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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Division of Water and Audits
Water and Sewer Advisory Branch**

**Resolution No. W-4799
October 29, 2009**

RESOLUTION

**(RES. W-4799), DELEGATION OF AUTHORITY TO STAFF TO
ISSUE CITATIONS TO WATER AND SEWER UTILITIES TO
ENFORCE COMPLIANCE WITH THE COMMISSION'S ORDERS
AND THE PUBLIC UTILITIES CODE; PROCEDURES FOR
APPEAL OF CITATIONS**

SUMMARY

This resolution delegates authority to Staff, as designated by the Executive Director ("Staff"), for enforcing compliance by water and sewer utilities with the Commission's orders and the Public Utilities Code. Delegating authority to Staff will allow the Commission to promptly respond to threats and protect the public interest from violations of the Commission's Orders and the Public Utilities Code. This program is designed to utilize resources efficiently and enhance overall regulation in California. The Staff will issue citations only after written notice of non-compliance or violation has been given to the water or sewer utility and the water or sewer utility has failed to correct the non-compliance or violation in a timely manner. The Staff is delegated authority to draft and issue citations for specific violations and levy penalties up to amounts set forth in Appendix A.

BACKGROUND

Section 701 of the Public Utilities Code authorizes the Commission to "supervise and regulate every public utility in the State ... and 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." More specifically, Section 702 of the Public Utilities Code 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.

In turn, under Section 2101 of the Public Utilities Code, the Commission is directed “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” Pursuant to this authority, and under this direction, the Commission has adopted, and at various times amended General Orders 103-A (*Rules Governing Water Service Including Minimum Standards for Operation, Maintenance, Design and Construction*) and 96-B (which includes rules for filing utility tariffs and informational reports).

California law, including Public Utilities Code Section 7, authorizes the Commission to delegate certain powers to its staff, including 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. Over the last several years the Commission has delegated citation authority over many kinds of regulated entities including household good movers, charter party carriers, passenger stage corporations, propane gas distribution system operators, power plant operators, telecommunication providers, and energy service providers. This resolution is consistent with these other approved citation programs.

CITATIONS

Before issuing a citation, Staff¹ will issue a written Notice to the water or sewer utility stating the specific violation along with the proposed fine, and information about how to contact Staff. This Notice will provide an opportunity for the utility to cure the violation and also to informally contest to Staff both the determination of a violation and the proposed penalty amount. For violations that do not endanger the public’s health or safety the Notice will provide at least 30 days for the water or sewer utility to either achieve compliance or informally contest Staff’s alleged violation or proposed fine amount. For violations that could endanger the public’s health or safety, the Staff Notice will provide 3 days to comply, or such shorter time as is appropriate under the particular circumstances. For either kind of violation, a utility may request an extension of time to achieve compliance, based on a showing of good cause. Staff should grant such extensions as are reasonable. This resolution authorizes the Staff to issue a citation to any water or sewer utility for violations listed in Appendix A if the utility does not come into compliance by the time stated in the Notice, or any extension thereof.

Appendix A contains penalty schedules for specified violations. The penalties are denominated in a dollar amount per “event” and represent the maximum amount that

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.

can be imposed by a Staff citation. The penalties imposed are the responsibility of shareholders or owner(s) of the water or sewer utility. The fines imposed cannot be charged to customers. Each issuance of a Notice may trigger a separate “event”. Thus, additional penalties may be imposed where a utility fails to cure a continuing violation, but in order for there to be an additional penalty, there must be a separate Notice (with a separate compliance date).

Payment of a citation does not prevent the Commission from taking other remedial measures, including, but not limited to, (i) issuing an order instituting investigation in the event the underlying violation is unresolved or (ii) requiring the payment of monies to third parties.

