

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

Order Instituting Rulemaking on the)	
Commission's Natural Gas and Electric)	Rulemaking 14-05-013
Safety Citation Programs.)	(Filed May 15, 2014)
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**OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U-902-E)
RE THE COMMISSION'S PROPOSED ELECTRIC SAFETY CITATION PROGRAM**

Pursuant to Ordering Paragraph 9¹ of the Commission's order instituting the above-captioned rulemaking, Respondent San Diego Gas & Electric Company ("SDG&E") files these opening comments on the electric safety citation program described in *Attachment B* to the order.² For the reasons and in the manner stated below, the Commission should modify the proposed electric safety citation program so as to structure and administer the electric safety citation program in accordance with federal and state constitutional principles respecting due process³ and in an otherwise reasonable manner consistent with state law, Commission regulations and adjudicatory fairness. To meet these standards, SDG&E submits the proposed electric safety citation program must be modified in the following fundamental respects:

- The electric safety citation program must be modified to provide reasonable notice of violations to the electric utilities subject to its provisions. The provision of reasonable notice obligates the Commission not only to adopt rules assuring the procedures governing the issuance of a citation comport with due process, but more importantly that an electric utility should have and will be provided with adequate prior substantive notice as to the specific nature of the acts, errors and/or omissions which will subject the utility to the issuance of a citation and imposition of a fine and penalty. With such prior notice, the utility will be afforded the essential opportunity to conduct itself in a manner so as to avoid the threat of citation, fine and penalty;

¹ See *Order Instituting Rulemaking on the Commission's Natural Gas and Electric Safety Citation Programs* ("Order Instituting Rulemaking"), Rulemaking 14-05-013, May 15, 2014, printed opinion, at pp.12-13.

² *Attachment B*, denominated as "Resolution ESRB-4 (Revised)", is an updated version of a draft resolution issued in its original form by the Commission Safety and Enforcement Division in December 2013. On June 12, 2014, the Commission issued another, unrelated resolution also designated as "Resolution ESRB-4"; that resolution directed certain electric utilities to enhance their fire-protection programs in response to the state of emergency declared by the Governor prompted by the drought conditions existing in the state. So as to avoid confusing these two separate, unrelated Commission initiatives, SDG&E will refer to the document describing the proposed electric safety citation program as "*Attachment B*".

³ *United States Constitution*, Fifth and Fourteenth Amendments; also, *California Constitution*, Article I, Sections 1, 7(a), 15.

- The electric safety citation program must be modified so as to adopt reasonable limitations on the safety-enforcement authorities being delegated by the Commission to the Commission Staff;⁴
- The electric safety citation program must be modified so as to adopt reasonable limitations on the level of fines and penalties the Commission Staff may assess against an electric utility; and,
- The electric safety citation program must be administered in a manner consistent with due process, and otherwise modified so as to assure that electric utilities will not be subject to citation and/or penalties for violations related to joint facility uses where the joint user is responsible for the violation and to add an additional informal meet-and-confer process.

While the Commission faces a statutory requirement to implement an electric safety citation program no later than January 1, 2015, the Commission should take care to structure the program so as to comport with constitutional principles of due process and applicable state statutes. As proposed, the electric safety citation program is impermissibly and/or unreasonably vague and ambiguous on several counts and these deficiencies should be rectified prior to the implementation of the electric safety citation program on January 1, 2015.⁵ An electric safety citation program structured and administered reasonably, fairly and in accordance with law will effectively achieve the public interest in safe utility operations, act as a deterrent to utility conduct threatening public safety, encourage prompt discovery, reporting and remediation of potential safety threats, and/or punish guilty conduct, while protecting the legitimate rights and interests of the electric utilities. SDG&E submits the following proposed modifications with these overarching principles in mind.

⁴ SDG&E's expectation is that the Commission Safety and Enforcement Division will be the principal organization within the Commission Staff responsible for the administration of the electric safety citation program. But because *Attachment B* indicates the Commission may delegate enforcement authority to other organizations and itself uses the generic term, "Staff", SDG&E uses the term "Commission Staff" herein as a reference to the organization charged with administering the electric safety citation program, while recognizing this is most likely to be the Commission Safety and Enforcement Division.

⁵ On or about June 9, 2014, SDG&E filed its *Comments of San Diego Gas & Electric Company (U-902-E) re [Attachment B, nee Draft Resolution ESRB-4]* in the instant docket. In those comments, SDG&E requested the Commission schedule evidentiary hearings to consider the scope of the proposed electric safety citation program. More specifically, SDG&E recommended the Commission consider limiting the program to redress violations where public safety will be or had been threatened or compromised and corrective action should have been, but was not, taken immediately. For the purposes of these comments, SDG&E assumes the Commission will grant SDG&E's request for hearings and, further, will thereafter reconcile the electric safety citation program with the provisions of its own General Order 95 in setting the scope of the program. As discussed later in these Opening Comments, such a limitation would, in part, resolve potential constitutional infirmities in the electric safety citation program as presently proposed.

A. Substantive and Procedural Notice Requirements

The electric safety citation program should be structured and administered in a manner meeting substantive and procedural notice requirements. The provision of reasonable notice obligates the Commission not only to adopt rules assuring the procedures governing the issuance of a citation are reasonable and will be followed, but more importantly encompasses the notion that an electric utility will be provided with adequate prior substantive notice as to the specific nature of the acts, errors and/or omissions which will subject the utility to the issuance of a citation and/or the imposition of fines and penalties. With this notice, the utility will be afforded the reasonable opportunity to conduct itself in such a way as to avoid citations and penalties in the first place. In order to address these notice requirements, SDG&E proposes the following modifications to the electric safety citation program described in *Attachment B*.

1. Limitation to Variances from Commission Decisions, Rules, Regulations, Standards and/or Orders and/or Law Violations Resulting in a Threat to Public Safety

First and foremost, the proposed electric safety citation program fails to describe with any specificity the nature of the conduct, whether by act, error or omission, that will be subject to citation by the Commission Staff. Due process entitles the electric utilities to prior notice regarding which failures of the Commission's decisions, rules, regulations, standards, and/or orders, and/or law violations will prompt citations, fines and penalties compared to those lapses which would not.⁶ As proposed, the electric safety citation program fails to give electric utilities any clear guidance as to which acts, errors and/or omissions place them in jeopardy of citations, fines and/or penalties and, even worse, can be easily interpreted to require fines and penalties for conduct which fully complies with Commission regulations and orders. SDG&E submits the Commission should be specific as to the violations to which the program will apply. In particular, SDG&E strongly recommends the Commission should limit the electric safety citation program to those violations where the utility's conduct poses a demonstrable and unreasonable threat to public safety.

