Public Utilities Code and/or Commission orders, pursuant to Decision (D.) 14-12-001 (as modified by D.15-05-054 and D.16-09-055). In turn, electric utilities receiving such citations may accept the fine imposed or contest them through the appeal process, as set forth in the aforementioned decisions.

Uncontroverted evidence in this proceeding shows that there was at least one storm event between July 30 and 31, 2015 (Storm Event), at the location of the crossarm on SCE Pole No. 43502S (Crossarm), located in Twentynine Palms, California (Crossarm Location). At or around the time of the Storm Event, the Crossarm broke and caused a 12 kilovolt (kV) energized conductor to drop and become low-hanging and suspended above the ground between Edison's Pole Numbers 43502S and 43503S.

On August 1, 2015, at approximately 9:36 a.m., three men riding off-road vehicles on a dirt road around the Crossarm Location injured themselves when they came in contact with a downed and energized conductor connected to the failed Crossarm. The first of the three men struck the energized conductor and suffered injuries. While attempting to aid the first man, the other two men also made contact with the energized conductor and were injured (the Accident). Injuries to the three men include lacerations to the neck, third-degree burns, and electric shocks.

The downed conductor connected to the Crossarm was energized at the time of the Crossarm failure and the Accident.

SCE learned of the Accident and the Crossarm failure immediately after the Accident and promptly notified SED. Within hours of that notice, SED investigators arrived at the Accident scene to begin the investigation.

OVERVIEW OF PROCEDURAL BACKGROUND

February 12, 2018 Citation E.18-02-001 (Original Citation)

On February 12, 2018, SED issued the Original Citation and charged SCE with alleged violations of General Order (GO) 95 (updated and revised May 2018) (Current GO 95), Rules 48 (Strength of Materials), 37 (Minimum Clearance of Wires above Railroads, Thoroughfares, Buildings, etc.), and 31.1 (Design, Construction and Maintenance). The citation alleged that SCE violated Current GO 95, Rules 48, 37, and 31 for two days each. For each Rule violated, SED assessed a \$100,000 penalty, with a total penalty amount of \$300,000.

SCE timely filed its appeal of the Citation.¹ Proceeding K.18-03-008 was initiated to hear SCE's appeal. On March 29, 2018, Administrative Law Judge (ALJ) Kimberly Kim was assigned to this proceeding.

October 3, 2018 Amended Citation

In preparing for the evidentiary hearing, SED discovered an SCE work order that listed a missing nut on an insulator pin attached to the Crossarm. The work order listed the missing nut as a Maintenance Priority Level 3 (the lowest priority maintenance issue).

On October 3, 2018, SED issued Amended Citation E.18-02-001 (Amended Citation) against SCE. The amended citation added violations of GO 95 Rule 18-A and Public

¹ On March 14, 2018, Edison filed its appeal to the citation.

Utilities Code² Section 451 concerning SCE's failure to prioritize the missing nut as either a Priority 1 or Priority 2 maintenance issue. SED alleged that the missing nut should have been categorized as a higher priority maintenance issue and thus should have been corrected before the August 1, 2015 Accident. Based on these further allegations, SED increased the total penalty amount to \$8 million, the maximum allowable penalty per citation, calculated at a rate of \$50,000 per day from October 13, 2011, when SCE learned of the missing nut, to August 1, 2015.

SCE timely filed its appeal of the Amended Citation (Appeal).³ Proceeding K.18-03-008 was amended to hear SCE's appeal of the Amended Citation, which superseded the Original Citation. Ten days of evidentiary hearings were then held between December 2018 and March 2019.

Draft Resolution, Comments and Subsequent Motion

A draft resolution resolving the proceeding was issued and served on the parties on February 24, 2023 (Draft Resolution ALJ-435). On March 16, 2023, SED filed its comments on the Draft Resolution. On March 24, 2023, SCE filed reply comments.

On November 29, 2023, SCE, joined by SED, filed a joint request to withdraw its Appeal of the Amended Citation E.18-02-001 which initiated this proceeding K.18-03-008 (Joint Request). On February 27, 2024, Draft Resolution ALJ-435 was withdrawn to address the November 29, 2023 motion.

