



**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
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**REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U-902-E)  
RE THE COMMISSION'S PROPOSED ELECTRIC SAFETY CITATION PROGRAM**

Pursuant to Ordering Paragraph 9 of the Commission's order instituting the above-captioned rulemaking,<sup>1</sup> Respondent San Diego Gas & Electric Company ("SDG&E") files these reply comments to the *Opening Comments of the Energy Producers and Users Coalition on the Proposed Electric Safety Citation Program*.<sup>2</sup> SDG&E submits the recommendations found in those comments are so outrageously beyond the scope of the legislation prompting the instant rulemaking and the rulemaking itself that the comments should be wholly disregarded. In addition, the Commission should make clear in a revised Scoping Memo that parties are prohibited from raising the Coalition's recommendations in this proceeding. The prohibition sought by SDG&E will serve the purposes of administrative economy and efficiency by avoiding any further waste of the resources of the Commission and the other parties on the patently ridiculous extremes described in the Coalition's filing.

Although the Coalition appears to be aware that this proceeding will result in the implementation of Public Utilities Code Section 1702.5,<sup>3</sup> the gist of the Coalition's position is that the citation program described and limited by that statute should be extended to matters well beyond those contemplated by the Legislature and the Commission. More specifically, the Coalition goads the Commission and its Staff to "investigate and subject to potential citation:

- "Any outage that directly or indirectly results in harm to persons or property;
- "Repeated outages on the same circuit; and
- "Outages occurring on circuits serving essential customers."<sup>4</sup>

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<sup>1</sup> See *Order Instituting Rulemaking on the Commission's Natural Gas and Electric Safety Citation Programs* ("Order Instituting Rulemaking"), Rulemaking 14-05-015, May 15, 2014, printed opinion at p.22; see also, p.12.

<sup>2</sup> *Opening Comments of the Energy Producers and Users Coalition on the Proposed Electric Safety Citation Program*, Rulemaking 14-05-015, June 20, 2014. SDG&E will refer to this party as the "Coalition" and its filing as the "Coalition Comments".

<sup>3</sup> *Coalition Comments*, at p.1.

<sup>4</sup> *Coalition Comments*, at p.2 (emphases added).

And, as if the extension of civil penalties to “outages” is not sufficiently vague or unconstrained, the Coalition further adds the Commission “should also consider as grounds for citation violations of tariffs and industry standards.”<sup>5</sup>

Throughout its opening comments, SDG&E stressed that the terms of the electric citation program as described in Public Utilities Code Section 1702.5 and as proposed by the *Order Instituting Rulemaking* were unduly overbroad and potentially violative of constitutional restraints on the imposition of administrative penalties.<sup>6</sup> The *Coalition Comments* serve the purpose of demonstrating SDG&E’s point: in the absence of clear definitions provided to the Commission Staff, electric utilities could face investigations, citations and penalties for a limitless range of alleged “violations” justified by the mere mention of the word “safety” and, now, by the Coalition’s terms, “outages” consisting of even the shortest of “momentary” flickers caused by voltage or frequency fluctuations.

The folly and fancy of the Coalition’s recommendation to place electric utilities at risk to citation and fines for lapses in reliability, power-quality and outages is not a matter of hyperbole. Rather, they are clear from the matters the Coalition includes in its virtually limitless and vindictive parade of “crimes” for which utilities must be punished:

- “A utility’s failure to provide reliable, *quality* electric power service”;<sup>7</sup>
- “Unplanned power outages”;<sup>8</sup>
- “*Even momentary* excessive deviations in voltage and frequency”;<sup>9</sup>

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<sup>5</sup> *Ibid.*

<sup>6</sup> See *Opening Comments of San Diego Gas & Electric Company (U-902-E) re the Commission’s Proposed Electric Safety Citation Program*, Rulemaking 14-05-013, June 20, 2014, e.g., at pp.1, 3-10.

<sup>7</sup> *Coalition Comments*, at p.5 (emphasis added).

<sup>8</sup> *Coalition Comments*, at p.5.

