

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

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

R.14-05-013

**JOINT COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) AND
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 G)**

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Southern California Gas Company (“SoCalGas”) and San Diego Gas & Electric Company (“SDG&E”), respondents to this proceeding, respectfully submit the following joint comments on the Order Instituting Rulemaking on the Commission’s Natural Gas and Electric Safety Citation Programs (“OIR”) issued May 21, 2014. SoCalGas and SDG&E’s joint comments pertain to the Commission’s implementation of a natural gas safety citation program. SDG&E is concurrently filing separate comments with respect to the Commission’s proposed adoption of an electric safety citation program.

Since the adoption of Resolution ALJ-274 on December 1, 2011, SoCalGas and SDG&E have worked with the Commission’s Safety and Enforcement Division (“SED”) in the development of the Commission’s natural gas safety citation program. In this new proceeding to implement Senate Bill (“SB”) 291, the experience gained with ALJ-274 over the past two years should both inform the development of a new electric safety citation program and lead to improvements and refinements to the existing gas safety citation program. As discussed in further detail in the comments below, the OIR errs in concluding that ALJ-274 already complies with SB 291 and the preliminary schedule must therefore be revised to enable the Commission to bring its natural gas safety citation program into full compliance with SB 291 by July 1, 2014, as required by Public Utilities Code section 1702.5 (d). Specifically, the Commission must adopt

the following for the natural gas safety citation program by July 1, 2014: (1) a requirement that staff provide notice of a violation within a reasonable period after the discovery of the violation; (2) an administrative limit on the amount of monetary penalty that may be set by Commission Staff; (3) a requirement that an enforcement action conclude, within a reasonable period of time, with a finding of violation, a corrective action order, a citation, a determination of no violation, approval of the corrective actions undertaken by the gas corporation, or other action; and (4) removal of the requirement under ALJ-274 that Commission Staff impose the maximum penalty allowed under the law.

1. The Gas Safety Citation Program Should be Brought Into Compliance with SB 291.

SB 291 requires the Commission to develop and implement a safety enforcement program applicable to gas corporations and electric corporations. The goal of the legislation is to improve gas and electric system safety through the enforcement of applicable laws, orders and rules of the Commission. The gas safety enforcement program must include procedures for monitoring, data tracking and analysis, investigations, and issuance of citations by designated Commission Staff, and must be implemented by July 1, 2014.

The OIR states that “SB 291 requires the Commission to do a number of other things that have already been implemented by Resolution ALJ-274.”¹ Specifically, the OIR describes ALJ-274 as complying with all of the following requirements of SB 291: (1) “[w]hen considering the issuance of citations and assessment of penalties, the commission staff shall take into account voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, the prior history of violations, the gravity of the violation, and the degree of culpability;”² (2) [t]he procedures shall include, but are not limited to, providing notice of violation within a

¹ OIR, *mimeo*, at 6.

² Cal. Pub. Util. Code §1702.5 (a)(1).

reasonable period of time after the discovery of the violation;³ (3) “[t]he commission shall adopt and implement an administrative limit on the amount of monetary penalty that may be set by commission staff;”⁴ (4) [t]he commission shall develop and implement an appeals process to govern the issuance and appeal of citations or resolution of corrective action orders issued by the commission staff;”⁵ and (5) [t]he commission shall, within a reasonable time set by the commission, conclude a safety enforcement action with a finding of violation, a correction action order, a citation, a determination of no violation, approval of the corrective actions undertaken by the gas corporation or electric corporation or other action.”⁶

A review of ALJ-274 reveals that ALJ-274 does not yet comply with all of the requirements of SB 291. First, ALJ-274 does not contain a requirement that Commission Staff provide notice of a violation within a reasonable period of time after the discovery of a violation. Second, ALJ-274 does not satisfy the requirement that the Commission adopt an administrative limit on the amount of monetary penalty that may be set by Commission Staff. Third, ALJ-274 does not require that safety enforcement action be concluded within a reasonable period of time with a finding of violation, a corrective action order, a citation, a determination of no violation, approval of the corrective actions undertaken by the gas corporation or electric corporation or other action. Indeed, ALJ-274 prescribes no limit on the amount of time that Commission Staff may take to conclude an enforcement action, and is silent with respect to all of the graduated enforcement alternatives to a monetary citation listed in SB 291. All of these statutory requirements for the natural gas safety citation program must be addressed by the Commission

³ Cal. Pub. Util. Code § 1702.5(a)(2).

⁴ Cal. Pub. Util. Code § 1702.5(a)(3).

⁵ Cal. Pub. Util. Code § 1702(b).

⁶ Cal. Pub. Util. Code § 1702.5(c).

by July 1, 2014, in order to bring the Commission’s natural gas safety citation program into compliance with SB 291.

Additionally, as noted above, SB 291 requires the Commission’s safety citation program to direct Staff to take into account, in considering the issuance of citations and assessment of penalties, a utility’s “voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, the prior history of violations, the gravity of the violation, and the degree of culpability.”⁷ ALJ-274 includes comparable language in its Findings and Conclusions.⁸ However, ALJ-274 also contains contradictory language requiring that “[e]ach citation will assess the maximum penalty amount provided for by [Public Utilities Code] § 2107.”⁹ This language is inconsistent with SB 291, and must be corrected by July 1, 2014.