⁶ In stating that the electric safety citation program will apply to "corporations owning or operating electrical supply facilities in order to enforce compliance with General Orders 95, 128, 165, 166, 174, and other applicable electric decisions, regulations and codes", the Commission adopts impermissibly vague and onerous prohibitions involving literally thousands of potential violations across an indeterminate spectrum of gravity. See *Attachment B*, at pp.B-1 to B-2.

To begin, the vague and ambiguous nature of the conduct subject to the electric safety citation program affords the electric utilities virtually no, let alone adequate, prior notice as to the jeopardy they face under the program's terms. This is a violation of the electric utilities' rights to due process.⁷ Although the order instituting this rulemaking recounts the statutory authorities upon which the Commission's proposed electric safety citation program is grounded,⁸ it is axiomatic that each and every one of the cited authorities is subordinate to the applicable provisions of the federal and state constitutions. Indeed, the California Constitution explicitly obligates the Commission to conduct its business in accordance with "statute and due process."⁹ By failing to provide any guidance as to the nature of the conduct subject to citation, fine and penalty, the electric safety citation program as proposed fails the requirements of, and otherwise fails to afford citation recipients their rights to, substantive and procedural due process as guaranteed under the United States and California Constitutions. The Commission should redress this deficiency by providing some greater definition of both (a) the nature of the acts or omissions, e.g., whether negligence is sufficient or if gross negligence or willful conduct is required, and, (b) the specific variances from Commission's decisions, rules, regulations, standards, and/or orders, and/or law violations which will subject the electric utilities to citation, fines and/or penalties. In this regard, SDG&E strongly recommends the electric safety citation program be explicitly limited to those acts, errors or omissions which pose a demonstrable

⁷ See *Hand v Board of Examiners*, 66 Cal.App.3d 605, 620-621 (Cal.Ct.App., 1977), quoting *McMurtry v State Board of Medical Examiners*, 180 Cal.App.2d 760, 766-767 (Cal.Ct.App., 1960), "It is well settled that a statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. This principle applies not only to statutes of a penal nature but also to those prescribing a standard of conduct which is the subject of administrative regulation." Also, *County of Suffolk v First American Real Estate Solutions*, 261 F.3d 179, 195 (2d Cir., 2001), where the court held, "Due process requires that before a ... significant civil or administrative penalty attaches, an individual must have fair warning of the conduct prohibited by the statute or the regulation that makes such a sanction possible." Accord, *Connelly v General Construction Co.*, 269 U.S. 385, 391 (1926), cited with approval at *Morrison v State Board of Education*, 1 Cal.3d 214, 231 (1969).

⁸ See *Order Instituting Rulemaking*, at p.4; but compare *Attachment B*, at pp.B-2 to B-5, where the Commission curiously omits any reference to Public Utilities Code Section 1702.5 where the Commission's express authority to and terms under which it may delegate safety-enforcement authority to the Commission Staff is found.

⁹ *California Constitution*, Article XII, Section 2.

and unreasonable threat to public safety.¹⁰ Such a limitation is entirely reasonable in light of the purposes of the program and the statute prompting the program's creation.¹¹

Given the breadth and sheer number of the Commission's electric-industry regulations, a simple limitation to "safety-related violations" would, by itself, be insufficient to afford the electric utilities the prior notice required by due process. The Commission's regulations and decisions distinguish between, on the one hand, "violations" which pose an immediate threat to public safety and, on the other, "nonconformances" where a threat to public safety may exist but is not "immediate".¹² As to variances posing "immediate" threats to public safety, electric utilities are required to correct them "immediately" so as to abate, or reduce the degree of, the threat. But, as to variances posing non-immediate threats to public safety, electric utilities are provided considerable discretion, relying solely upon the professional judgment of a qualified utility officer, in determining the schedule pursuant to which such nonconformances will be remediated as well as the nature of the remediation to be performed. Thus, the Commission's own regulations explicitly permit even safety-related variances to exist, subject to the requirement the utility remediate them in accordance with standards governing good utility practice and the public's welfare.

As a salient example, Rule 18 of Commission General Order 95 recognizes that not all variances from Commission design and construction standards, whether original or due to wear and tear, constitute "safety hazards." To that end, Rule 18 defines "safety hazards" 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

¹⁰ Such a limitation would comport with due process; see, e.g., *Musser v Utah*, 333 U.S. 95, 96-97 (1947), remanding case for further state proceedings on the grounds that a state statute, which by its terms could be so vague as to violate due process rights guaranteed under the Fourteenth Amendment to the United States Constitution, might still be narrowly construed by the state so that the nature of a prohibition would be clear to potential violators.

¹¹ Indeed, the program bears the word "safety" in its title and the word appears on virtually every page of the *Order Instituting Rulemaking*; see also, *Attachment B*, at pp.B-2 to B-5, describing the safety-related focus and objectives of the program as "deter[ring] misbehavior or illegal conduct by utilities and other entities subject to Commission jurisdiction, thereby ensuring that both the employees of the corporation and the public it serves are properly protected from the inherent hazards of providing their services." Accord, Public Utilities Code Section 1702.5(a).

¹² See Commission General Order 95, Rules 18 and 18.A. 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 technical variances.

representative”.¹³ “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”. Under this regulatory scheme, an electric utility could determine a variance from a provision of General Order 95 to pose either a “non-immediate” or “acceptable” threat to human life or property and, in full compliance with Rule 18.A, defer remediation of the variance for a period as long as five years. But, notwithstanding the compliance scheme found in Rules 18 and 18.A, an electric utility could still face citation and fines under the vague terms of the electric safety citation program for any variance without regard to the level of threat posed unless the Commission acts to provide greater definition of the nature of the variances that will be cited as “violations”.¹⁴

Apart from the incongruity between the proposed electric safety citation program and Rules 18 and 18.A of General Order 95, Rule 31.1 of General Order 95 places an additional, more stringent, but nonspecific, requirement on the engineering design and construction and maintenance of overhead electrical facilities. Rule 31.1 provides, in pertinent part:

For all particulars not specified in these rules, design, construction, and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of communication or supply lines and equipment.

