

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Natural Gas and Electric Safety
Citation Programs.

Rulemaking 14-05-013
(Issued May 21, 2014)

**COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY ON
ORDER INSTITUTING RULEMAKING**

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I. INTRODUCTION

In accordance with the Order Instituting Rulemaking (OIR) issued on May 21, 2014, Pacific Gas and Electric Company respectfully submits these brief comments on the preliminary scoping memo regarding category, need for hearing, issues to be considered, and schedule. Consistent with the directives in the OIR, PG&E will reserve its substantive comments about the Proposed Electric Safety Citation Program for the Opening and Reply Comments due on June 20 and July 7, respectively.

These comments contain the following key points:

- The scope of this OIR should consider safety **enforcement** approaches and programs, not just safety **citation** programs. This is necessary to meet the objectives of Senate Bill (SB) 291, to address the issues already listed in the OIR, and, most importantly, to encourage a culture of compliance and beyond-compliance performance, and drive continuous improvement in public and employee safety;
- SB 291 requires adoption of a per-citation administrative limit on the amount of monetary penalties that can be issued by staff;

- Workshops and/or hearings should be held to consider different models or options to develop the best model for a comprehensive safety program for California and the Commission;
- The schedule should be modified to allow for workshops and, if necessary, hearings, and still meet the statutory deadline of January 1, 2015.

II. THE COMMISSION SHOULD CLARIFY THAT THE SCOPE OF THE OIR INCLUDES THE CPUC'S GAS AND ELECTRIC SAFETY ENFORCEMENT PROGRAMS, AND NOT JUST SAFETY CITATION PROGRAMS.

The OIR describes the scope of this proceeding as “to 1) implement a new electric safety citation program in compliance with SB 291; 2) improve and refine the Commission’s gas and electric safety citation programs; and 3) consider the timing and process for possible future modifications of the Commission’s gas and electric safety citation programs.” (OIR, pp.7-8.)

PG&E respectfully submits that the safety citation program should not, and under SB 291 cannot, be considered in a vacuum, but must be analyzed in the broader context of examining successful regulatory safety enforcement approaches across various industries, such as those of the Federal Aviation Administration, the Federal Energy Regulatory Commission, the North American Electric Reliability Corporation, and the Nuclear Regulatory Commission in order to seek opportunities to learn from other successful safety programs. The parameters for, and implementation of, the Commission’s proposed electric, and gas, safety citation programs need to be viewed as part of a broader approach to safety and regulatory enforcement. A citation program is not, and should not be, the Commission’s primary goal.

This broader perspective is mandated by SB 291. Among other things, SB 291 directs the Commission to

...in an existing or new proceeding, develop and implement a safety enforcement program applicable to gas corporations and electric corporations which includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director.... (Pub. Util. Code § 1702.5(a); emphasis added.)

In other words, SB 291 requires that the Commission develop a “safety enforcement program” in a new or existing proceeding, not just the citation portion of that program. This is not a minor or technical point. The Commission’s goal should be an enforcement program that enhances public and employee safety, helps drive a culture of compliance with an emphasis on continuous improvement, and is an integrated part of the Commission’s overall safety enforcement approach. A system for issuing citations is only one part of such a program.

PG&E notes that although the scope as expressed on page 7 of the OIR was focused on safety citation programs only, the Policy Direction and Issues sections on pages 9 and 10 are broader than just citations. The issue list includes procedures for monitoring, data tracking, analysis and reporting of violations, as well as other models and approaches. PG&E respectfully submits that this broader approach is the proper approach, and development of this approach should not be deferred for later “improvement and refinement.” (OIR, p. 8.)

Accordingly, PG&E respectfully requests that the scope of this OIR be clarified to include all of the matters discussed in SB 291.

III. SB 291 REQUIRES THE COMMISSION ADOPT AN ADMINISTRATIVE LIMIT ON THE AMOUNT OF MONETARY PENALTIES THAT CAN BE ISSUED BY STAFF.

The Commission correctly states that SB 291 requires it to develop and implement a safety and enforcement program for gas corporations and electrical corporations by July 1, 2014, and January 1, 2015, respectively. (OIR, p. 4.) Among other things, SB 291 requires that the Commission “adopt an administrative limit on the amount of monetary penalty that may be set by Commission staff.” (OIR, p. 6, citing Pub. Util. Code § 1702.5(a)(3).) The OIR acknowledges (at p. 10) that an administrative limit should be considered in the course of this proceeding.

The OIR states (at p. 6) that Resolution ALJ-274 adopted in December 2011, along with ongoing implementation of General Order 112-E, has met all of the requirements of SB 291 for a

gas safety enforcement program. Specifically, regarding SB 291’s requirement for an administrative limit, the OIR states:

Resolution ALJ-274 set a limit per violation, based on the statutory maximum in §2107. Because there can be more than one violation per citation, this per-violation limit does not limit the total amount of penalty that could be imposed by a Commission staff-issued citation. It is not clear that SB 291 requires a per-citation limit. [Emphasis added.]