2. The Preliminary Schedule Should be Revised to Enable the Commission to Bring the Gas Safety Citation Program into Compliance with SB 291 by July 1, 2014.

The OIR defines the scope of this proceeding in terms of three tasks: (1) to implement a new electric safety citation program; (2) to improve and refine the Commission’s gas and electric safety citation programs; and (3) to consider the timing and process for possible future modifications of the Commission’s gas and electric safety citation programs. In view of the deadline for the implementation of the electric safety citation program, the OIR directs the assigned Administrative Law Judge and Commissioner to ensure that the statutory requirements are met by January 1, 2015. The OIR provides that once the basic SB 291-compliant electric

⁷ Public Utilities Code § 1702.5(a)(1).

⁸ See Res. ALJ-274 at Findings and Conclusions No. 19 (“To the extent that violations are self-identified and self-corrected, and no injury or damage has resulted from these violations, Staff should take these factors into account in deciding whether to cite such violations.”). In addition, although SB 291 requires the Commission to adopt this as a mandatory requirement of its citation program, SED’s *Gas Safety Citation Program Standard Operating Procedure*, published September 20, 2013, provides at Section 4.3, Identification of Violations, that “[a]fter a potential violation is identified, SED looks at the facts, evidence, utility’s conduct, and the risk posed by the violations, among other

safety citation program is implemented, “issues relating to the improvement and refinement of the gas and electric safety citation programs may be addressed.” (OIR, mimeo at 9.)

SoCalGas and SDG&E recognize the Commission’s objective to implement a new electric safety citation program as required by SB 291, but urge the Commission to first move forward expeditiously to bring the gas safety citation program implemented under ALJ-274 into compliance with SB 291 by July 1, 2014, as is also required by Public Utilities Code section 1702.5.

3. The Commission Should Strive to Align the Gas and Electric Safety Citation Programs.

The OIR states the Commission’s intention that the electric and gas safety citation programs should be similar in structure and process. The OIR acknowledges that there are differences between gas and electric systems as to their operation, potential hazards, and regulatory regimes, which may need to be taken into account in the development of an effective safety citation program, but the OIR proposes to make the electric and gas safety citation programs generally similar. The OIR provides that once the new electric safety citation program is in place, further improvements and refinements to both the gas and electric safety citation programs will be considered.¹⁰

SoCalGas and SDG&E agree that making the electric and gas safety citation programs similar will simplify the practical implementation and application of the programs by SED and the regulated utilities. Further, SB 291 does not provide that there should be material differences between the substantive provisions or the procedures applicable to gas and electric systems, but

factors” in determining whether a citation should be issued and if so, the level of the fine that should be assessed.

⁹ Res. ALJ-274, Section 6, Delegation of Authority to Commission Staff, *mimeo*, at 7.

¹⁰ OIR, *mimeo*, at 9-10.

instead specifically refers to “a safety enforcement program applicable to gas corporations and electric corporations. . . .”¹¹

In order to bring the two citation programs into alignment, material differences between the substantive and procedural provisions of ALJ-274 and the provisions of ESRB-4 should be reconciled. First, the ten-day time period for notification of potential violations and appeal of citations under the gas safety citation programs should be revised to correspond to the 30-day period provided under the proposed electric safety citation program. Second, because the provisions of the gas safety citation program for notification to local government agencies of potential violations has not been productive or led to an enhancement to safety or public understanding of gas systems, this requirement should either be removed completely, or modified to avoid burdening local jurisdictions.

4. The Scope of Issues Set Forth in the OIR is Appropriate.

The OIR identifies ten issues to be addressed in this proceeding, including the administrative limit on penalty amounts; requirements for regulated entities to self-report potential violations; treatment of self-reported potential violations as compared to violations established by other means; appeal process; and notification to local jurisdictions and other state and federal agencies. This statement of the issues to be considered in this proceeding is appropriate and is sufficient to accommodate the issues SoCalGas and SDG&E intend to raise concerning ALJ-274.¹²

¹¹ Cal. Pub. Util. Code § 1702.5(a) (emphasis added).

¹² As noted previously, SDG&E is filing separate comments regarding the Commission’s proposed electric safety citation program. SoCalGas and SDG&E’s joint comments here with respect to the gas safety citation program are not intended to address any additional issues that may be proposed by SDG&E with respect to the electric safety citation program.

5. The OIR Appropriately Categorizes the Proceeding and Identifies the Potential Need for Hearings, But the Preliminary Schedule Should be Revised.

The OIR categorizes this proceeding as quasi-legislative and makes the preliminary determination that a hearing is needed. The OIR establishes a preliminary schedule that expedites comments on the proposed electric safety citation program. With respect to improvements and refinements to the gas safety citation program, the OIR prioritizes this issue as the third step in this proceeding, to be undertaken after the implementation of the electric safety citation program, and does not set a schedule for it.

SoCalGas and SDG&E agree with the categorization and preliminary determination of the need for a hearing in this proceeding, but urge the Commission to set an expeditious schedule for the consideration of improvements and refinements to the gas safety citation program in this proceeding. Indeed, as discussed above, SB 291 requires that the Commission revise the gas safety citation program by July 1, 2014.

6. Conclusion

In conclusion, SoCalGas and SDG&E look forward to participating in this proceeding and to resolving the matter of necessary and appropriate amendments, modifications, or repeal of provisions of ALJ-274.

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