

law poses an immediate and foreseeable threat to public safety, and those which should be deemed to be beyond the scope of the program. The distinction between violations subject to the proposed electric safety citation program and those beyond the proposed program's scope warrants careful, thoughtful consideration and SDG&E believes that evidentiary hearings are essential to that end.³

In support of its request for evidentiary hearings, SDG&E submits the Commission must consider that its existing regulations vest electric utilities with considerable discretion to determine the manner in which deviations from, as an example, design and construction regulations should be corrected, including the timing of such corrections. In this regard, Rule 18 of Commission General Order 95 recognizes that not all variances from Commission design and construction standards, whether original or due to deterioration, constitute "safety hazards."⁴ To that end, Rule 18 defines a "safety hazard" as "a condition that poses a significant threat to human life or property". In accordance with that definition, Rule 18.A provides flexible remediation schedules tied to the level of the threat posed to public safety by any specific variance. "Level 1" variances are described as posing "immediate safety and/or reliability risk with high probability for significant impact" which must be corrected "immediately". "Level 2" variances are described as posing "variable (non-immediate high to low) safety and/or reliability risk"; these variances may be corrected within twelve to fifty-nine months, depending on the threat to public safety as determined "by a qualified company representative".⁵ "Level 3" variances are described as posing "acceptable safety and/or reliability risk", and actions suited to the variance are to be taken "as appropriate". Logically, SDG&E would expect the electric safety citation program to apply only to certain Level 1 variances.⁶ Otherwise, an electric utility would run the risk that deferring the correction of a Level 2 or 3 nonconformance could result in a continuing violation where each passing day might justify the imposition of a separate penalty, a wholly incongruous result.

SDG&E proposes to submit factual evidence and expert opinion describing the manner in which a reasonable electric utility would (a) evaluate any nonconformances and (b) thereafter determine whether

³ The Commission has correctly anticipated the importance of addressing this issue, enumerating it as the first issue to be addressed during the course of this rulemaking. *Id.*, printed opinion, at p.10.

⁴ See also, *Decision Adopting Regulations to Reduce Fire Hazards Associated with Overhead Power Lines and Communications Facilities*, Decision 12-01-032 in Rulemaking 08-11-005, January 12, 2012, printed opinion at 14-15, where the Commission replaced the word "violation" with "nonconformance" to distinguish between safety-related violations and variances of a lesser order.

⁵ SDG&E notes that it normally vets its threat assessments and remediation planning with the Division Staff.

⁶ Even in the case of Level 1 variances, SDG&E would not expect that all such variances would be subject to citation. For example, a safety or reliability risk posed by electric facilities could be the result of an outside agent or circumstances beyond an electric utility's control. Under such facts, the electric utility should not be subject to citation or penalty, no matter the severity of the risk if the condition is remediated promptly and in accordance with all applicable regulations and law.

any specific nonconformance should be deemed to be a Level 1, 2 or 3 variance. This evidence would provide the Commission with the proper bases upon which it might adopt reasonable criteria governing the nature of “violations” which are subject to the issuance, prosecution and appeal of citations.⁷ Additionally, this evidence will also address the foreseeable and likely effects of applying the electric safety citation program to nonconformances where little or no threat to public safety is posed, including but not limited to increases in the costs of providing electric service disproportionate to any improvement in public safety.

II. Modifying the Preliminary Schedule

The Commission’s order instituting rulemaking contemplates that, in accordance with statute, the electric safety citation program will be in effect commencing on a date not later than January 1, 2015. The Commission’s order proposes a preliminary schedule consistent with that objective and indicates a prehearing conference would be held on or before “Day 75” following the issuance of the order, *i.e.*, August 4, 2014. In order to accommodate meaningful hearings and an appropriate post-hearing briefing schedule, SDG&E submits the preliminary schedule should be modified to provide for an earlier prehearing conference date, *viz.*, ten (10) days following the filing of reply comments, *i.e.*, on or before Day 55. This modification affords a reasonable interval during which each party can evaluate its position in light of the controversies and issues raised in the opening and reply comments to be filed in this docket and determine its interests in contributing further to the evidentiary and/or legislative record in this matter. Thus, SDG&E recommends the preliminary schedule be modified to incorporate the following dates and steps:

- Day 55: Prehearing Conference (July 15, 2014)
- Day 75: Service of Prepared Opening Testimony (August 4, 2014)
- Day 100: Completion of Discovery (August 29, 2014)
- Day 110: Service of Prepared Rebuttal Testimony (September 8, 2014)
- Days 117 to 121: Evidentiary Hearings (Week of September 15, 2014)
- Day 142: Service of Concurrent Opening Briefs (October 10, 2014)

⁷ SDG&E’s proffered evidence will be consistent with the Division Staff’s internal guidelines regarding the gas-citation program. SDG&E recognizes these guidelines are not binding on the Commission or the Division Staff, but the Division Staff’s “*Gas Safety Citation Program Standard Operating Procedure (Version 1.0)*”, dated September 20, 2013, is clearly structured with due consideration given to the risks to safety posed by any nonconformance with state and federal gas-safety standards and would be logically applicable to an electric-citation program. In particular, the “risk matrix” used by the Division Staff to measure the degree to which the public safety was potentially at risk provides a direct correlation between the level of risk posed by any variance and the penalties which should be applied to the variance. This aspect of the gas-citation program both (a) ties the citation program to safety-related matters and (b) provides the utilities with some prior notice as to their potential liabilities to citation and penalties for specific kinds of violations. In the event the Division Staff does not proffer evidence regarding the gas safety citation program, SDG&E may choose to do so of its own accord.

- Day 156: Service of Concurrent Reply Briefs (October 24, 2014)

SDG&E's schedule modifications provide the parties with ample opportunity to develop a full record upon which the Commission may proceed to adopt a well-vetted electric safety citation program. Importantly, SDG&E's proposed schedule provides the Commission with 100 days from the close of hearings to consider the evidence adduced and seventy (70) days to conduct its deliberations with all briefs in hand, ample time to meet the Commission's statutory deadline. SDG&E submits its proposed schedule is reasonable, provides a meaningful schedule for developing a robust record, and should be adopted.

III. Additional Issues to Be Addressed

SDG&E strongly recommends the Commission add an issue to those enumerated in the Commission's order instituting rulemaking.⁸ Although the enumerated issues include "[p]rocedures for Staff drafting, approval and issuance of citations", SDG&E submits the Commission should make clear that parties may address the full substance of any and all aspects of the program necessary to assure the program is administered reasonably, fairly and in accordance with applicable constitutional principles and the rights of citation recipients. In adding this issue to the rulemaking, the Commission could adopt requirements which must be met by the Division Staff in the issuance of any citation and thereby assure the citation recipient is afforded its constitutional rights to due process, including rights to notice and an opportunity to be heard, and that its other relevant constitutional rights are not infringed.

Respectfully submitted,

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⁸ See *Rulemaking 14-05-014*, *supra*, printed opinion at p.10.