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January 21, 2014

Brigadier General Jack Hagan, Director
Safety and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: Pacific Gas and Electric Company's Opening Comments on
Draft Resolution ESRB-4

Dear General Hagan:

Pursuant to Rule 14.5 of the Commission's Rules of Practice and Procedure and the instructions included with draft Resolution ESRB-4 (the Draft Resolution), Pacific Gas and Electric Company (PG&E) provides its comments on the Draft Resolution, which delegates authority to Safety and Enforcement Division (SED) staff to issue citations to owners of electric supply and communications facilities.

PG&E strongly supports the Legislature's and the Commission's focus on public and employee safety - nothing is more important. PG&E takes its safety and compliance obligations extremely seriously. PG&E wholeheartedly agrees with Commission precedent that "[t]he duty to furnish and maintain safe equipment and facilities fall squarely on California public utilities, including PG&E."^{1/}

The hallmark of any proposed citation program and of the Commission's entire electric safety enforcement program should be its focus on enhancing public and employee safety. Towards that end, PG&E recommends the Commission:

- Open a rulemaking to examine successful regulatory safety enforcement approaches across various industries, such as those of the Federal Aviation Administration, the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission. The rules for, and implementation of, the Commission's proposed citation program should be developed as part of a broader approach, consistent with Senate Bill (SB) 291 and with national best practices. A rulemaking would encourage broad stakeholder participation and provide an opportunity to review what has worked well elsewhere in the country.
- Focus the citation program on systemic issues that raise the greatest safety concerns, such that the Commission and the utilities can concentrate their resources on truly enhancing public and employee safety, and not inadvertently create a "check the box" compliance paradigm;

^{1/} See Decision Adopting Procedure for Lifting Operating Pressure Restrictions, D.11-09-006, at p.6.

- Adopt an administrative limit on the amount of any monetary penalty that may be imposed by commission staff, as required by SB 291 and Public Utilities Code Section 1702.5(a)(3).^{2/} Due to the complexity of this issue, PG&E recommends the Commission adopt an interim administrative limit of \$200,000, which is the statutory limit for the SED citation program for propane, and the highest limit of the various CPUC citation programs cited in the Draft Resolution as similar to this proposed program.^{3/} The administrative limits can later be refined in the proposed rulemaking;
- Clarify that having a reasonable schedule for repair is relevant to whether a citation should be issued, as required by Section 1702.5(a)(1). In addition, the Commission should provide the responding utility with an opportunity to cure a violation without the issuance of a citation, consistent with General Order 95, Rule 18 and with several existing Commission citation programs^{4/};
- Provide an opportunity for the utility to meet and confer with Commission staff prior to the issuance of a citation, consistent with the Commission's approach in the recently established CEQA citation program^{5/};
- Provide a transparent internal process requiring that any citation be approved by SED management levels based on the proposed fine amount; and,
- Revise the appeals process to provide, consistent with due process and the approach in the majority of the citation programs referenced in Draft Resolution,^{6/} for *de novo* review where Commission staff has the burden of proof at the evidentiary hearing, including as to the amount of any fine.

1. Open a Rulemaking to Examine Successful Regulatory Safety Enforcement Approaches and Regulatory Best Practices.

PG&E's goal is to become an industry leader in both public and employee safety. We strongly support the Commission in its efforts to lead the utility industry towards improved public and employee safety.

Given the importance of the Commission's safety efforts, the Commission should provide an opportunity for all stakeholders, including workers, local governments, safety advocates, customer advocates, commission staff and utilities, to participate in developing a comprehensive

^{2/} All section references are to the Public Utilities Code, unless otherwise noted. As noted in the Draft Resolution, notwithstanding any administrative limit on staff the Commission retains the authority to institute more formal actions, such as opening an Order Instituting Investigation (OII). Draft Resolution at p. 11; Section 1702.5(c).

^{3/} See Section 4457(a); *see also* Draft Resolution at Finding 6 ("The citation program, as provided for above and in Appendix A hereto, is similar to citation programs previously adopted by the Commission for other industries."), and the citation programs discussed in the Draft Resolution. As discussed *infra*, the gas citation program does not currently have an administrative limit but is now required to have one under SB 291.