A supply ... company is in compliance with this rule if it designs, constructs, and maintains a facility in accordance with the particulars specified in General Order 95, except that if an intended use or known local conditions require a higher standard than the particulars specified in General Order 95 to enable the furnishing of safe, proper, and adequate service, the company shall follow the higher standard.

The implication of Rule 31.1 in the context of the electric safety citation program is that, notwithstanding a utility’s full compliance with the letter of all of the Commission’s other rules and regulations, that utility might still be subject to citation and penalties if the Commission Staff were to determine that “an intended use” or “known local conditions” required adherence to some higher standard not found in the Commission’s

¹³ SDG&E notes that it normally vets its threat assessments and remediation planning with the Commission Safety and Enforcement Division Staff so as to coordinate the remediation of variances from General Order 95 with the Commission’s engineering and safety experts.

¹⁴ See *Attachment B*, at pp.B-5 to B-6, stating, “penalties shall be assessed on a daily basis pursuant to Section 2108 until a satisfactory repair is made” and “[a] corporation’s schedule for repairs is irrelevant for the purposes of violations; citations may be issued for violations, and penalties levied, regardless of the status of the corporation’s schedule for repairs.” But compare, *Attachment B*, at pp.B-17 and B-19 (emphasis added), where the citation procedures require that “the violation must be corrected as soon as *feasible*” but also allow the utility to demonstrate the reasonableness of non-immediate corrections where any delays or deferrals would “not affect the safety or integrity of the operating system or endanger public safety.”

regulations but in subjective judgments as to what might constitute “accepted good practice” given that use or those conditions.¹⁵

As the extensive record in Rulemaking 08-11-005 indisputably demonstrates, SDG&E has studied and possesses far greater knowledge regarding the meteorological and environmental conditions posing threats of wildfire in its service area than is true of the state’s other electric utilities with respect to their service territories. As a result, SDG&E has implemented design, construction, operations, maintenance, and inspection practices to comport with these known local conditions, particularly under extreme conditions. Accordingly, these practices can be well in excess of the requirements of the letter and specifications of the Commission’s regulations and orders. If the provisions of the electric safety citation program fail to address the interplay between Rule 31.1 and the violations which are subject to citation and penalties, SDG&E stands to be at an unduly greater risk to enforcement actions by virtue of its proactive approach to understanding fire risks, conflicting with SDG&E’s and the public’s interests in addressing known local conditions. The implications of any such conflict would clearly be counterproductive to the purposes of the citation program. Electric utilities and the Commission Staff need a better understanding of the manner in which the electric safety citation program will be administered in light of Rule 31.1. SDG&E’s recommendation to limit the electric safety citation program to violations where there is a demonstrable nexus between the violation and an unreasonable risk to public safety resolves this need by considerable measure.

SDG&E’s concerns regarding the potential for the issuance of unfair or undue citations arising from Rule 31.1 are borne not only of the *ad hoc* nature of Rule 31.1, which frankly defies clear definition, but, equally important, from the ongoing dispute between the electric utilities and the Commission Staff regarding the proper interpretation of another, more precisely stated regulation. As the Commission is well aware, SDG&E has disputed the Commission’s interpretation, originated by the Commission Staff, of Rule 48 of General Order 95.¹⁶ As SDG&E has argued, the Commission’s recent misinterpretation of Rule 48 indicates that, notwithstanding a utility’s adherence to each and every of the hundreds of other specifications provided in General Order 95, an electric utility would be *per se* in violation of Rule 48 if its facilities were not designed to withstand wind pressures exerted by winds of less than 112 miles-per-hour or failed to perform at wind pressures exerted by winds of less than 92 miles-per-hour. Whether or not the Commission, the Commission Staff or SDG&E is ultimately determined to be correct with respect to the proper interpretation of Rule 48, SDG&E submits the dispute demonstrates at the very least that the terms of General Order 95,

¹⁵ Similar jeopardy could arise under any of Rules 11, 13 and 14 of Commission General Order 95.

¹⁶ See *Application for Rehearing of Decision 14-02-015 and Oral Argument by San Diego Gas & Electric Company (U-902-E)*, Rulemaking 08-11-005, March 12, 2014.

written to serve a host of regulatory purposes, inadequately apprises the electric utilities of which acts, errors or omissions might subject them to citations and/or penalties.¹⁷

In order to provide the electric utilities with prior due notice as to the manner of violations which are within the scope of the citation program and subject to fine or penalty, SDG&E recommends the citation program be limited to those instances where the variance from a Commission rule or regulation poses, using the terms of Rules 18 and 18.A of General Order 95, a demonstrable “immediate” (or “unreasonable”) risk to public safety where corrective must be taken immediately. SDG&E’s recommendation is wholly consistent with the multitude of references in the order instituting this resolution and *Attachment B* describing the purposes of the program as being related to “safety enforcement” and the punishment of “safety violations”.¹⁸

Importantly, limiting the electric safety citation program to violations posing a demonstrable and immediate threat to public safety is wholly consistent with the specific terms of Section 1702.5(a), which provides in pertinent part (emphases added), “The enforcement program *shall* be designed to improve gas and electrical system *safety* through the enforcement of applicable law, or *order or rule of the commission related to safety*.” In addition, Section 1702.5(a)(1) provides, in determining whether to issue a citation and/or assess a penalty, the Commission Staff should consider the “gravity of the violation” and the “degree of culpability” of the electric utility. These provisions serve to heighten the threshold issues to include not only whether a violation exists, but whether the utility’s acts, errors or omissions have placed the public

¹⁷ SDG&E’s concerns here cannot be dismissed by declaring that all nonconformances may be prosecuted under the electric safety citation program. Such an expansive view would violate the mandatory terms of Section 1702.5(a) requiring the citation program be “designed to improve electrical system safety”. As the Commission itself has conceded, the number and variety of Commission regulations governing electric utility facilities and operations make it impossible for the utilities to be in perfect compliance on any given day and that the imposition of fines should not apply to “minor” failures but only to those “involv[ing] potential serious harm.” See *Opinion Finding Violations and Imposing Sanctions*, Decision 04-04-065 in Investigation 01-08-029, May 4, 2004, printed opinion at pp.2-3.