Authorizing Staff to issue citations for the violations listed in Appendix A has been identified as necessary to fulfill the Commission’s regulatory mandate to ensure that water and sewer utilities provide safe and reliable service at a reasonable rate. Maximum fines are established for each of the listed violations appropriate to the potential harm to the public interest, as well as to ensure compliance with the Commission’s orders and the Public Utilities Code. A water or sewer utility that has been issued a citation may accept the fine imposed or contest it through a process of appeal. The following procedures govern the issuance and appeal of these citations.

1. *Contents.* The citation served upon the water or sewer utility (Respondent) by the Staff will include:
 - (a) A specification of each alleged violation, including citation to the statute, rule, or order allegedly violated;
 - (1) while the citation need not include all supporting evidence, Staff will make the evidence available for timely inspection upon request by the Respondent;
 - (b) A statement of the facts upon which each alleged violation is based;
 - (c) The amount of the fine.
 - (d) A statement that the Respondent may pay the amount of the fine set forth in the citation, agree with Staff on conditions for payment, or appeal the citation, and that the Respondent will forfeit the right to appeal the citation by failing to do one of these things within 30 days;
 - (e) An explanation of how to file an appeal, including the Respondent’s right to have a hearing, to have a representative at the hearing, to request a transcript, and to request an interpreter; and
 - (f) The form for Notice of Appeal and the form for requesting an interpreter.

2. *Service of Citation.* Service of the citation shall be effected either personally on the owner or an officer of the Respondent or by first-class mail. Citations served by first class mail may be sent to the Respondent's business address, or the address for the service of process of the Respondent filed with the Secretary of State of California.
3. *Response.*
 - (a) Within 30 days after the date of service of the citation, Respondent shall remit payment of the full amount of the fine with notice to Staff, agree with Staff on conditions for payment, or serve a Notice of Appeal upon Staff. Before the expiration of this deadline, Staff, an Administrative Law Judge ("ALJ"), or the Commission may extend the time for response upon a showing of good cause.
 - (b) Unless otherwise specified, a requirement to notify Staff or serve Staff means to send a written communication by the U.S. Mail or an express mail service to the address specified in the citation. These written communications are not filed with the Commission's Docket Office. In addition to, or instead of, communications by mail service, Staff may allow electronic submissions.
4. *Payment of fine; default.*
 - (a) Payment of 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.
 - (b) If Respondent pays the full amount of the fine within the time allowed, the citation shall become final. Failure to pay the full amount of the fine 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.
5. *Appeal.*
 - (a) An appeal shall be brought by serving a Notice of Appeal upon Staff, and the Respondent shall indicate the grounds for the appeal in the notice.
 - (b) Upon receipt of a timely Notice of Appeal, 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 ALJ to hear the appeal.

- (c) The assigned ALJ shall set the matter for hearing promptly. The Respondent and Staff will be notified at least ten days in advance of the time, date and place for the hearing. The ALJ may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- (d) Any appeal of a citation shall be heard in the Commission's courtroom in San Francisco or Los Angeles.
- (e) Upon a good faith showing of language difficulty, the Respondent will be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned ALJ not less than three business days prior to the date of the hearing.
- (f) The Respondent may order a transcript of the hearing, and shall pay the cost of the transcript in accordance with the Commission's usual procedures.
- (g) The Respondent may be represented at the hearing by an attorney or other representative, but such representation shall be at the Respondent's sole expense.
- (h) At the hearing, Staff will bear the burden of proof in establishing a violation. Staff will also bear the burden of producing evidence and, therefore, shall open and close. The ALJ may, in his or her discretion, alter the order of presentation. Rule 13.6 (Evidence) of the Commission's Rules of Practice and Procedure is applicable.
- (i) Ordinarily, the appeal will be submitted at the close of the hearing. Upon a showing of good cause, the ALJ may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.
- (j) Within 60 days after the appeal is submitted, the ALJ will issue a draft resolution resolving the appeal. The draft resolution will be placed on the first available agenda, consistent with the Commission's applicable rules. Parties may file comments on the draft resolution pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure.
- (k) A resolution approved by the Commission is subject to rehearing pursuant to Public Utilities Code Section 1731 and to judicial review pursuant to Public Utilities Code Section 1756.
- (l) During the period described in the next sentence, none of the following may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or ALJ: the Respondent, the