^{4/} See Resolution W-4799 (2009), at p. 1 (water and sewer); Resolution ROSB-002 (2008), at p. 2 (railroads); Resolution USRB-001 (2008), at p. 5 (propane).

^{5/} See Resolution E-4550 (2013), at p. 14.

^{6/} Draft Resolution, at p. 4, footnote 8.

safety program consistent with Commission and legislative policy. A rulemaking is the best and most transparent way to ensure meaningful stakeholder input and provide a forum for a thorough analysis of existing citation programs across relevant industries.

2. Any Citation Program Should Focus on Risks That Raise the Greatest Safety Concerns

The Commission's General Orders and safety decisions are and should be designed to enhance public safety and employee safety. In the same vein, the goal of any citation program should be to enhance and improve public and employee safety.

As the Commission explained in its Opinion Finding Violations and Imposing Sanctions in the Investigation into Southern California Edison's Maintenance Practices,

The purpose of the maintenance requirements of our GOs is not to create an enforcement regime where every failure to comply, no matter how minor, no matter what its cause, no matter whether it has been corrected, puts a utility in jeopardy of substantial daily fines. On the contrary, their purpose is to ensure safe, reliable operation of the electrical system.^{7/}

Obviously, some violations are more serious and create a greater risk than others. This concept is embodied in General Order 95, Rule 18.A, which requires utilities to have different prioritization levels for addressing violations or nonconformances with the General Order. Any regulatory citation program needs to create the right incentives for the regulated companies. To do so, the Commission needs to focus its resources, and in turn utility resources, on those matters that create more substantial safety risks, consistent with D.04-04-065 and General Order 95.

PG&E submits that the best approach, in terms of promoting public safety as well as the efficient use of Commission and utility resources, is to group multiple violations occurring over a period of time or related to a single event or root cause into a single citation. This facilitates focusing on whether an issue is an isolated event or part of a larger pattern or trend. This grouping a "series of related violations" into one citation approach is consistent with the approach under the propane citation program, as well as SED's current approach under its gas citation program. In its non-binding Gas Safety Citation Program Standard Operating Procedure, Version 1.0 ("Gas SOP") SED correctly notes that violations should often be grouped together:

In many instances, multiple violations occurring over a period of time can be grouped into a single citation. This may include multiple violations caused by a single root cause over a period of time, or several violations identified during an investigation of a single event.^{8/}

^{7/} D.04-04-065, at p.13.

^{8/} See Gas SOP at section 6.2.

Such an approach would help focus both Commission and utility resources on more systemic or major issues, which in turn would have the greatest effect on public and employee safety, and avoids creating a perverse incentive for utilities to focus their efforts on addressing minor issues at the cost of addressing more significant safety issues.

3. Adopt an Interim Administrative Limit, with Different Citation Levels Depending upon the Significance of the Violation and the Degree of Risk Involved

SB 291 contains certain requirements directed specifically to the citation program. One such requirement is that “[t]he Commission shall adopt an administrative limit on the amount of monetary penalty that may be set by commission staff.” (Emphasis added.) The Draft Resolution is silent on this topic. The only limit mentioned in the Draft Resolution is the statutory limit in Sections 2107 and 2108.^{9/} The clear intent of the Legislature in adding Section 1702.5(a)(3) is to have an administrative limit below the statutory limit for the violations that are likely to be handled by staff.

Although the Legislature required an administrative limit, the statute and the legislative history are silent on what that limit should be. However, other CPUC citation programs with administrative limits provide appropriate benchmarks. For example, all but one of the citation programs cited as precedent in the Draft Resolution include administrative limits on the amounts of any fine:

- Resolution E-4195 (2008) (resource adequacy): a schedule of fines for specified violations, either \$1,000 or \$1,500 per incident plus daily fines;^{10/}
- Resolution ROSB-002 (2008) (transportation): a schedule of fines for specified violations, ranging from \$500 or \$1,000 per incident plus daily fines;^{11/}
- Resolution UEB-001 (2006) (telecommunications): a \$1,000 fine per violation;
- Resolution USRB-001 (2008) (propane): limit varies per violation category, but generally a penalty of either \$750/violation or per week, plus additional fines of like amount, up to a statutory limit of \$200,000 per violation or related series of violations;^{12/}
- Resolution W-4799 (2009) (water and sewer): a schedule of fines for specified violations, ranging from \$500 per event up to \$20,000 per event;
- Resolution E-4550 (2013) (not cited in the Draft Resolution), initiated a CEQA Citation Program, where the Commission adopted an administrative limit of \$100,000 on a single violation.

