

From: Cherry, Brian K  
Sent: 5/6/2014 8:05:24 PM  
To: Carol A. Brown (carol.brown@cpuc.ca.gov)  
Cc:  
Bcc:  
Subject: Fwd: Citation OIR

More background

Brian K. Cherry  
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Begin forwarded message:

**From:** "Cherry, Brian K" <[BKC7@pge.com](mailto:BKC7@pge.com)>  
**Date:** May 6, 2014 at 8:04:41 PM PDT  
**To:** "Tyrrell, Denise" <[denise.tyrrell@cpuc.ca.gov](mailto:denise.tyrrell@cpuc.ca.gov)>  
**Subject: Re: Citation OIR**

Thanks Denise. I think the ALJ basing the fine on a recent PG&E case is faulty. The fine quoted was the first fine ever levied under the citation program. There was significant testimony at the time the authority was granted that suggested the staff would vet the issues carefully and wouldn't go overboard. I remember Michelle Cooke testifying before the Commission that they would take this authority extremely seriously. When this particular fine was issued, several of the Commissioners privately expressed outrage. Some even expressed public frustration that they were unable to reduce it based on interpretation from legal that the resolution didn't allow it. However, because they weren't consulted and the fine number was out there publicly, they felt unable to challenge it. You might want to check with Peevey and Florio on this. I think the more persuasive argument is a review of all fines levied by the Commission over the last 10 years. I don't have the average (I am working on it) but I suspect the number will be significantly less than \$20 million on average. My concern is that this track record of fines from OIIs over the last decade demonstrates that the Commission cannot arbitrarily delegate such significant fine authority to staff without a formal hearing and process. That will be my argument. I'd be happy to send you my data to review.

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On May 6, 2014, at 5:45 PM, "Tyrrell, Denise" <[denise.tyrrell@cpuc.ca.gov](mailto:denise.tyrrell@cpuc.ca.gov)>  
wrote:

That figure was based on the highest fine SED has ever imposed which was \$17. The judge just went to the next whole number round up.

What would be your suggestion? The original OIR had no cap of any kind and I didn't think that was wise.

Denise

**From:** Cherry, Brian K [<mailto:BKC7@pge.com>]  
**Sent:** Tuesday, May 06, 2014 5:13 PM  
**To:** Tyrrell, Denise  
**Subject:** Citation OIR

Denise – do you have any downward flexibility on the \$20 million cap on penalties for the Citation OIR ? I'd like to be able to work with you on this but if you have your minds made up, I will likely head to the 5<sup>th</sup> floor. Thoughts ?

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