However, the plain language of SB 291 requires the Commission “to adopt an administrative limit on the amount of monetary penalty that may be set by commission staff.” The Commission recognizes that, because there can be more than one violation per citation, Section 2107’s statutory limit – which is “per offense” rather than per citation^{1/} – does not limit the total amount of monetary penalty that Commission staff could impose. When enacting SB 291, the Legislature was well aware that “current law” or “existing law” already set a “penalty between \$500 and \$50,000 for each offense.”^{2/} The clear intent of the Legislature in adding Section 1702.5(a)(3) is to have an administrative limit other than the existing statutory limits.^{3/} Treating Section 2107’s pre-existing statutory limit as the SB 291-mandated administrative limit renders the words “shall adopt an administrative limit on the amount of monetary penalty that may be set by commission staff” meaningless. The OIR and Resolution ALJ-274 therefore do not satisfy the plain language of SB 291.

An administrative limit does not of course restrict the Commission’s own authority, only the extent of staff’s authority to independently issue fines. As expressly provided by SB 291,

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- 1/ When combined with Section 2108, this becomes a “per offense per day” approach, rather than per citation.
 - 2/ See, e.g., Bill Analyses of SB 291 dated March 28, 2013, April 17, 2013, June 14, 2013, and September 11, 2013. (<http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml>)
 - 3/ It is a well-established tenet of statutory construction that courts will avoid, if possible, a construction that renders any part of the statute meaningless or extraneous. *Woolsey v. State of Calif.* (1992) 3 Cal. 4th 758, 775-76. The courts will also avoid statutory construction that suggests that the Legislature “engaged in an idle act.” *Elsner v. Uveges* (2004) 34 Cal. 4th 915, 935. By adopting an administrative limit equal to the statutory limit, the OIR turns the Legislature’s adoption of the administrative limit language in Section 1702.5(a)(3) into an idle act.

notwithstanding any staff citation or administrative limits, the Commission retains the power to initiate a formal Order Instituting Investigation and impose whatever enforcement actions the Commission deems appropriate. (Pub. Util. Code § 1702.5(c).)

Accordingly, PG&E respectfully submits that the Commission needs to develop a per citation administrative limit on the size of any monetary penalty that can be imposed by staff.

IV. PG&E'S COMMENTS ON CATEGORY, NEED FOR HEARING, ISSUES TO BE CONSIDERED, AND SCHEDULE.

Categorization. PG&E agrees that this proceeding should be categorized as quasi-legislative.

Need for Hearings. PG&E agrees that the issues in this proceeding could be addressed without the need for hearings, but there may be opportunities to present evidence that would advance the goals of the proceeding. For example, as stated in the OIR (at p. 2), the IRP Report suggested that the Commission should provide “staff with additional enforcement tools modeled on those of the [Office of the State Fire Marshal] and the best from other states.” Parties will probably wish to present evidence regarding enforcement models from other states or from federal or other state agencies. In addition, as stated in the OIR (at p. 8), “there are differences between gas and electric systems and their operation, potential hazards and regulatory regimes, all of which may need to be taken into consideration.” Parties may wish to present evidence regarding these differences as a basis for justifying differences in enforcement tools.

For these reasons, PG&E supports the OIR’s preliminary determination that hearings will be needed, although PG&E also believes that workshops may be a reasonable and perhaps even preferable alternative to formal hearings.

Issues to be Considered. PG&E supports the list of issues identified in Section 3.2 of the OIR. As noted in Section II above, the current issue list already provides for a review of other safety enforcement models and how to best incorporate safety and citations into the Commission’s overall safety approach. In addition, PG&E requests the following additional issues be considered:

- How to develop a feedback mechanism for CPUC staff and utilities to continually improve safety?
- What approaches will best drive a robust safety culture for all stakeholders?

Schedule. As discussed above, PG&E believes that to comply with SB 291, the scope of this proceeding needs to be broader than just safety citation programs. PG&E agrees that the schedule will need to have several steps or phases. Given the time constraints of SB 291, PG&E would like to plan for workshops and have a schedule prepared for hearings in the event that hearings become necessary. PG&E proposes the following rough schedule:

Proposed Schedule	Calendar Month
Scoping Memo issued	July
Workshop (Stage 1)	
Workshop	Late July
Draft Workshop Report served (not filed)	August
All party meeting to review draft Workshop Report, provide feedback, and suggest changes	Late August
Final Workshop Report filed and served	Early September
Deadline for filing motions for evidentiary hearings	Mid-September
Hearings – if necessary (Stage 2)	
Opening Testimony	Late September
Rebuttal Testimony	Early October
Evidentiary Hearings	Mid-October
Opening Briefs	Late October
Reply briefs	Early November
Proposed Decision on Electric Safety and Citation Program	End of November
Final Decision on Electric Safety and Citation Program	End of December

PG&E believes that it is likely that some, if not all, of the issues can be resolved in workshops. Although it is not possible at this time to identify the need for hearings, PG&E recommends the proposed schedule be adopted so that there is a plan in place to meet the statutory deadline of January 1, 2015.

With respect to what the OIR terms the “forum for making improvements and refinements” in the next phase, PG&E recommends a prehearing conference be held in January or February of 2015 to scope out the unresolved issues and develop a plan for that phase of this proceeding, with the goal of finishing well before the 18 months of the issuance of the original scoping memo.

WHEREFORE, for the foregoing reasons, PG&E respectfully requests that the Commission modify the OIR in the manner described above.

Respectfully submitted,

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