^{9/} Draft Resolution at p. 2 (“in the maximum amount prescribed for penalties by Public Utilities Code Sections 2107 and 2108.”) (footnote omitted).

^{10/} Where applicable, daily fines of \$500 per day for first ten days; \$1,000 per day thereafter.

^{11/} Where applicable, daily fines of \$50 per day.

^{12/} The statutory limits for propane are not more than \$1,000 for each day that a violation continues and no more than \$200,000 for a single violation or related series of violations. Section 4457(a).

The only citation program mentioned in the Draft Resolution that does not include any administrative limit is Resolution ALJ-274 (gas), but SB 291 now requires the Commission to adopt an administrative limit for its gas citation program.^{13/}

PG&E proposes that the Commission establish a rulemaking to determine a tiered, risk-based set of administrative limits.^{14/} Pending the results of the proposed rulemaking, PG&E recommends the Commission adopt an interim upper administrative limit of \$200,000 per violation or series of related violations – the largest of the limits in any of the citation programs listed above.^{15/}

4. Utilities Should Have An Opportunity to Cure Violations, Consistent with General Order 95 Rule 18A and the Commission's Safety Goals

A utility that has an auditable maintenance program that properly prioritizes corrective actions consistent with General Order 95, Rule 18.A and the principles therein should not be subject to a citation. In the same vein, the Commission's citation program should provide the utility with an opportunity to cure any violations prior to issuance of a citation, consistent with other Commission citation programs. Otherwise, the Commission's electric and communications citation program could be counterproductive and undermine public safety by forcing utilities to focus resources on minor issues at the expense of more important or urgent issues.

PG&E has a vast electric system, covering all or parts of 47 counties and approximately 70,000 square miles, ranging from rugged coastline to the Sierras. PG&E has over 114,000 miles of electric overhead distribution lines, approximately 18,000 miles of transmission lines and approximately 28,000 miles of electric underground distribution lines. PG&E has over 2.2 million poles (many of them jointly owned with communication providers). Annually, on average, PG&E patrols approximately 1.3 million overhead and 230,000 underground locations, performs detailed inspections of 450,000 overhead and 120,000 underground locations, and performs 23,000 equipment inspections. In addition, PG&E manages approximately 70,000 maintenance notifications per year and performs approximately 6,000 maintenance work units during an average month.

General Order 95, Rule 18.A requires utilities to establish a maintenance program that prioritizes corrective action for "GO 95 nonconformances" consistent with three different priority levels.

^{13/} Resolution ALJ-274 was issued prior to SB 291, which now requires the Commission to establish an administrative limit for gas as well as electric.

^{14/} In Resolution ALJ-274, the Commission rejected several utilities' constitutional arguments on excessive fines, due process and takings as "too hypothetical and speculative" for a facial challenge to the citation enforcement procedures adopted in that Resolution. See Resolution ALJ-274, at p. 11. PG&E expressly reserves all such constitutional arguments on excessive fines, due process and takings depending upon how Commission staff applies the authority being delegated

^{15/} Some of the citation programs listed above do not have an administrative limit per event or per incident, but instead have an initial amount plus a per day limit, such as the RPS and Resource Adequacy citation programs with a limit of \$1000/day in addition to the per incident administrative limit. See Resolutions E-4257 at pp. 15-16, and E-4195 at pp. 13-14. The \$200,000 limit is a statutory limit for the propane citation program, as discussed in footnote 12 above.

Level 1 nonconformances are immediate safety or reliability risks and require immediate corrective action. For Level 2 nonconformances, unless the nonconformance compromises worker safety or is in an Extreme or Very High Fire Threat Zone, General Order 95, Rule 18.A provides that the utility has up to 59 months to address the issue. Under Rule 18.A, Level 3 GO 95 nonconformances are those with an acceptable safety or reliability risk and do not need to be repaired. Consistent with General Order 95, Rule 18.A, PG&E takes “appropriate corrective action to remedy Safety Hazards and GO 95 nonconformances posed by its facilities.” In particular, PG&E’s maintenance program prioritizes its corrective actions consistent with the priority levels set forth in Rule 18.A. (2) (a).^{16/}