¹⁸ As noted earlier, the citation program clearly bears the word “safety” in its title and the word appears on virtually every page of *Order Instituting Rulemaking*, as well as *Attachment B*. Similarly, Public Utilities Code Section 1702.5(a).

safety at some measurable degree of unreasonable risk and/or are to a measurable extent “wrong” and “blameworthy”.¹⁹

Notwithstanding the numerous references to safety found in the *Order Instituting Rulemaking* and the provisions of Public Utilities Code Section 1702.5(a)(1), the proposed electric safety citation program is not specifically limited to “safety-related” violations and nowhere in *Attachment B* is there any recognition of the distinctions drawn between varying levels of the threat to the public safety or the concept of technical “nonconformances” described in *Decision 12-01-032* and *Decision 04-04-065*. Indeed, the electric safety citation program as proposed indicates the lack of a threat to public safety is a matter the electric utility may dispute in demonstrating the reasonableness of its plans to correct the violation.²⁰ Nevertheless, the proposed program is entirely silent as to whether such a demonstration is exculpatory in any way. To the contrary, the electric safety citation program as proposed explicitly places the utility at risk to further fines for each day the violation remains uncorrected, apparently even if the utility proves the absence of any safety risks or threat to the integrity of the electrical system.²¹ *Attachment B* can even be read to include “animal contacts” as matters subject to citation, although these incidents normally involve circumstances well beyond a facility owner’s ability to prevent.²² Disregarding this extreme reading for the moment, the electric safety citation program as proposed could be applied to variances not typically associated with any threat to public safety and appears to place facility owners and operators at risk to citation for such variances, contrary to the Commission’s prior orders and regulations which hold that not all variances from

¹⁹ See, e.g., *Black’s Law Dictionary*, indicating “culpability” encompasses circumstances where “the act or conduct spoken of is reprehensible or wrong,” and that the term connotes “fault” that is “deserving of moral blame.” SDG&E also notes that the *Order Instituting Rulemaking* anticipates that the electric safety citation program “should be generally similar” to the existing gas safety citation program and “[i]mprovements derived from [the Commission’s] experience with [the] gas safety citation program can be incorporated.” (*Order Instituting Rulemaking*, printed opinion at p.9.) In the event the Commission grants SDG&E’s pending request for hearings in this matter, SDG&E will proffer evidence establishing that citations issued by the Commission’s Safety and Enforcement Division under the existing gas safety citation program to date have been limited to violations posing an unreasonable risk to public safety and, further, that the magnitude of the penalties assessed under any citation appear to be calibrated to the gravity of that risk and/or the degree of the utility’s culpability under the facts known to the Staff. Viewed from the perspective of the experience gained from the gas safety citation program, SDG&E’s recommendations requiring the Commission Staff to demonstrate a nexus between a violation and any unreasonable risks to public safety caused by the utility’s blameworthy acts or omissions should be quite familiar to both the Commission and the Commission Staff. This requirement has not, to SDG&E’s knowledge, impaired the Commission Staff’s ability to administer the gas safety citation program effectively.

²⁰ See *Attachment B*, at p-18 (Section II.C.1).

²¹ See *Attachment B*, at pp.B-18 to B-19 (Section I.C.1, I.C.2, I.C.3.b).

²² See *Attachment B*, at pp.B-9 to B-10, where the 2012 Ridgecrest and 2012 San Mateo incidents are enumerated as evidencing the need for the citation program. Both of these incidents involved animal contact with overhead electrical facilities.

those orders and regulations should be construed to be “violations”.²³ Application of the electric safety citation program to relatively minor infractions where little or no threat to public safety is posed will result in a misdirection of Commission and utility resources that would otherwise be properly focused on safety-related violations. This result can and should be entirely avoided through the adoption of SDG&E’s recommendations to limit the program to safety-related violations placing public safety at unreasonable risk.

While it could be argued that virtually all, if not all, of the Commission’s regulations and orders might bear some relationship to public safety, SDG&E’s recommendations cannot and should not be so easily dismissed. Section 1702.5 specifically calls upon the Commission and Commission Staff to weigh, among other factors, “the gravity of the violation” and “the degree of culpability” exhibited by the utility. Under these requirements, the Legislature can only be seen to have required that some demonstration of the threat to public safety would be made in the issuance of a citation and assessment of a penalty. That demonstration should be, at minimum, part of the *prima facie* case required of the Commission Staff in issuing any citation and, where the citation and penalties are contested, a matter upon which the Commission Staff’s evidence should be required to prevail by a preponderance of the evidence adduced in the hearings on appeal.²⁴

For the foregoing reasons, SDG&E respectfully requests the Commission proceed to revise the electric safety citation program to clarify that the application of the citation program is (a) limited to safety-related violations where an unreasonable threat to public safety can be demonstrated, and (b) intended to be consistent with the Commission’s prior orders and regulations, most notably, Rules 18 and 18.A of General Order 95. Additionally, the Commission should specify that the Commission Staff’s proofs as to whether a violation posed an unreasonable threat to public safety must be sufficient, if disputed, to prevail by a preponderance of the evidence adduced during a hearing on appeal.

B. The Scope of the Safety-Enforcement Authorities Being Delegated to the Commission Staff

In adding Section 1702.5 to the Public Utilities Code, the Legislature authorized the Commission to delegate certain of Commission’s safety-enforcement authorities to the Commission Staff. In construing this authority to delegate, SDG&E submits the Commission may only delegate to the Commission Staff those authorities the Commission itself possesses and cannot in any way enlarge the Commission’s enforcement authorities. Thus, in adopting an electric safety citation program, the Commission should consider the

²³ See *Attachment B*, at p.B-6, where “the schedule for repairs” which would be determined in accordance with Rule 18.A is described as “irrelevant”, a holding completely at odds with the Commission’s regulations permitting a utility to schedule repairs in accordance with its judgment as to the risk to life and property posed by the variance subject to repair.

²⁴ See *Attachment B*, at p.B-21 (Section II.B.6).

manner in which the safety-enforcement authorities delegated to the Commission Staff should be distinguished from those authorities the Commission will reserve to its exclusive invocation. SDG&E recommends the following limitations be placed on the safety-enforcement authorities being delegated to the Commission Staff.