On March 22, 2024, Draft Resolution ALJ-458 was issued by the assigned Administrative Law Judge.

- On April 19, 2024, SED submitted comments on Draft Resolution ALJ-458.
- On July 2, 2024, Revision 1 to ALJ-458 was issued by the assigned Administrative Law Judge.
- On July 2, 2024, an Alternate to Draft Resolution ALJ-458 was issued by Commissioner Houck.
- On July 22, 2024, SCE submitted comments on Commissioner Houck's Alternate.

² All references to Code section in this Resolution are to California Public Utilities Code, unless otherwise specified.

³ All references to Edison's Appeal in this resolution will be inclusive of both its appeal of the Original Citation and the Amended Citation.

- On July 26, 2024, Revision 2 to ALJ-458 was issued by the assigned Administrative Law Judge.
- On September 24, 2024, the July 2, 2024 Alternate to Draft Resolution was withdrawn by Commissioner Houck.

On September 27, 2024, this instant Alternate to Draft Resolution ALJ-458 was issued by Commissioner Houck.

DISCUSSION

As noted above, on November 29, 2023, SCE and SED jointly requested the withdrawal of SCE's citation appeal given the withdrawal of SED's Amended Citation. The Parties explained that the Amended Citation was removed from the CPUC's Electric Safety Citations webpage.

The Commission has the exclusive authority to close or dismiss a contested proceeding.⁴ Even where the dismissal or withdrawal is uncontested, the Commission has the authority not to dismiss a complaint.⁵

The Commission favors resolution of matters by settlements and has frequently allowed staff to withdraw a citation even after an appeal is filed, when no evidentiary hearings took place. For instance, in K.21-09-015, involving the Appeal by GoGo Charters LLC of Citation No. T.21-08-003 issued by the Consumer Protection and Enforcement Division (CPED), CPED notified the assigned Administrative Law Judge and GoGo Charters that it was withdrawing the Citation. Based upon CPED's notice of withdrawal of the Citation before commencement of an evidentiary hearing, the Commission issued Resolution ALJ-414 dismissing the matter as moot.⁶

However, as we held in *Re Application of Southern California Gas Company*,⁷ withdrawal from a proceeding is not a matter of right, but an action that requires Commission

⁴D.18-11-007, Application of Pac. Gas & Elec. Co. (U39e) for A Certificate of Pub. Convenience & Necessity to Provide: (i) Full Facilities-Based & Resold Competitive Loc. Exch. Serv. Throughout the Serv. Territories of AT&T California, Frontier California Inc., Consol. Commc'ns of California Co., & Citizens Telecommunications Co. of California; & (II) Full Facilities-Based & Resold Non-Dominant Interexchange Servs. on A, No. 17-04-010, 2018 Cal. PUC LEXIS 544, *6 (Cal. P.U.C. November 8, 2018) citing D.04-06-016, D.92-04-027, D.03-07-032.

⁵Miller Brewing Co., 41 CPUC 2d 409 (Sept. 25, 1991), D.91-09-075 (parties settled and complainant requested to dismiss the complaint per Executive Director order. ALJ denied the request and ruled that the proposed settlement was a matter requiring consideration of the interests of ratepayers, thus precluding voluntary dismissal.).

⁶2022 Cal. PUC LEXIS 30 (Cal. P.U.C. January 27, 2022).

⁷D.92-04-027, 43 CPUC 2d 639 (1992).

approval. We again affirmed this in our decision in Investigation 98-03-013.⁸ In *Re Application of Southern California Gas Company*, the Commission evaluated requests to withdraw from proceedings that have resulted in a significant record. The Commission looked to the California Supreme Court decisions in *Chadbourne v. Superior Court*⁹ and *Liberty Mutual Insurance Co. v. Fales*.¹⁰ “Under this test, a court determines whether a party should be allowed to withdraw by balancing the litigant’s right to control its interaction with government against the government’s duty to resolve matters of important public interest.”¹¹

Applying that test here, there was a developed and significant record and a draft resolution resolving the proceeding. And there could be value given that developed record in clarifying the application of General Order 95 rules to the facts here. GO 95 exists to “ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead lines and to the public in general.”¹² It is a crucial component of the Commission’s safety rules that is not intended to spell out every conceivable situation, and instead places on utilities the responsibility to maintain a safe system of overhead lines, including by identifying safety hazards and taking appropriate corrective action to remedy those safety hazards.¹³ Here, the record demonstrated substantial disagreement between SED and SCE as to whether SCE met the GO 95 requirements, and there could be value for this and future cases in the Commission resolving that dispute.