To be consistent with General Order 95, Rule 18.A, and to avoid misallocation of resources to less significant issues, citations should not be issued if a utility has a program that comports with Rule 18.A. The Legislature incorporated this concept into SB 291, which provides that Commission staff should take various factors into consideration when deciding whether to issue a citation or fine. In particular, section 1702.5(a)(1) provides, among other things, that Commission staff should – “[w]hen considering the issuance of citations...” – take into account voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, and other factors. The Draft Resolution correctly reflects the legislative approach on page 11 (“Staff is directed to take account of the factors listed ... in issuing citations and assessing the penalty and the number of offenses”) (emphasis added) and in the Appendix at section I.E. However, other portions of the Draft Resolution improperly contain language that could be read to imply, contrary to SB 291, that citations should be issued whenever there is a violation. See, e.g., Draft Resolution at p.5 (“... requires Staff to levy penalties for violations in the maximum amount...”; “Thus, penalties shall be assessed on a daily basis ... until a satisfactory repair is made.”).

In addition, the Draft Resolution states that citations may be issued for violations regardless of the utility having an existing schedule for repairs.^{17/} To the extent that this language could be interpreted to imply that an existing schedule to repair a violation is irrelevant to whether a citation should be issued, it is contrary to SB 291’s admonition to consider resolution efforts undertaken and to General Order 95 itself, which requires utilities to have a timeline for corrective actions and provides that utilities shall prioritize corrective actions based on several listed criteria. PG&E recognizes that a utility does not immunize itself from liability for GO violations or other citations for failure to comply with safety rules or decisions merely by adhering to its own maintenance schedules. However, it is equally the case that if a utility has a schedule to repair violations consistent with the priorities in Rule 18.A of General Order 95, the utility should not be subjected to fines or citations simply because all violations have not yet been addressed as of the day the CPUC begins an audit.

^{16/} Although General Order 95 only applies to overhead facilities, PG&E has a similar prioritization approach to underground facilities. See also General Order 165 recognizing that utilities must schedule corrective actions.

^{17/} See Draft Resolution at pp. 5, 10.

Consistent with the goal of promoting public safety, and with General Order 95, Rule 18.A, the utilities should, where feasible, be provided an opportunity to cure a violation or nonconformance within a reasonable period of time.^{18/} An opportunity to cure, especially with self-identified violations, is a common aspect of several successful citation programs. In fact, the Commission has provided for an opportunity to cure in advance of the issuance of any citation in its water and sewer, railroad and propane citation programs.^{19/} The reasoning behind the opportunity to cure in those situations applies with equal if not greater force in the electric area.

5. Provide an Opportunity to Meet and Confer Prior to Issuance of a Citation

In Resolution E-4550, the Commission recognized the benefits of informal meetings between Commission staff and a utility prior to making a decision on issuing a citation. As explained in Resolution E-4550,

The Commission agrees that meeting with staff to discuss a potential compliance violation is beneficial. [Resolution E-4550] has been amended to require staff to meet and confer with the utilities prior to making a final decision on issuing a citation.

PG&E strongly urges the Commission to adopt a similar approach here. There can often be extenuating circumstances that delay correcting a nonconformance, such as third party refusal, required environmental or other permits, or access issues. Furthermore, informal communication prior to issuing any citations will improve understanding between SED and the utilities, promote efficient use of Commission and utility resources, and avoid burdening the Commission with unnecessary appeals.

6. Require that Any Citation be Approved by SED Management

PG&E also recommends that the Commission adopt a transparent internal process under which a deputy director, the director of SED or the Executive Director must approve a citation before it is issued. This is consistent with Resolution E-4550, which concluded that typical Commission practice for issuing citations includes review by several management level employees and accordingly requires any citation to be issued by a division director or equivalent, as determined by the Executive Director.^{20/} The non-binding gas citation program Standard Operating Procedure also requires different levels of SED management approval depending on the risk level and citation level, which PG&E also recommends.^{21/}

^{18/} PG&E agrees that a violation creating a Level 1 risk with immediate safety or reliability risk with high probability for significant impact should be fully repaired immediately, or temporarily repaired so as to substantially reduce the risk. See GO 95, Rule 18.A (2) (a).

