

**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 15, 2014)

**OPENING COMMENTS OF PACIFICORP (U-901-E), BEAR VALLEY ELECTRIC  
SERVICE (U-913-E), A DIVISION OF GOLDEN STATE WATER COMPANY, AND  
LIBERTY UTILITIES (CALPECO ELECTRIC) LLC (U-933-E)**

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**I. INTRODUCTION**

On May 21, 2014, the California Public Utilities Commission (Commission) issued an Order Instituting Rulemaking on the Commission's Natural Gas and Electric Safety Citation Program (OIR), naming each California natural gas corporation and electric corporation as respondents. The OIR invites comments on a proposed electric safety citation program.<sup>1</sup> As California electric corporations, in accordance with the OIR, PacifiCorp, d/b/a Pacific Power (PacifiCorp), Bear Valley Electric Service, a division of Golden State Water Company (Bear Valley) and Liberty Utilities (CalPeco Electric) LLC (collectively, "CASMU") jointly submit the following comments.<sup>2</sup>

Senate Bill 291 (SB 291) added Section 1702.5 to the California Public Utilities Code, which requires the Commission to establish a safety enforcement program that includes procedures for monitoring, data tracking and analysis, investigations and issuance of citations by

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<sup>1</sup> OIR, p. 11.

<sup>2</sup> Under Rule 1.8(d), PacifiCorp has been authorized to file these reply comments on behalf of the CASMU utilities.

Staff.<sup>3</sup> Attachment B of the OIR contains a draft resolution (Draft Resolution) detailing a citation program similar to the program proposed by the Safety and Enforcement Division (SED) Draft Resolution ESRB-4 issued December 31, 2013. CASMU submitted comments in response to Draft Resolution ESRB-4 dated January 21, 2014. Based on the similarities between the Draft Resolution and Draft Resolution ESRB-4, CASMU's comments to this OIR are similar to the comments previously submitted, with some additional input.

## **II. The Proposed Citation Program Inappropriately Renders Existing Enforcement Provisions Meaningless**

The proposed citation program will be used ostensibly to enforce General Orders (GOs) 95, 128, 165, 166 and 174.<sup>4</sup> However, the Commission should recognize that corrective action programs already exist within these very same GOs to address non-conformance issues. It is unclear whether any non-conformance to a code is a "violation" with potential citations, as proposed through this program. Prior decisions have been rendered that indicate such a broad definition is not appropriate and not consistent with the intent of the General Orders.<sup>5</sup>

Under the proposed citation program, citations for violations may be issued and penalties levied for violations regardless of a company's schedule for repairs.<sup>6</sup> Further, the respondents will be required to correct violations as soon as feasible.<sup>7</sup> If the violations cannot be corrected within thirty calendar days, the utility may submit a detailed Compliance Plan to the Director of SED with the soonest possible date of correction.<sup>8</sup>

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<sup>3</sup> Cal. Pub. Util. Code §1702.5(a).

<sup>4</sup> OIR Attachment B, pp. B-5-B-6, B-10.

<sup>5</sup> See D.04-04-065.

<sup>6</sup> Id., p. B-11.

<sup>7</sup> Draft Resolution, Appendix A, Section 1.A.6.

<sup>8</sup> Id.

Thus, the proposed citation program in the Draft Resolution does not take into account correction timelines already incorporated into the Commission's rules. For example, GO 95, Rule 18-A describes three levels of safety hazards: 1) Level 1 priority conditions pose an immediate safety and/or reliability risk and must be corrected immediately, 2) Level 2 priority conditions pose variable safety and/or reliability risks and may be corrected within 12 or 59 months, depending on the type of condition, and 3) Level 3 priority conditions present an acceptable level of safety and/or reliability risk and action may be taken as appropriate. Because the Draft Resolution grants SED very broad citation authority without describing how such citation authority should be used with respect to corrective action rules already in place, the Draft Resolution, as written, would render the existing corrective action provisions within the GOs meaningless.

### **III. The Commission's Grant of Citation Authority Should Be Clear and Narrowly Focused**

The Commission's enforcement programs, including the proposed citation program, should clearly state the decisions, regulations and codes the Commission intends to enforce utilizing that program. Such a narrow and clear grant of authority ensures fairness and due process.