<sup>9</sup> *Ibid.* (emphasis added). SDG&E is of two minds here. On the one hand, none of the members of the Coalition is an SDG&E customer and the Coalition’s issues are apparently spawned by their experiences from elsewhere. (See *Motion for Party Status of the Energy Producers and Users Coalition*, Rulemaking 14-05-013, June 20, 2014, at p.2.) Unfortunately, the Coalition does not limit the “encouragement” that might be provided to its utilities to do better using the vehicles of investigations, citations and penalties – rather, the Coalition proposes to have all utilities exposed to penalties for lapses in service reliability and power quality. SDG&E cannot help but object to being made part of a solution where it is no part of the Coalition’s problem. On the other hand, as discussed further below, SDG&E strenuously objects to the notion that the occurrence of “even momentary” voltage and frequency fluctuations should prompt a mandatory investigation by the Commission Staff and, in some instances, citations, fines and penalties. In serving 1.4 million electric customers, SDG&E would be exposed to investigation, and perhaps sanctions, for a failure to provide “perfect” service across some 2.65 quadrillion moments per year, *i.e.*, 1.4 million customers x 365 days per year x 24 hours per day x 60 minutes per hour x 60 seconds per minute x 60 cycles per second. To state the obvious, such a proposition is simply ludicrous. The arithmetic suggests the Coalition’s point would be even more absurd in the cases of Pacific Gas & Electric Company and Southern California Edison Company by several orders of magnitude.

- “Affect[ing] the operation of critical medical, heating and cooling devices for residential customers”;<sup>10</sup>
- Affecting the “function” of “public transit systems and regional traffic grids” by failing to provide “near-100% reliability”;<sup>11</sup>
- “Delayed return-to-service for planned outages”;<sup>12</sup>
- “Otherwise detrimentally impact[ing] the safety and security of customer premises and property”;<sup>13</sup>
- “Rais[ing] ... safety and environmental implications for industrial sites”;<sup>14</sup>
- “The emergency shutdown of a refinery which could result in market impacts, environmental consequences, mechanical damage or a potential safety incident”;<sup>15</sup> and,
- “Unplanned service outages at oilfields ... harm[ing] people or property and ... lead[ing] to supply disruptions.”<sup>16</sup>

Given its membership, SDG&E suspects the Coalition’s real interests are limited to the final few “violations”, with the others thrown in to wrap the Coalition’s narrow economic interests with an aura of the public interest.<sup>17</sup> But even if the Commission were moved to address the Coalition’s interests, the Coalition itself indicates the effects of “service disruptions ... on property and safety consequences on customer premises” can and will be addressed in a more relevant venue, Commission Rulemaking 13-11-006, which the Coalition describes as addressing revisions to “the rate case plan to incorporate safety and reliability risk-based decision making.”<sup>18</sup> SDG&E submits the Commission should address the Coalition’s issues in that other venue and not complicate the already difficult issues in this matter. By returning the Coalition’s issues to a more appropriate place, the Commission may, in a more orderly way, contemplate whether, and if so, what, power-quality regulations might and should be adopted for electric utilities. Following the resolution of those issues, then and only then the Commission should decide whether to enforce those regulations under the aegis of the electric citation program.

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<sup>10</sup> *Ibid.* (emphasis added).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Id.*, at p.6.

<sup>17</sup> *Id.*, at p.1, note 1.

<sup>18</sup> See *Motion for Party Status of the Energy Producers and Users Coalition*, *supra*, at p.2.

The issues the Coalition attempts to raise in this rulemaking are clearly and demonstrably out of place. They bring their own complexities which will require the parties and Commission to divert undue attention to them. For instance, as can be clearly inferred from the Coalition's specification of utility failures to prevent "momentary" voltage and frequency variations which, arguably, "indirectly" cause harm to persons or property, the Coalition's members themselves might, equally arguably, more "directly" be the cause of such harms, having failed to take adequate precautions to avert or mitigate those harms, for example, by installing backup generation (as in the case for the "critical" medical facilities mentioned by the Coalition) or power-quality technologies (as in the case of prudent electric customers seeking to protect their ultra-sensitive equipment). In addition, the Coalition's comments could mislead the Commission into thinking power-quality issues are a "one-way" issue. To the contrary, customer equipment can be, and often is, the cause of voltage and frequency disturbances on the utility system. Induction loads can cause utility power factors to drop below utility standards. The start-up of large electric motors which are not properly connected or mitigated can cause voltage sags on utility circuits. SDG&E submits the Coalition's invitation to place the onus, and civil penalties to boot, on the electric utility for failures to provide "perfect" service necessarily requires the Commission to consider the extenuating circumstances relevant to the utility's culpability for power-quality and reliability issues. The Commission simply needn't and shouldn't go there.<sup>19</sup> The Commission should not, *at the juncture of launching* the electric citation program, take on the thorny issues of liability and proximate fault implicated by the Coalition's allegations and recommendations.