1. Waiver of Alternative Enforcement Procedures and Venues by the Commission

The electric safety citation program proposed in *Attachment B* bears the following admonition:

Further, nothing herein interferes with the Commission's ability to institute a formal proceeding regarding the alleged violation(s), and pursuing additional enforcement action taken at the Staff level. The citation program approved today is cumulative to all other applicable provisions of state and federal law that provide for sanctions against violators, including but not limited to Sections 2112 and 2113.²⁵

This provision is apparently intended to permit the Commission to commence its own separate enforcement actions, in addition and without prejudice to the issuance of a citation and assessment of a penalty by the Commission Staff. SDG&E submits such a broad reading of Section 1702.5 improperly places electric utilities at risk to multiple enforcement actions brought on the same grounds and under the same statutory authorities by both the Commission and the Commission Staff. Pancaking the electric safety citation program on top of the Commission's enforcement authorities for the same offense clearly and improperly enlarges, rather than merely delegates, the safety-enforcement authorities of the Commission. The electric safety citation program as proposed must be delimited to indicate the issuance of a citation by the Commission Staff constitutes the Commission's election to forego its own independent investigations and enforcement actions which might otherwise be brought under any of the statutory authorities invoked by the Commission Staff in the issuance of a citation and/or assessment of a penalty.²⁶

At this point in time, SDG&E limits its argument and recommendations to safety-enforcement actions taken by both the Commission and the Commission Staff that are clearly duplicative and overlapping. Thus, SDG&E's point is that, if the Commission Staff were to issue a citation and assess a penalty under Section 1702.5(a), any separate and further action by the Commission taken under Section 1702.5(c) would terminate the Commission Staff's right to prosecute the original citation, while, conversely, the payment of the penalty pursuant to the original citation would terminate the Commission's independent right to pursue any additional action under Section 1702.5(c). These same principles and results would apply to the

²⁵ *Attachment B*, at p.B-12, citations omitted.

²⁶ See, e.g., Section 2101 (penalty action brought in superior court by the Commission or, at the Commission's request, Attorney General or local district attorney), Section 2102 (action in superior court for injunctive relief or by mandamus), and/or Section 2112 (prosecution for misdemeanor).

authorities specified in Sections 2107 and 2108; thus, penalties described in those statutes may not be assessed by both the Commission and the Commission Staff for the same violations. In addition, SDG&E has concerns that, notwithstanding the terms of Section 1702(c), the Commission could pursue multiple actions for the same offense in different venues in a manner violative of the double-jeopardy and/or excessive fines clauses of the federal and state constitutions.²⁷ SDG&E does not raise those concerns here since the Commission could avoid prejudice to the electric utilities' constitutional rights through the careful administration of the electric safety citation program, but reserves its right to contest the impropriety of multiple prosecutions as circumstances may warrant.

In raising this issue, SDG&E is not contesting the delegation of enforcement authority to the Commission Staff as permitted by the Legislature. Rather, SDG&E only points out that actions taken by the Commission Staff pursuant to the authorities delegated to it by the Commission should be construed to be taken as if taken by the Commission itself and, therefore, in lieu of any further and independent actions taken by the Commission on the same grounds.²⁸ The Commission may certainly determine, upon specific facts and circumstances, that the Commission itself will pursue an enforcement action of its own accord, in which case the authorities delegated to the Commission Staff should be deemed to have been usurped by the exercise of the Commission's originating and superior enforcement authorities. In these situations, the delegation of enforcement authorities to the Commission Staff should be deemed to have been withdrawn with respect to such matters. This limitation fully comports with Section 1702.5, without the slightest impairment to the Commission's ultimate authority or ability to enforce its regulations or applicable law, and should be adopted. Indeed, SDG&E's recommendation here merely memorializes the Commission's own characterization of the electric safety citation program as "an additional enforcement *procedure*."²⁹

²⁷ For the prohibitions against placing the same person twice at jeopardy for the same offense and/or for excessive fines, *United States Constitution*, Fifth and Eighth Amendments; also, *California Constitution*, Article 1, Sections 15 and 17

²⁸ See, in accord, *Order Denying Rehearing of Decision 13-04-012*, Decision 14-01-038 in Investigation 12-01-010, January 17, 2014, where the Commission described the enforcement duties and authorities of the Commission Staff as tantamount to its own and enforcement proceedings pursued by the Commission Staff as the equivalent of action taken by the Commission; the order also articulates the level of deference to be accorded to the Commission Staff's discretion in bringing an enforcement action, recommend penalties, and settle cases in a manner equally applicable to the Commission itself.

²⁹ *Attachment B*, p.B-5 (emphasis added).

2. Violations Predating the Adoption of the Electric Safety Citation Program

Attachment B provides that “[c]itations may be issued for violations that have occurred both before and after the date of this Resolution.”³⁰ SDG&E submits this provision of the electric safety citation program is inconsistent with the authority granted to the Commission by 2013 Senate Bill 291.³¹ As the *Order Instituting Rulemaking* makes clear, the delegation of certain aspects of the Commission’s safety-enforcement authorities to the Commission Staff derives from and must be in compliance with the directions of the Legislature.³² Despite the terms of this legislation, the proposed electric safety citation program indicates the enforcement authorities being delegated to the Commission Staff can predate the enabling legislation prompting the Commission’s rulemaking in the first place. Nothing in the legislation indicates the terms of the newly enacted statute are retroactive. Therefore, any application of the terms of the electric safety citation program to violations occurring prior to the passage of Senate Bill 291 patently and unlawfully exceeds the statutory authorities relevant to and governing the program. As a matter of law, the Commission cannot disregard the implications and limitations of the legislation and must conform the electric safety citation program to the contours of the Legislature’s directions.³³ To do otherwise would render the electric safety citation program defective under the California Constitution, a defiance of the plenary power of the Legislature and contrary to the body of law governing the Commission’s general authorities and responsibilities. The Commission should therefore set the scope of the electric safety citation program in accordance with the terms of the authorities granted under Senate Bill 291 by limiting the application of the program to violations occurring on or after the effective date of the program.

³⁰ *Attachment B*, p.B-2.

³¹ Stats.2013, ch. 601.

