

**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
(Filed May 21, 2014)

**OPENING COMMENTS OF THE COALITION OF CALIFORNIA UTILITY
EMPLOYEES ON THE PROPOSED ELECTRIC SAFETY CITATION
PROGRAM**

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Pursuant to the Order Instituting Rulemaking issued May 21, 2014, the Coalition of California Utility Employees (CUE) offers these Opening Comments on the Proposed Electric Safety Citation Program.

I. INTRODUCTION

SB 291, codified as Section 1702.5 in the Public Utilities Code, requires the Commission to develop and implement a *safety enforcement* program for gas and electrical corporations.¹ Section 1702.5(a) directs the Commission to:

[D]evelop and implement a safety enforcement program applicable to gas...and electrical corporations which includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff.... The enforcement program shall be designed to improve gas and electrical system safety.²

However, the Preliminary Scoping Memo included in the OIR focuses primarily on developing a *citation* program for electric corporations.³ The OIR

¹ SB 291 (Stats. 2013, Ch. 601).

² Pub. Util. Code § 1702.5(a).

³ OIR, p. 7.

asks parties to comment on the attached Draft Resolution ESRB-4, which would establish a citation program for electrical corporations similar to the citation program established for gas corporations in ALJ-274. Regardless of the citation program adopted, the Commission *must* create a safety enforcement program “which includes procedures for monitoring, data tracking and analysis, and investigations.” The program should incentivize self-reporting and foster an improved safety culture within the utilities.

II. THE COMMISSION MUST DEVELOP A SAFETY ENFORCEMENT PROGRAM, NOT JUST A CITATION PROGRAM

The OIR states that the scope of this proceeding is “to 1) implement a new electric safety citation program in compliance with Section 1702.5; 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.”⁴ Yet, a citation program should not be the Commission’s primary goal in carrying out the statute’s requirements. Section 1702.5 directs the Commission to develop a “safety enforcement program,” which includes many parts—only one of which is the staff citation program.⁵

In its Comments on the OIR, PG&E argued “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

⁴ OIR, p.7.

⁵ Pub. Util. Code § 1702.5(a).

Aviation Administration.”⁶ SCE also recognized the limited scope of the OIR and argued that the OIR should strive to develop broader enforcement programs and not just a citation program.⁷ CUE wholly agrees. The Commission is charged with developing a safety enforcement program that improves public and worker safety and citations are but a mere part of the program. Therefore, any citation program considered as part of this OIR should be considered as part of an overarching safety enforcement program.

III. THE SAFETY ENFORCEMENT PROGRAM SHOULD INCENTIVIZE SELF-REPORTING

Pursuant to Section 1702.5, the Commission must develop and implement a safety enforcement program using a variety of enforcement mechanisms.⁸ However, the Commission is explicitly allowed to take into account voluntary reporting of potential violations when considering issuance of citations.⁹ Any citation program developed in the context of a larger safety enforcement program must incentivize self-reporting. Otherwise, the utilities work in a fear-based safety culture, one which we *know* results in less than complete willingness to come forward with violations.

As PG&E suggested in its Comments on the OIR, the Commission needs to examine other successful regulatory safety enforcement approaches. One very successful safety enforcement program is the anonymous self-reporting done at the Federal Aviation Administration. The FAA uses aggregate, protected data from

⁶ PG&E Comments on OIR, p. 2.

⁷ SCE Comments on OIR, p. 3.

⁸ Pub. Util. Code § 1702.5(a).

⁹ *Id.*, at § 1702.5(a)(1).

industry and government voluntary reporting programs, to proactively find safety issues, identify safety enhancements and measure the effectiveness of solutions.¹⁰ These reports from air carrier and repair station employees, air traffic controllers, government employees, and other types of employees, are completely anonymous. Years of analyzing incident data, voluntary pilot reports and other sources of safety information have played a major role in driving U.S. commercial-aircraft accident rates to record-low levels.¹¹

Additionally, the FAA uses NASA as a neutral third party to evaluate safety reports.¹² The success of this program in improving safety relies on the anonymity of the person reporting, the parties involved in the incident, and increased flow of information. Based on NASA's reports, the FAA will then take an enforcement action. Similarly, the Commission should also consider using a neutral third party to achieve the same success as the FAA in accomplishing a successful self-reporting program. Otherwise, the integrity of the enforcement action is at risk, and the criticisms (true or not) of the Commission's reputation for "close relationships" with the utilities will only continue.

The OIR lists "other models or approaches" as an issue to be considered in this proceeding.¹³ The Commission, in developing a safety enforcement program,

¹⁰ FAA Fact Sheet – Aviation Voluntary Reporting Programs, March 5, 2013; available at http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14373.

¹¹ "FAA Ramps Up Data-Sharing Efforts to Enhance Global Airline Safety," Wall Street Journal, June 17, 2014; available at <http://online.wsj.com/articles/faa-ramps-up-data-sharing-efforts-to-enhance-global-airline-safety-1402977874>.

¹² Aviation Safety Reporting System, Immunity Policies, available at <http://asrs.arc.nasa.gov/overview/immunity.html>.

¹³ OIR, p. 10.

should consider the FAA's voluntary, confidential self-reporting programs as a model for the gas and electrical corporations. Regardless, the Commission must consider a safety enforcement program and not merely focus on the citation program within it.

IV. CONCLUSION

The Commission must look beyond creating a citation program as part of its compliance with SB 291. Any citation program must be developed as part of a larger safety enforcement program designed to foster a safer, more reliable utility structure for the public and utility employees. The Commission should look at the FAA's safety reporting model as a successful program to follow.

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Respectfully submitted,

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