Staff that issued or is enforcing the citation, or any agent or other person on behalf of the Respondent or such Staff. This prohibition applies from the date that Staff receives a Notice of Appeal to and including 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 Commission serves the decision finally resolving the application for rehearing. Inquiries strictly limited to procedural matters are permitted.

NOTICE AND COMMENT

A prior draft of this resolution, that did not include a schedule of violations and fines, was mailed to all water and sewer service utilities and other interested parties in accordance with Section 311 of the Public Utilities Code. Comments were allowed under Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments were filed on January 12, 2009 by the California Water Association (CWA). CWA raised concerns over the discretion given Staff in determining what constitutes a violation and then assessing a fine. To address CWA's concerns over the Commission's delegation of authority to Staff, a revised draft resolution was prepared which included a specification of particular violations and associated fines in Appendix A.

The revised draft resolution was mailed to all water and sewer service utilities and other interested parties on April 21, 2009. Comments were served pursuant to Rule 14.5 of the Commission's Rules of Practice and Procedure. Timely comments were received from CWA and the Division of Ratepayer Advocates (DRA) on May 11, 2009. Late-filed comments were received from Garrapata Water Co. Inc. on May 20, 2009 that generally support the comments filed by CWA and DRA. We will accept these late-filed comments.

CWA's comments raise four concerns: (1) the range of violations is inappropriately broad; (2) the penalties are excessive for many of the specified violations; (3) the time limits for curing violations are unduly rigid; and (4) the delegation to Staff is imprecise. With respect to this last concern, CWA requests that references to Staff be replaced by references to "the Director" with this term being defined as referring to the Director of the Division of Water and Audits or its successor.

We decline to adopt this request. We have, however, clarified that the term "Staff" refers to the portion of the Commission's staff designated by the Executive Director for carrying out the particular function involved. The Commission needs the flexibility to designate the Staff most appropriate for carrying out the various functions involved in this citation program.

DRA raises a concern as to why some violations, e.g., certain provisions of General Order 103-A, are not specifically listed in Appendix A. DRA is also concerned about

the rigidity of the fine schedule in Appendix A. DRA states that the compliance period is inappropriate for certain violations, e.g., Rule 1 violations, and that the cure period is unrealistic for other types of violations, e.g., bringing a non-compliant system into compliance. Lastly, DRA requests that the resolution clearly state that penalties imposed are a shareholder (owner) and not a ratepayer responsibility.

We have made several changes to the schedule of violations and penalties in response to comments. Generally, the table of violations and penalties is more specific in areas where our experience has shown that violations are more frequent. Other violations will be handled under the more general provisions of Appendix A, or using an enforcement mechanism other than the citation forfeiture procedure. The absence of a specific violation from the schedule does not mean that a violation is unimportant. It only means that such violations are less frequent or that other enforcement mechanisms are likely to be more suitable.

The most significant change we have made concerns the penalty schedules which have been modified to reduce their “rigidity” and thereby avoid excessive penalties. The penalty amounts shown in Appendix A now represent the maximum fine for a specified violation under the citation program.

The schedule of violations has been amended in a number of areas, including adding a violation for all provisions of General Order 103-A not otherwise specifically listed in Appendix A. We have also eliminated as a violation under the citation program noncompliance with general rate case filing requirements by Class A utilities. This matter is addressed as part of a formal proceeding, and thus not appropriate for resolving under the citation program. Similarly, we have amended the Rule 1 violation to indicate that it is subject to a citation only for violations outside the course of a formal proceeding.