³² See also, *California Constitution*, Article XII, Section 5.

³³ Interestingly, *Attachment B* does not cite Section 1702.5 as enabling the delegation of safety-enforcement authority by the Commission to the Commission Staff. Rather, *Attachment B* appears to rely on Public Utilities Code Section 7 and the Commission’s exercise of its police powers as exercised in other circumstances as the legal bases upon which the delegation of enforcement authorities may rest, although the *Order Instituting Rulemaking* pays greater due to the legislation than does *Attachment B*. (Compare *Order Instituting Rulemaking*, at pp.2, 5-7, 8, to *Attachment B*, at pp.B-2 to B-4.) While the Commission might try this approach in the absence of Senate Bill 291, the Commission’s legal analysis renders the legislation superfluous to the actions being taken and ignores the plain language of Section 7 permitting the exercise of the Commission’s authority by a deputy only as “authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.” Senate Bill 291 cannot be construed to be anything but the “law” “pursuant to” which the delegation of enforcement authority is “authorized”. In its absence, the Commission’s authority to delegate safety-enforcement authority to the Commission Staff would be at least contestable, but more importantly, with the passage of the bill, the Legislature has exercised its “plenary power ... to confer additional authority and jurisdiction upon the commission” and the Commission is not at liberty to disregard the Legislature’s directions or determine that the legislation is superfluous. See *California Constitution*, Article XII, Section 5; similarly, *California Constitution*, Article III, Section 3.5, prohibiting “an administrative agency, including an administrative agency created by the Constitution,” from refusing to enforce a statute on constitutional grounds.

C. Limitations on the Level of Fines and Penalties Commission Staff May Assess

The Legislature has in no uncertain terms required the Commission to adopt limits on the level of fines and penalties the Commission Staff may assess under the electric safety citation program.³⁴ Notwithstanding this explicit requirement, the electric safety citation program as proposed fails to adopt any such limit. Rather, in direct contravention of the mandatory terms of Section 1702.5(a)(3), the Commission “requires Staff to levy penalties for violations in the maximum amount prescribed for penalties in [Public Utilities Code] Sections 2107 and 2108.”³⁵ This direction completely ignores and directly contravenes the Legislature’s instructions. At bare minimum, SDG&E submits the Commission should provide that the Commission Staff may assess a penalty “up to”, rather than equal to, the maximum amounts provided in Section 2107 and 2108. This would also remove the inconsistencies between the “required” imposition of the maximum fines found in Section 2107 and the discretion granted to the Commission Staff elsewhere that it “may” assess a penalty “on less than a daily basis” as otherwise provided in Section 2108.³⁶ Even so, SDG&E submits the electric safety citation program would fail to set the mandatory “administrative limit” on the level of monetary penalties that may be assessed by the Commission Staff. Without such a provision, the electric safety citation program would be defective as a matter of law.

The Legislature’s directions clearly distinguish enforcement actions instituted by the Commission, presumably for violations where the gravity of the offense and the culpability of the utility are relatively higher, from those pursued by the Commission Staff under the electric safety citation program: citations issued by the Commission Staff are subject to an administrative limit while enforcement actions initiated by the Commission itself are limited only by statute.³⁷ The Commission should act in accordance with these directions and adopt the requisite administrative limit on penalties assessed under the aegis of the electric safety citation program *prior to the program’s launch on or before January 1, 2015*.

³⁴ See Section 1702.5(a)(3), which provides, “The commission *shall* adopt an administrative limit on the amount of monetary penalty that may be set by commission staff.” (Emphasis added.)

³⁵ *Attachment B*, at p.B-5 (emphasis added).

³⁶ See *Attachment B*, at pp.B-5 to B-6.

³⁷ And, as argued above, SDG&E strongly believes that pursuit of a violation by the Commission Staff under the electric safety citation program should be considered as indicative of the level of prosecution faced by the utility, *i.e.*, that the Commission is thereby waiving its greater enforcement authorities in favor of a Commission Staff citation.

There are many parameters the Commission might consider in determining the appropriate limits on the penalties the Commission Staff might assess.³⁸ SDG&E submits the following recommendations regarding the nature of the parameters the Commission should consider here.

1. Limitation to Violations Posing a Demonstrable, Unreasonable Risk to the Public Safety

As discussed previously, SDG&E recommends that the electric safety citation program be limited to violations where the Commission Staff can demonstrate that there was an unreasonable risk to public safety warranting the issuance of a citation and assessment of penalties. This demonstration should be an essential part of the *prima facie* case the Commission Staff must make in issuing a citation and, in the event of an appeal by the electric utility, the Commission should require that the Commission Staff's demonstration be sufficient to prevail by a preponderance of the evidence.

2. Adoption of a Reasonable Statute of Limitations

Because the proposed electric safety citation program fails to address the timeliness required of the Commission Staff in the issuance of any citation other than to indicate "[c]itations may be issued for violations that have occurred both before and after the date of this Resolution,"³⁹ electric utilities are, apparently, at risk to citation and civil penalties without consideration of or due regard for any reasonable statute of limitations. SDG&E submits that the Commission should adopt a reasonable statute of limitations as part of the administrative limits placed on the authority of the Commission Staff to issue citations and assess penalties.⁴⁰

As a general matter, Code of Civil Procedure Section 340(b) provides an omnibus one-year statute of limitations applicable to actions brought "upon a statute for a ... penalty to the people" where no other

³⁸ Indeed, the Legislature has already provided specific instructions as to the matters the Commission Staff must consider in issuing a citation or assessing a penalty: the voluntary reporting and correction of a violation by the utility; the utility's prior history of violations; the gravity of the violation; and the degree of culpability attributable to the utility. Public Utilities Code Section 1702.5(a)(1). Accord, *Re Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, Decision 98-12-075 in Rulemaking 98-04-009, 84 CPUC2d 155, 186-190 (1998), where in addition to the foregoing the Commission enumerates other requirements such as: (a) the Commission Staff should also be sensitive to the finances of the utility; (b) fines assessed by the Commission Staff should strike a balance between the need for deterrence with the constitutional limitations on excessive fines and be evaluated from the perspective of the public interest; and (c) the Commission Staff should consider the role of precedent as instructive in determining how the safety record and conduct of the utility in any specific case compares with past cases of a similar background. Those guidelines are equally reasonable in the context of the electric safety citation program.