^{19/} See Resolution W-4799 (2009), at p. 1 (water and sewer); Resolution ROSB-002 (2008), at p. 2 (railroads); Resolution USRB-001 (2008), at p. 5 (propane).

^{20/} See Resolution E-4550 at p. 15.

^{21/} See Gas SOP at p. 16, section 7.1

7. Provide for De Novo Review on Appeal and Confirm that Staff Has the Burden of Proof

The Draft Resolution does not discuss the appeals process, or who bears the burden of proof on appeal from a citation. However, Appendix A incorporates an appeals process that, contrary to most CPUC citation processes, shifts the burden of proof to the responding utility to show the fine is excessive.^{22/}

The CPUC has consistently held that the burden of proving violations rests on staff.^{23/} Virtually all CPUC citation programs follow this approach, and contain a provision that on appeal staff bears the burden of proof and shall open and close.^{24/} The only citation program cited in the Draft Resolution that uses the same burden shifting approach as the Draft Resolution is Resolution ALJ-274 (2011) (gas). The only “explanation” for the deviation from the Commission’s normal approach is footnote 17 quoting language from Decision 11-09-006, “Decision Adopting Procedure for Lifting Operating Pressure Restriction.” PG&E agrees with the quoted language from D.11-09-006 that “the duty to furnish and maintain safe equipment falls squarely on California utilities.” The second sentence of the quote in footnote 17, that the burden of proving particular facilities are safe rests with PG&E, is and was appropriate in the context of D.11-09-006, i.e., a request by PG&E to be allowed to increase operating pressure. That has no applicability, however, to who should bear the burden of proving a violation or the appropriateness of the amount of a penalty being assessed. That burden does and should rest with Commission staff, consistent with the approach taken in virtually all Commission citation programs.

8. Conclusion

PG&E strongly supports efforts to improve public and employee safety. Consistent with the importance of this goal, PG&E urges the Commission to open a rulemaking so the Commission can explore and incorporate best practices from safety enforcement programs across the country. PG&E also urges the Commission to incorporate the attached set of Recommended Changes into the Draft Resolution.

^{22/} See Draft Resolution, Appendix A, at pp. A-5 – A- 6, section II.B.6.

^{23/} See, e.g., *In Re Southern California Edison Co.*, D.04-04-065, p.2; *In Re Qwest Communications Corporation*, D.02-10-059, at p. 4.

^{24/} See Resolutions E-4550, at p.21, section 2.7.7 (2013)(CEQA), E-4257, at p.13, section 2.7.7 (2009) (Renewable Portfolio Standards reporting requirements); E-4195 (2008), at p. 11, section 2.7.7 (resource adequacy); ROSB-002 at p.6, (g) (transportation); UEB-001 (2006), at p.5, (h) (telecommunications), USRB-001 (2008), at p.8, (g))(propane), W-4799 (2009), at p.5, (h))(water and sewer).

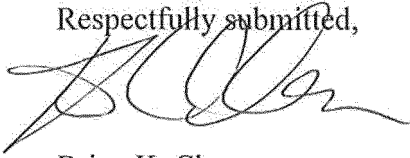
General Jack Hagan

January 21, 2014

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We appreciate this opportunity to comment on the Draft Resolution, and look forward to working with the Commission, staff and other stakeholders.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Cherry", written over a light gray signature line.

