

From: Baker, Amy C.  
Sent: 3/15/2013 9:39:33 AM  
To: Allen, Meredith (/O=PG&E/OU=Corporate/cn=Recipients/cn=MEAe)  
Cc:  
Bcc:  
Subject: RE: Proposed Changes to Draft Citation Program

Thanks Meredith, this is very helpful.

Amy Baker

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**From:** Allen, Meredith [mailto:MEAe@pge.com]  
**Sent:** Thursday, March 14, 2013 4:38 PM  
**To:** Randolph, Edward F.; Sterkel, Merideth "Molly"; Borak, Mary Jo; Baker, Amy C.; Mulligan, Jack M.  
**Cc:** Beardsley Grant, Kate  
**Subject:** Proposed Changes to Draft Citation Program

Ed, Molly, Mary Jo, Amy & Jack,

Thank you so much for taking the time to meet with us earlier this week. Attached and below is a summary of PG&E's proposed changes to the resolution.

We are looking forward to continuing to work with you on the program. Please let me know if you have questions or would like to discuss the information below.

Meredith

## Proposed Changes to Draft Resolution E-4550

**Cap:** Proposed staff citation program should include a cap of \$100,000 with any proposed penalty above that amount requiring a vote of the Commissioners through the OII process.

- Proposed staff citation program is unbounded and would allow staff discretion to issue substantial penalties for non-compliances even if no or minimal environmental harm and no intent (e.g., contractor error). For example, at \$10,000 per day a condition that is undetected for several months could result in a fine in excess of \$1 million.
- Proposed program should recognize that violations that could result in penalties in excess of \$100,000 – which is already a substantial amount that exceeds the amount of fines imposed in the vast majority of cases of environmental law violations -- should not be addressed through a staff citation program. For example, the RA citation program has always recognized a distinction between what is appropriate through a citation and an OII. Procurement deficiencies in excess of 10 MW remedied within 5 days from the date of notification by Energy Division can be cited \$10,000 per incident or \$20,000 for repeat offenses in a year. If the deficiency is not remedied within 5 days, the penalties are significantly higher and need to be sought through an OII. From 2006 through 2011 the Commission issued 22 RA citations for violations and initiated four enforcement cases, collecting \$82,500 and \$847,500 respectively from LSEs. The RA OII initiated against PG&E sought penalties of approximately \$7 million for alleged procurement deficiencies and was settled for \$215,000.
- \$100,000 is significant for an alleged environmental violation.
  - In PG&E's recent experience, environmental fines tend not to exceed \$10,000.
  - CEC has a cap of \$125,000 for a violation of a permit conditions. That is not a staff program but requires vote of commissioners.
  - Seventh Standard OII was settled for \$100,000 penalty and \$50,000 donation for multiple alleged violations.

**Opportunity to Cure:** Where feasible, the draft citation program should allow an opportunity to cure within a reasonable period of time consistent with many of the other citation programs adopted by the Commission. If the non-compliance is a repeat offense, staff may issue a citation without an opportunity to cure.

- In many situations, an alleged non-compliance can be remedied, such as modifying structures that were incorrectly designed, terminating inadvertent use of unauthorized access roads, or correcting deficiencies in required reports. If the utility resolves the non-compliance event within the period of time specified, a citation should not issue. In order to address staff's concern with repeat offenses, staff should be allowed to issue a citation without an opportunity to cure in these circumstances. An opportunity to cure ensures that issues are addressed and would reduce non-compliances going forward given the opportunity to cure would not be available for repeat offenses.
- In addition, many mitigation measures are aspirational or lack specificity. An opportunity to cure on such measures is reasonable to avoid immediate fines on an ambiguous or

aspirational measure and instead allow the opportunity to address through an agreed upon compliance plan.

- CPUC Precedent for Opportunity to Cure:

- RPS Citation Program (2009): It is unreasonable to allow penalties to accrue for errors or omissions without giving an LSE time to correct. The Commission allowed 10 business days from the date Staff notifies an LSE to remedy an incomplete or incorrect report. If the errors or omissions identified by Staff have not been corrected within 10 days, a fine will be levied. Requests for additional time to remedy errors or omissions may be requested by contacting Staff.
- Water and Sewer Program (2009): Before issuing a citation, Staff will issue a written Notice that provides an opportunity for the utility to cure the violation. 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.
- Railroad Citation Program (2008): Citations will only issue after a notice of defect or violation has been given to the railroad by the CPUC inspection Staff, the railroad has had an opportunity to correct the defect or violation, and the railroad has failed to correct the defect or violation in a timely manner.
- Propane Gas Distribution Safety (2008): After an inspection, CPSD staff provides the propane system operator with an Inspection Report. If, during the course of the investigation, the inspector discovers violations, the inspector must indicate any violations in the Inspection Report. The operator has 30 days to submit a compliance plan detailing how the operator will correct the violations detailed in the Inspection Report, except for violations that may result in an immediate threat to the health and safety of the distribution system's customers, which must be corrected within 24 hours.

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**Criteria:** The draft resolution should require staff to consider, in determining whether to issue a fine and the amount of the fine, the gravity of the harm, extent of deviation from the applicable requirement, history of compliance or non-compliance on the project, intent (degree of willfulness or negligence), good faith efforts to comply, degree of cooperation, and any voluntary corrective action taken by the alleged violator. Similar criteria are currently used by environmental regulatory agencies and by the Commission itself in determining the proper amount of fines under general provisions related to violation of Commission orders. Prior citation programs have likewise required staff to consider specific criteria in determining whether to issue a citation and have allowed staff to determine the fine amount up to a maximum (Water and Sewer Citation Program, Fine Schedule)

**Meet and Confer:** After CPUC staff issues notice of non-compliance, a meet and confer with the utility should be required before a citation is issued. The meet and confer will allow the

utility to present facts to staff concerning the alleged incident, including evidence that a non-compliance did not occur and/or mitigating factors.

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