³⁹ See *Attachment B*, at p.B-2.

⁴⁰ It is among the oldest and most revered principles of procedural fairness that causes of action must be brought timely and should be barred if stale. As the Supreme Court held in one of its earliest sessions, a cause of action "brought at any distance of time [would be] utterly repugnant to the genius of our laws." *Adams v Woods*, 2 Cranch 336, 342 (1805). The Court more recently explained, "Just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost. In compelling circumstances, even wrongdoers are entitled to assume that their sins may be forgotten." *Wilson v Garcia*, 471 U.S. 261, 263 (1985).

express limitations are established by law. SDG&E submits the application of this one-year limitation would be appropriate and reasonable in the context of the proposed electric safety citation program.⁴¹

In evaluating the reasonableness of this one-year statute of limitations, the Commission should consider that, typically, the Commission Staff would become aware of violations by one of three means: (1) through the Commission Staff audit program where it would discover the existence of a violation on its own; (2) through a disclosure of the violation by the utility; and/or (3) from media and/or public reports, e.g., by law-enforcement or public-safety agencies, regarding actual harm to a person or property. In all likelihood, these methods of discovery will provide Commission Staff with timely notice of the violation within the proposed one-year statute of limitation and, for those relatively rare events where they do not, the Commission Staff could still consider whether the Commission should pursue an enforcement action under the Commission's larger authorities under the facts and circumstances at hand.⁴² SDG&E agrees that, as with all statutes of limitations, it would consistent with procedural fairness for the one-year limitation to be equitably tolled in the event (a) the violation could not reasonably have been discovered within the one-year period or (b) if the evidence indicated the electric utility or the utility's agents had concealed or otherwise prevented the discovery of the violation within the one-year period. Adoption of a statute of limitations should not be construed, by itself, to be sufficient to meet the requirements of Section 1702.5(a)(3), but would be at

⁴¹ The Commission has previously held this section barred the imposition of penalties for a utility's violation of Commission orders cured at least one year prior to the filing of a complaint. *Strawberry Property Owners Association v Conlin-Strawberry Water Co.*, Decision 99-11-044 in Case 95-01-038, January 20, 1995, 1999 Cal.PUC LEXIS 875, *9 to *10, but cf., *Carey v Pacific Gas & Electric Co.*, Decision 99-04-029 in Case 97-11-014, 85 CPUC2d 682 (1999), rejecting the relevance of the section to "administrative actions". In addition, the Commission has relied upon other instructive provisions of the Code of Civil Procedure for the purpose of determining "basic rules of civil procedure", including in the context of enforcement proceedings initiated by the Commission Staff where the cited utility asserted a defense based upon a statute of limitations found in the Public Utilities Code. See, e.g., *Opinion: Presiding Officer's Decision Authorizing Petition for Receiver and Ordering Reparations*, Decision 05-07-010 in Investigation 03-10-338, July 21, 2005, printed opinion at p.56.

⁴² SDG&E is not proposing that the one-year statute of limitations would bar the issuance of a citation for a continuing violation which had existed for more than one year, but only that the imposition of penalties for the period predating the year prior to the issuance of a citation be barred. Even in these cases, because each day of a continuing violation constitutes a separate offense, the potential penalty the Commission Staff might assess, in the absence of a dollar limit the Commission might place on the Commission Staff's citation authority, would be \$18,250,000, which is no trifle. Equally important, for violations which had been cured at least one year prior to its discovery by the Commission Staff and would therefore fall outside the citation program altogether, it would most likely be the case that no harm to a person or property occurred and, inferably, the violation did not pose an unreasonable risk to public safety. Even if the Commission Staff would want to pursue violations that had been corrected more than one year prior to their discovery (whether or not harm to a person or property occurred), e.g., to punish a pattern of behavior or some offense considered by the Commission Staff to be serious, the Commission Staff would still have other means to bring an enforcement action, e.g., by initiating an order instituting investigation before the Commission.

minimum instructive as to the reasonableness of any penalties that might be assessed by the Commission Staff through the electric safety citation program.

3. The Effect of Prompt Discovery, Remediation and Reporting

As required by Section 1702.5(a)(1), the Commission Staff must “take into account voluntary reporting of potential violations [and] voluntary removal or resolution efforts undertaken” by the electric utility in determining whether to issue a citation and/or assess a penalty. SDG&E submits this requirement should be clearly reflected in the penalties assessed by the Commission Staff. That is, the Commission Staff should be required to demonstrate the manner in which its proposed penalty was reduced or modified due to the voluntary reporting and/or remedial activities undertaken by the utility so that a reasonable person could in fact determine the effect of the utility’s actions in promptly discovering, correcting, and reporting the violation. These requirements and limitations should be considered and factor into the Commission’s determinations of the appropriate administrative limit on the level of monetary penalties the Commission Staff may assess pursuant to Section 1702.5(a)(3).

4. Explicit Administrative Limit on Penalties Assessed by the Commission Staff

At this point in time, SDG&E does not have a recommendation as to the explicit administrative limit on penalties which should be adopted in the electric safety citation program. SDG&E believes this is an appropriate matter for either (a) workshops where parties could discuss the factors relevant to the setting of such a limit or (b) evidentiary hearings where, at minimum, the Commission Staff would bear some burdens of demonstrating the reasonableness of the limit the Staff believes is necessary to serve the purposes of the electric safety citation program.

D. Other Considerations and Provisions

1. Consistency with Constitutional Principles of Due Process

As discussed in these Opening Comments, SDG&E believes the proposed program is unduly vague and fails to place any meaningful, substantive constraints on the prosecutorial discretion being conferred upon the Commission Staff. As written, the Commission Staff has sole and complete discretion to determine whether to issue citations and, when it does, the level of penalties which would be imposed upon facility owners and operators for any specific violation. In commenting on the companion gas-citation program adopted pursuant to Commission Resolution ALJ-274, the Sempra Utilities argued the broad discretion conferred upon the Commission’s Safety and Enforcement Division in that program raised constitutional due process issues; more specifically, the Sempra Utilities alleged the program violated their constitutional rights to procedural and substantive due process as a result of, collectively and individually, (a) the summary

nature of the process, (b) the unlimited authority of the Commission Staff to impose potentially significant penalties on bases undefined by Resolution ALJ-274, and (c) the absence of any prior approval of penalties by an impartial adjudicatory tribunal. Resolution ALJ-274 dismissed these arguments on the ground that they were “too hypothetical and speculative”. In rejecting the Sempra Utilities’ comments, the Commission indicated the Commission Staff could be presumed to exercise its discretion reasonably and the Commission could be expected to review penalties, if appealed, fairly.