Brian K. Cherry

Vice President, Regulatory Relations

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

SUBJECT INDEX
PG&E'S Recommended Changes to Draft Resolution ESRB - 4

Issue	Location in Draft Resolution	Recommended Change
SB 291 Directs Staff to Consider Several Mitigating Factors, With Respect to Whether to Issue a Citation, And Not Just With Respect to the Size of Any Penalties	Pages 5, 10	<p>(page 5): A corporation's schedule for repairs is irrelevant for purposes of violations; citations may be issued for violations, and penalties levied, regardless of the status of the corporation's schedule for repairs.</p> <p>(page 10): This Resolution grants Staff the authority to issue such written citations to help implement its existing authority to require that the violation be corrected at, or soon after, the time Staff identifies a violation, notwithstanding any existing utility schedule for repairs.</p>
SB 291 Directs Staff to Consider Several Mitigating Factors, Such That Assessing Penalties at the Maximum Level is Neither Reasonable nor Appropriate	Page 5	<p>The Commission delegates this authority to Staff to require the immediate cure of the cited violations and requires Staff to levy penalties for violations in the maximum amount prescribed for penalties in §§ 2107 and 2108.</p>
SB 291 Directs Staff to Consider Several Mitigating Factors, Such That Assessing Penalties at the Maximum Level is Neither Reasonable nor Appropriate	Finding 8	<p>8. It is reasonable to assess penalties for each violation at the maximum amount set forth in Public Utilities Code § 2107; this approach is consistent with the Commission's broad regulatory powers to protect public safety and to ensure compliance with the Commission's orders and the Public Utilities Code.</p>
SB 291 Directs Staff to Consider Several Mitigating Factors, With Respect to Whether to Issue a Citation, And Not Just With	Finding 10	<p>10. Given Public Utilities Code § 2108, Staff has the authority to assess penalties on a daily basis, but Staff shall have <u>the discretion not to issue a citation</u> and the discretion to assess penalties on something less than a daily basis based upon consideration of the factors set forth in Public Utilities Code §§ 1702.5(a)(1) and 2104.5 and Commission Decision</p>

Respect to the Size of Any Penalties		98-12-075 and Resolution ALJ-277, issued April 20, 2012.
The list of self-identified reporting requirements should be developed in the proposed Rulemaking	Finding 16	16. Staff shall create Self-Identified reporting requirements, which shall encompass what violations shall be self-reported.
Administrative Limit on the Amount of Staff Fines	New Finding 19	19. <u>Staff may assess fines of no more than \$200,000 for a single violation or related series of violations, subject to the mitigating factors discussed in this Resolution, including those set forth in Senate Bill 291, Section 2104.5, and Commission decisions interpreting § 2104.5, including, among other things, consideration of self-reporting of the violation.</u>
Open A Rulemaking	New Finding 20	20. <u>Given the importance of the Commission's safety efforts, the Commission should provide an opportunity for all stakeholders including workers, local governments, safety advocates, customer advocates and utilities, to participate in developing a safety and citation program. A rulemaking is the best and most transparent way to ensure stakeholder input and provide a forum for a thorough analysis of various approaches. Accordingly, the Commission will, in the near future, open a rulemaking to consider how to best implement all aspects of a citation program, including the development of what should be self-reported and administrative limit(s) should be on staff citations.</u>
Citations Approved By SED Management	New Finding 21	21. <u>We will require that all citations are approved by a division director, or equivalent, as determined by the Executive Director.</u>
Recognize Need to Repair Violations Consistent with Prioritizing Public and Employee Safety	Ordering Paragraph 4	4. <u>Corporations owning or operating electrical supply and/or communications facilities shall cure any cited violation as soon as feasible, consistent with maintaining safe and reliable systems, while prioritizing the safety of the public and their employees, pursuant to the procedures described in Appendix A hereto.</u>
Opportunity to Cure and Meet and Confer Process	Appendix A, new section I.A. (prior to existing section	<u>A. Procedures Prior to Issuance of a Citation. 1. Meet and Confer. After identifying a potential violation, staff shall contact the utility to meet and confer, either in person or by phone, concerning the</u>

	I.A.)	<p><u>facts of the potential violation and any mitigating or aggravating factors.</u></p> <p><u>2. Opportunity to Cure. Should staff determine that a violation has occurred, where feasible the staff shall provide the utility with a reasonable period of time within which to cure the violation.</u></p> <p><u>3. After Staff has completed the meet and confer requirement provided in Section A.1 above and has determined either that an opportunity to cure is not feasible for the violation or that the Utility has not cured the violation within the specified reasonable time period, Staff is authorized but not required to issue a citation.</u></p>
Burden of Proof on Appeal	Appendix A, II.B.6	<p>6. Staff has the burden to prove a prima facie case supporting its issuance of the citation for the alleged violation; the burden then shifts to Respondent/Appellant to demonstrate that a violation did not occur and the citation should not issue or that the amount of the penalty is inappropriate [Footnote: As most recently stated in D.11-09-006, "[t]he duty to furnish and maintain safe equipment and facilities falls squarely on California public utilities, including PG&E. The burden of proving that particular facilities are safe also rests with PG&E." (D.11-09-006 at 6.)]</p> <p><u>At the hearing, Staff shall bear the burden of proof in establishing a violation. Staff shall 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.</u></p>