We accept the parties’ request to withdraw the citation appeal and permit SED to withdraw the Amended Citation. The enforcement arms of the Commission, including SED, are empowered to bring forth citations and other enforcement actions as they deem necessary to protect the public’s safety. We value the expertise and dedication of the Commission’s enforcement staff and given the specific circumstances of this particular case, we find that the public interest is served by permitting SED to withdraw its Amended Citation E.18-02-001, as requested. Accordingly, we grant SED an after-the-fact leave to withdraw Amended Citation E.18-02-001, grant SCE the requested

⁸ D.00-11-036, at 24.

⁹ 60 Cal.2d 723, 731 (1964).

¹⁰ 8 Cal.3d 712, 716 (1973).

¹¹ D.00-11-036, p. 21.

¹² GO 95, Rule 11.

¹³ The Commission has recognized that “no code or safety rules can cover every conceivable situation,” and expects that in exercising discretion under the rules, utilities will exercise reasonable care to avoid causing harm to others. D.15-04-023 San Bruno OII, at 27; *Mata v. Pac. Gas & Elec. Co.*, 224 Cal. App. 4th 309, 318 (2024), as modified on denial of reh’g (Mar. 26, 2014).

leave to withdraw its appeal of the associated Amended Citation E.18-02-001, and close this proceeding.

COMMENTS

This draft resolution was served on the parties for public review and comment in accordance with Pub. Util. Code § 311(g)(1), Article 14 of the Commission's Rules of Practice and Procedure, and Section 12 of Resolution ALJ-299, which explicitly incorporated Rule 14.5.

_____ submitted comments to the Alternate Draft Resolution on ____, 2024.

FINDINGS OF FACT

1. On November 29, 2023, SCE, joined by SED, filed a Joint Request to withdraw its Appeal of the withdrawn Amended Citation E.18-02-001.
2. Proceeding K.18-03-008 should be closed.

CONCLUSIONS OF LAW

1. The Commission determines whether a party should be allowed to withdraw by balancing the litigant's right to control its interaction with the government against the government's duty to resolve matters of important public interest.
2. It is reasonable and therefore SED should be granted after-the-fact leave to withdraw the Amended Citation.
3. SCE's November 29, 2023 motion to withdraw its Appeal of the Amended Citation should be granted.
4. SCE should be ordered to contact the assigned Administrative Law Judge to coordinate and then collect all physical evidence previously admitted into the evidentiary record of this proceeding.
5. Proceeding K.18-03-008 should be closed.

Therefore, **IT IS ORDERED** that:

1. The Commission's Safety and Enforcement Division is granted leave to withdraw Amended Citation E.18-02-001.
2. The Joint Request to withdraw the appeal of the Amended Citation E.18-02-001, dated November 29, 2023, and filed by Southern California Edison Company and joined by the Commission's Safety and Enforcement Division, is granted.

3. Southern California Edison Company is ordered to contact the assigned Administrative Law Judge to coordinate and then collect the physical evidence previously admitted into the evidentiary record of this proceeding.
4. Proceeding K.18-03-008 is closed.

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 _____, the following Commissioners voting favorably thereon:

Rachel Peterson
Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALTERNATE RESOLUTION ALJ-458. Resolves Proceeding K.18-03-008 finding violations of General Order 95 and Pub. Util. Code Section 451 and dismissing two violations, the Amended Citation E.18-02-001 Issued to Southern California Edison Company (U338E) by Safety and Enforcement Division.

INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached official service list who have provided an e-mail address for K.18-03-008.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.

Dated September 27, 2024, at San Francisco, California.

/s/ SHANE GUTTO

Shane Gutto

N O T I C E

Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

Alternate Resolution ALJ-458 COM/DH7/sgu

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Last Updated on 27-SEP-2024 by: AMT

K1803008 LIST

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