SDG&E is concerned the electric safety citation program as proposed bears the same ambiguities and potential for overzealous or inconsistent application as did Resolution ALJ-274. Notwithstanding the Commission’s prior admonition that the citation program should be judged by its operation and not its potential infirmities, SDG&E is compelled to raise the same due process issues in the context of the instant electric safety citation program. SDG&E raises its prior concerns, among other reasons, to remind the Commission of its stated commitment to administer the citation program reasonably, fairly and in accordance with the principles of due process. Adoption of the recommendations and proposals described in these Opening Comments would go a long way towards ensuring by rule, and not merely by promise, that the administration of the electric safety citation program will comport with constitutional requirements and respect the rights of potential citation recipients.

2. Application to Joint Use Facilities

Unlike the previously adopted gas safety citation program, the electric safety citation program will be applied to facilities used in common by more than one entity, *i.e.*, it is frequently the case that overhead electrical structures will be used to support the facilities of an electric utility and one or more communications infrastructure providers simultaneously. SDG&E submits that Public Utilities Code Section 1702.5(a)(1), which requires the Commission Staff to consider the electric utility’s “degree of culpability” for any threat to the public safety in issuing citations and assessing penalties, is relevant and extremely important in this regard. SDG&E submits the electric safety citation program should clearly describe the manner in which the utility’s culpability for a violation will be evaluated where joint-use facilities are involved.

Under Rule 18.B of General Order 95, a facility owner or operator conducting an inspection of its facilities, upon the discovery of a safety hazard posed by the facilities of another facility owner or operator, must provide notice to that other owner/operator within ten (10) days of the discovery of the safety hazard. General Order 95 does not, however, provide any authorities or mechanisms by which the inspecting owner/operator may require the other entity to abate or mitigate safety hazards. Generally, the Commission has been content to leave these matters to the parties involved – that is, the Commission has indicated that

the operational and financial responsibilities for making repairs or remediating violations should be governed by private contracts and, if disputed, resolved in civil court.⁴³ For obvious reasons, SDG&E finds the omission of any restrictions placed on its potential liability for penalties related to nonconforming facilities owned and operated by another party but attached to SDG&E's facilities to be unjust and unreasonable. Given that federal law and Commission policies and rules prohibit SDG&E from denying a qualified communications infrastructure provider reasonable access to its facilities, SDG&E submits it is incumbent on the Commission to clarify that SDG&E will not be subject to citation or penalties for the safety hazards created by the equipment attached to SDG&E's facilities but owned by another.

3. Informal Meet-and-Confer Process

As a matter of the first order, SDG&E believes that collaboration between the Commission, the Commission Staff and those entities subject to the Commission's jurisdiction is absolutely essential to the effectiveness of the Commission's safety program. Embedding attributes into the citation program that will avoid discouraging collaboration and cooperation among the affected parties will assure the free exchange of ideas and information between the Commission, the Commission Staff and SDG&E will not be inhibited or constrained in any way. SDG&E considers it axiomatic that the citation program will never be as effective a tool in reaching safety-related goals and objectives as the professional exchanges and interactions that form the bases of peer norms and common objectives. In recognition of this simple fact, SDG&E recommends the addition of an initial, informal meet-and-confer process pursuant to which the Commission Staff and the utility would meet prior to the issuance of any citation.⁴⁴

SDG&E fully respects the mission of Commission Staff and officials responsible for protecting public safety. SDG&E's officers and operating personnel regularly and routinely engage with the Commission Safety and Enforcement Division Staff and find these informal exchanges to be invaluable to both sides of the conversation. So as to preclude any chilling effect the citation program might otherwise impose on the informal processes upon which industry and the Commission Staff rely in promoting public safety, SDG&E recommends the electric safety citation program be amended to add an informal meet-and-confer process pursuant to which the Commission Staff, prior to the issuance of a citation, would issue a written notice to the electric utility setting the date for an informal meeting where the Commission Staff would identify the violations the Staff believes warrant citation and the manner in and extent to which the violation poses a

⁴³ See Commission Resolution E-4281, August 4, 2009, at pp.4, 7 (Finding of Fact 6), rejecting SDG&E Advice Letter 2101-E.

⁴⁴ SDG&E agrees the issuance of a notice by the Commission Staff setting the date for this conference would be sufficient to toll the running of SDG&E's recommended one-year statute of limitations.

demonstrable and unreasonable risk to public safety. SDG&E does not intend that this meet-and-confer process would waive any authority or discretion held by the Commission Staff to issue a citation or assess penalties, but rather proposes this informal process to serve the important purpose of allowing the electric utilities at imminent risk of citation to understand the facts and reasoning behind the Commission Staff's concerns early and respond to those concerns without delay. If this precursor discussion clarifies facts and circumstances related to the issuance or nature of a citation, all the better, but SDG&E submits the preservation of the industry-Staff collaboration at such low costs to both sides would provide enormous benefits and should be an integral part of the citation program.⁴⁵

As a final matter for the Commission to consider, SDG&E frequently finds that "notices of violations" issued under the current inspection program by the Commission's Safety and Enforcement Division are not always clear as to the facts and circumstances prompting the issuance of these notices and/or the nature of the alleged violation. In many cases, the meet-and-confer step has been useful in clarifying and resolving factual issues and/or defining the nature of the violations prompting the issuance of notices of violation. This information can be extremely useful in determining the manner in which the violation can be cured and the appropriate priority that should be assigned to implementing the most effective remedial measures. So as to bring these benefits to the electric safety citation program, SDG&E recommends the adoption of a meet-and-confer step as an essential and early step in the process.

Respectfully submitted,

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⁴⁵ The informal meet-and-confer step contemplated by SDG&E is described at length in the gas-citation program standard operating procedure observed by the Commission Safety and Enforcement Division. The process used in that program should be equally appropriate to the electric safety citation program, requiring few, if any, changes in the crossover.