To address a specific concern over the rigidity of the time limits for curing violations, we have clarified the resolution to indicate that the shorter three day compliance period is only for those violations that “could endanger the public’s health or safety.” Generally, we disagree with the concern expressed by both CWA and DRA that the notice period is unduly rigid in the time allowed to come into compliance. The citation program provides that a utility can request an extension of time and that Staff can grant a reasonable extension based on a showing of good cause.

In response to DRA’s concern that certain violations (e.g., Rule 1 violations) are not subject to cure, the 30-day Notice period has been broadened to include an opportunity during this time for a Respondent to informally contest to Staff, both the determination of a violation and the proposed penalty amount, prior to a citation being issued. In this way the 30-day Notice period serves as both an opportunity to cure, where applicable,

and informally contest the violation or proposed penalty amount prior to a citation being issued.

In response to DRA's comments on the responsibility for penalties, we have amended the resolution and added a finding to clarify that penalties imposed as part of the citation program are a shareholder (owner) and not a ratepayer responsibility.

We also disagree with CWA's contention that the range of violations listed in Appendix A is "inappropriately broad." CWA's comparison of the Commission's citation program here, covering industries in which we have broad regulatory authority, with our citation program for Load Serving Entities, where our regulatory oversight is limited, is misplaced. The scope of the violations listed in Appendix A is consistent with the scope of our regulatory responsibilities for the water and sewer utility industries.

Finally, both CWA and DRA recommend workshops to discuss the citation program. We do not take CWA and DRA up on their request for workshops. At this time we do not see the benefit of workshops. If, after some experience with the operation of the citation program, specific operational issues arise that would benefit from workshops, we will consider the need for workshops in that context.

FINDINGS

1. Public Utilities Code Section 701 authorizes the Commission to supervise and regulate every public utility in the State.
2. Public Utilities Code Section 702 mandates every public utility to obey and comply with every Commission order, decision, direction, or rule.
3. Public Utilities Code Section 2101 directs the Commission to see that the provisions of the State constitution and statutes dealing with public utilities are enforced and obeyed.
4. California law including Public Utilities Code Section 7 authorizes the Commission to delegate certain powers to its Staff, including the investigation of acts preliminary to agency action, and the issuance of citations for particular kinds of violations up to specified amounts.
5. The proposed citation program for water and sewer utilities described above is needed to ensure effective and efficient enforcement of Commission decisions and orders.

6. The proposed citation program for water and sewer utilities is similar to citation programs adopted by the Commission for other industries.
7. The water and sewer utility citation program as described above and in the Specified Violations and Maximum Penalty Schedules, Appendix A, is reasonable, will facilitate achieving compliance with Commission decisions and orders in protecting the public interest, and will help to deter future violations.
8. In response to comments, the schedule of violations and penalties has been modified, including that the penalty amounts in Appendix A now represent the maximum fine for a specified violation under the citation program.
9. The scope of violations contained in Appendix A is consistent with the scope of the Commission's broad regulatory responsibilities for the water and sewer utility industries.
10. The Commission needs the flexibility to designate the Staff most appropriate for carrying out the various functions involved in this citation program.
11. Water and sewer utilities will be provided prior written notice to cure or informally contest a violation and proposed penalty amount before a citation is issued.
12. The three day compliance period is only for those violations that could endanger the public's health or safety.
13. Water and sewer utilities may request an extension of time to achieve compliance based on a showing of good cause.
14. The water and sewer utility citation program includes the ability to appeal Staff's issuance of citations and penalties.
15. Payment of a citation does not preclude the Commission from taking other remedial measures.
16. Penalty payments are the responsibility of shareholders or owner(s) of the water or sewer utility and are not to be charged to customers.
17. The value of workshops to discuss the citation program may exist after some experience with the operation of the citation program.