It is concerning, therefore, that not only will the proposed citation program be used by SED to enforce General Orders (GOs) 95, 128, 165, 166 and 174, it will also be used by SED to broadly enforce "other related decisions, codes or regulations applicable to electrical supply facilities."<sup>9</sup> Thus, SED will be granted the authority to enforce unnamed but "applicable" electric decisions, regulations and codes regarding electrical supply facilities. In order to ensure

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<sup>9</sup> OIR Attachment B, pp. B-5-B-6, B-10.

that the entities subject to the enforcement program are adequately informed and notified, the proposed citation program should clearly state the decisions, regulations and codes the Commission intends to use the program to enforce.

#### **IV. The Commission Should Develop Other Elements of an Enforcement Program**

In addition to citations and penalties, SB 291 contemplates implementation of other enforcement procedures and mechanisms, which suggests a more comprehensive enforcement program<sup>10</sup> such as corrective actions and orders.<sup>11</sup> SB 291 also contemplates implementing procedures for monitoring, data tracking and analysis, and investigations. None of these issues are addressed in the Draft Resolution.

CASMU recognizes the statutory mandate to implement a program for electrical safety by January 1, 2015.<sup>12</sup> There is potential to consider other enforcement mechanisms to include in the enforcement program and meet the deadline. Other agencies have developed enforcement programs that may serve as useful models, such as the Western Electricity Coordinating Council's model implementing the North American Electric Reliability Corporation's Compliance Monitoring and Enforcement Program.<sup>13</sup> The Commission should review some of the more developed programs to determine if they could be adapted to meet the Commission's needs for a safety enforcement program.

#### **VI. The Commission Should Establish a Cap on Penalties**

The Draft Resolution states it is reasonable to assess penalties for each violation at the

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<sup>10</sup> Cal.Pub.Util.Code §1702.5(a).

<sup>11</sup> Id.

<sup>12</sup> Cal.Pub.Util.Code §1702.5(a)(3)(d).

<sup>13</sup> [http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix\\_4C\\_CMEP\\_20130625.pdf](http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix_4C_CMEP_20130625.pdf).

maximum amount set for in §§2107 and 2108 of the Public Utilities Code.<sup>14</sup> These code sections set a maximum value of \$50,000 per offense, with each instance of a violation being considered a separate and distinct offense.<sup>15</sup> Based on this, the Draft Resolution states penalties will be assessed on a daily basis, although Staff will be given discretion to assess penalties on a less than daily basis.<sup>16</sup> It appears the Commission is setting the penalty at \$50,000 for every violation cited under this resolution and each day of a perceived continuing violation until a satisfactory repair is made. This could lead to a limitless amount of penalties and would be disproportionate to the amount of potential harm for one violation, particularly if penalties continue to accrue from discovery of the violation to correction.

As noted above, it appears SED will be able to issue violations for infractions of GOs that pose acceptable levels of risk. Imposing \$50,000 per such offense is excessive, especially when considering the small size of the CASMU utilities. To ensure that penalties for citations issued under this new enforcement program are commensurate with the level of potential harm from infractions, the Commission should set a maximum penalty. CASMU does not have a recommendation for a maximum penalty at this time, but may provide further comments in reply.

## **V. Conclusion**

CASMU appreciates the opportunity to participate in this rulemaking to develop a safety enforcement program. While CASMU recognizes the short timeframe for implementing such a program, taking a bare-bones approach will only lead to confusion and disagreement over application of such a program. CASMU encourages the Commission to develop a more robust

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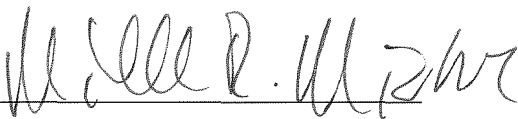
<sup>14</sup> OIR Attachment B, p. B-5.

<sup>15</sup> Cal.Pub.Util.Code §§2107 and 2108.

<sup>16</sup> OIR Attachment B, p. B-5.

program and to consider building workshops and all-party discussions into this rulemaking process prior to January 1, 2015.

Respectfully submitted this June 20, 2014 at San Francisco, California.

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