

January 28, 2014

Brigadier General Jack Hagan, Director
Safety and Enforcement Division
California Public Utilities Commission
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Re: Pacific Gas and Electric Company's Reply Comments on
Draft Resolution ESRB-4

Dear Brigadier General Hagan:

Pursuant to the December 31, 2013 instructions included with draft Resolution ESRB-4 (the Draft Resolution) and the January 8, 2014 email from Raymond Fugere, Pacific Gas and Electric Company (PG&E) provides its reply comments on the Draft Resolution.^{1/}

Preliminarily, PG&E reiterates that the Commission's safety program should be focused on enhancing public and employee safety. PG&E's comments, and all comments by the various stakeholders, should be viewed through the lens of whether the recommendations promote public and employee safety. The recommendations by PG&E and by the various other stakeholders about focusing on significant safety hazards, opportunities to cure violations, and the benefits of collaboration and cooperation all further those critical Commission goals.

PG&E generally supports the comments by other stakeholders. Many of the comments, especially those by the other electric utilities (SCE, SDG&E and CASMU), raised concerns that reinforced PG&E's concerns, particularly with respect to:

- the need to focus on high priority risks that raise safety concerns^{2/},
- the need for an administrative limit on staff-issued penalties^{3/},
- the need to align the Draft Resolution and the safety citation program with the prioritization approach in General Order 95, Rule 18.A and prior Commission decisions^{4/},
- the need for an opportunity to cure in advance of the issuance of any citations^{5/},

^{1/} Opening Comments were filed by PG&E, San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), the California Association of Competitive Telecommunications Companies (CALTEL), Verizon California, Inc. (Verizon), the CIP Coalition (CIP or CIP Coalition), and the California Association of Small and Multi-jurisdictional Utilities, consisting of PacifiCorp d/b/a Pacific Power, Bear Valley Electric Service and Liberty Utilities (CASMU)

^{2/} PG&E at p. 3; SDG&E at pp. 2-3.

^{3/} PG&E at pp. 4-5; SDG&E at p. 3; SCE at p. 2; CASMU at p. 3; CALTEL at pp. 9-10; CIP Coalition at p.10; Verizon at p. 5.

^{4/} PG&E at pp. 5-6; SDG&E at p. 3; SCE at pp. 4-6; CASMU at p. 2; CIP Coalition at pp.6-7; Verizon at pp. 9-10; *see, e.g.*, D.04-04-065, at pp. 2, 13-15, 30-31; D.05-01-030, at pp. 15-16.

^{5/} PG&E at p. 7; SCE at p. 5.

- the need for an opportunity to meet and confer in advance of the issuance of any citations^{6/}, and,
- the need for the burden of proof to be squarely on SED, not the responding utility^{7/}.

PG&E supports SCE's proposed clarification that staff has the discretion to assess a penalty at less than the maximum allowed; indeed, this is required by SB 291 and Public Utilities Code section 1702.5(a)(1).^{8/} PG&E also supports the recommendations by CASMU (i) that the Draft Resolution should clarify which "other applicable" decisions, regulations and codes are within the scope of the citation program^{9/}, (ii) that informal staff actions and the use of other enforcement mechanisms should be identified^{10/}, and (iii) that workshops, or a rulemaking as proposed by PG&E and SCE, should address the other aspects of SB 291 that have not yet been implemented.^{11/}

Verizon also raises a concern about language that implies a utility could lose the right to appeal unless it corrects an immediate safety hazard.^{12/} PG&E agrees with Verizon that a utility should not lose its right to timely file an appeal under these circumstances, as the utility may be invoking a corrective action plan and/or challenging SED's assessment that something is a violation.

PG&E, however, disagrees with the communication infrastructure providers' assertion that the safety citation program should not apply to them.^{13/} First, as the Draft Resolution points out, the proposed program is similar (particularly once the issues discussed above have been addressed) to prior citation programs where the CPUC has established staff citation programs.^{14/} Second, as a matter of public policy, it makes sense to include owners of communication facilities in the citation program. Communication companies jointly own many poles with electric supply providers or at a minimum lease space from electric providers. Both electric and communications companies are subject to General Orders 95 and 128. As the Draft Resolution notes, the 2007 Malibu fire was caused by overloaded electrical supply and communications

^{6/} PG&E at p. 7; SDG&E at pp. 7-8; SCE at pp. 4-5. In addition to having informal meet and confer sessions prior to the issuance of any citations, PG&E supports SDG&E's comments that collaboration and cooperation between utilities and SED are essential. SDG&E at p. 1.

^{7/} PG&E at p. 8; SCE at p. 6; CALTEL at pp. 7-9; CIP Coalition at pp. 7-8; Verizon at pp. 7-9. Although SDG&E did not address the burden of proof per se, it did re-iterate its due process concerns that had previously been raised in connection with Resolution ALJ-274, which concerns are shared by PG&E and well-articulated by Verizon. As noted in PG&E's opening comments, like SDG&E PG&E is reserving its rights to raise due process concerns at a later time and in more appropriate circumstances, consistent with the Commission's guidance in Resolution ALJ-274. See SDG&E at pp. 1-2, PG&E at p. 5, n.14, and Resolution ALJ-274 at p. 11.

^{8/} See SCE at p. 3-4; PG&E at p. 6.

^{9/} Draft Resolution at p. 2, CASMU at p. 2.

^{10/} CASMU at pp. 2-3.

^{11/} CASMU at pp. 2-3.

^{12/} Verizon at pp. 6-7.

^{13/} CALTEL at p. 3; Verizon at pp. 2-7; CIP Coalition at pp. 1-5.

^{14/} Draft Resolution, p. 4 n.8.

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facilities that collapsed during windy conditions.^{15/} It is illogical, and counterproductive, for both owners of a pole to be subject to the same general orders, and the same pole loading and safety rules, but for only one owner to be subject to a staff citation program.

CALTEL argues that General Order 128 is too vague to support a citation program. In particular, CALTEL focuses on the rule in General Order 128 that “systems shall be maintained in such condition as to secure safety to workmen and the public in general.”^{16/} Certain provisions of General Order 95 suffer from similarly vague language.^{17/} Indeed, it is in part to address those ambiguities that PG&E has recommended a meet and confer prior to the issuance of a citation or fine for any nonconformance.

PG&E appreciates this opportunity to comment on the Draft Resolution, and looks forward to working with the Commission, staff and other stakeholders on development of the electric safety enforcement program.

Respectfully submitted,



Brian K. Cherry

cc: Raymond Fugere
Traci Bone
Service List in R.08-11-005

^{15/} Draft Resolution, p. 9.

^{16/} CALTEL at p. 4, quoting from Rule 12.2 of General Order 128.

^{17/} See, e.g., General Order 95, Rule 31.1 (“Electrical supply and communications systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service. For all particulars not specified in these rules, design, construction and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of communication or supply lines and equipment....”)