IT IS ORDERED:

1. The citation program described in the section above entitled "Citations" and in the Specified Violations and Maximum Penalty Schedules, attached as Appendix A, is hereby adopted to govern the issuance and appeal of citations for violation of statutes, orders or rules relating to water and sewer utilities.
2. 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 October 29, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

APPENDIX A
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SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULES

SPECIFIED VIOLATIONS	PENALTY SCHEDULE Class A Utilities	PENALTY SCHEDULE Class B, C, D, and Sewer Utilities
	UP TO	UP TO
Charging fees not authorized by the Commission	\$1,000 per event	\$500 per event
Charging rates higher than authorized	\$1,000 per event	\$500 per event
Not charging developers for special facilities in violation of Tariff Rule 15	\$20,000 per event	\$1,000 per event
Not refunding excess deposits to developers or individual customers in violation of Tariff Rule 15	\$1,000 per event	\$500 per event
Installing new facilities that do not meet the standards or fire flow requirements of G.O. 103-A	\$20,000 per event	\$1,000 per event
Not refunding deposit after 12 months when the customer has met the payment requirements for service pursuant to Tariff Rule 5.C and 7.E	\$500 per event	\$250 per event
Not responding to water outages as specified in Tariff Rule 14 and G.O. 103-A	\$1,000 per event	\$500 per event

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SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULES

SPECIFIED VIOLATIONS	PENALTY SCHEDULE Class A Utilities UP TO	PENALTY SCHEDULE Class B, C, D, and Sewer Utilities UP TO
Not following safety standards when doing repairs as specified in G.O. 103-A	\$1,000 per event	\$500 per event
Not restoring the work area specified in G.O. 103-A after performing repairs	\$1,000 per event	\$500 per event
Shutting off a customer's water for non-payment of bill without the notice required by Tariff Rule 11.B.1.i	\$1,000 per event	\$500 per event
Not complying with Commission Ordering Paragraphs not otherwise specified herein	\$10,000 per event	\$1,000 per event
Misrepresenting information outside the course of a formal proceeding in violation of Rule 1	\$20,000 per event	\$2,000 per event
Failing to remedy defects or failing to file a required report on time or at all, in violation of Rule 6.2 of G.O. 96-B	\$1,000 per event	\$500 per event

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SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULES

SPECIFIED VIOLATIONS	PENALTY SCHEDULE Class A Utilities UP TO	PENALTY SCHEDULE Class B, C, D, and Sewer Utilities UP TO
Failing to submit a timely or satisfactory revision to a tariff effective pending disposition after notice by the Division of Water and Audits, in violation of Rule 7.5.3 of G.O. 96-B	\$1,000 per event	\$500 per event
Not keeping records of customer complaints in accordance with Section VII.7.E of G.O. 103-A	\$1,000 per event	\$500 per event
Not complying with Water Quality Standards in accordance with Section II.2.A of G.O. 103-A	\$1,000 per event	\$500 per event
Not complying with water pressure requirements of Section VII.6.A of G.O. 103-A	\$1,000 per event	\$500 per event
Not complying with water supply requirements of Section II.2.B.3 of G.O. 103-A	\$2,000 per event	\$1,000 per event
Non-compliance with provisions of G.O. 103-A not otherwise specified herein	\$1,000 per event	\$500 per event
Not filing Annual Reports	\$1,000 per event	\$500 per event

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SPECIFIED VIOLATIONS AND MAXIMUM PENALTY SCHEDULES

SPECIFIED VIOLATIONS	PENALTY SCHEDULE Class A Utilities UP TO	PENALTY SCHEDULE Class B, C, D, and Sewer Utilities UP TO
Misusing or misappropriating the Safe Drinking Water Bond Act and Safe Drinking Water State Revolving Fund surcharge funds collected from customers	\$20,000 per event	\$2,000 per event
Not complying with the Commission's filing requirements for general rate cases as specified in Standard Practice U-46-W	These matters are handled by the assigned ALJ for Class A utility rate cases	\$1,000 per event

(End of Appendix A)