As noted previously, SDG&E has urged the Commission to adopt reasonable, comprehensible parameters governing the matters subject to citation and penalty. The Coalition's recommendation to include power-quality, outage and reliability failures as punishable violations moves in exactly the opposite direction from the relevant legislation, reason and overriding constitutional requirements. The only guidance provided by the Coalition as to when the Commission should invoke the "express requirement" of

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<sup>19</sup> In determining the relevance and cogency of the Coalition's comments, the Commission should also consider that it has previously addressed power-quality issues of the type raised by the Coalition. SDG&E's tariffs describe the specifications, level, quality, and characteristics of service provided by a utility in terms which would defy prosecution for the "crimes" enumerated by the Coalition. SDG&E's tariffs bear reference to the provision of service "under normal load conditions" of "approximately 60-cycle frequency" and within "voltage ranges", and specifically allow for "infrequent momentary fluctuations of a short duration". (See SDG&E Tariffs, Electric Rule 2 (Description of Service).) Additionally, SDG&E's tariffs clearly place the responsibility of installing, owning and maintaining voltage regulators on the customer and not the utility, and further require customers to take measures to protect their equipment as well as utility facilities. (See, e.g., SDG&E Tariffs, Electric Rule 2, and Schedule TOU-A, Special Condition 15, and SDG&E Tariff Schedule AL-TOU, Special Condition 3.) These are well-settled matters and the Coalition brings an improper collateral attack on the longstanding definitions of and standards for utility services.

“an investigation of any outages”<sup>20</sup> is found in two places, namely, the Coalition appears to direct its umbrage at “excessive” momentary voltage and frequency variations and/or when “[s]tandards, such as ANSI C84.1 addressing service voltage deviations, ... defining prudent electric utility practice” are violated.<sup>21</sup> These vague and ambiguous “limitations” beg further, extensive discussion as to their ultimate meaning and would only delay the Commission from meeting the task of adopting an electric citation program by January 1, 2015.

Finally, SDG&E submits that the Coalition’s trite pass at providing legal grounds for its ludicrous recommendations is based on the mere assertion of the Commission’s “plenary authority over the public utilities.”<sup>22</sup> In the first instance, it is not the Commission but the Legislature which possesses the “plenary authority” to determine what is and is not cognate and germane to the regulation of public utilities.<sup>23</sup> The Coalition’s reliance on Public Utilities Code Section 702 to justify excursions beyond the authorities granted to the Commission by the Legislature is misplaced – that section has nothing to do with the expanse of the Commission’s powers and jurisdiction but rather describes the obligations of public utilities to obey the Commission and the derivative duty owed by the officers, agents and employees of public utilities to comply with those obligations.<sup>24</sup> In terms of the Commission’s authorities, the Legislature here has specifically granted the Commission authority to “develop and implement a safety enforcement program applicable to ... electrical corporations ... designed to improve ... electrical system safety.”<sup>25</sup> As SDG&E noted in its opening comments, these instructions are vague and ambiguous by constitutional standards, but the Commission may yet save the statute from its potentially fatal vagueness and ambiguity by meeting the requirements of due process through artful and precise interpretation.<sup>26</sup> The Coalition, in contrast, would exacerbate the flaws in the statute by extending its terms to all outages and, by the Coalition’s own

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<sup>20</sup> See *Coalition Comments*, at p.7.

<sup>21</sup> See *Coalition Comments*, at pp. 5, 6 at note 12.

<sup>22</sup> See *Coalition Comments*, at p.2.

<sup>23</sup> See *California Constitution*, Article XII, Sections 3 and 5.

<sup>24</sup> The Coalition might have more appropriately invoked and referenced the Legislature’s permissions allowing the Commission “to do all things ... necessary and convenient” in the exercise of the Commission’s lawful authorities found in Public Utilities Code Section 701, but did not. Even if it had, the Coalition’s statutory basis, *i.e.*, the Coalition’s citation to Public Utilities Code Section 451 and by imputation Public Utilities Code Section 701, for extending the electric citation program beyond terms found anywhere in Public Utilities Code Section 1702.5 would still be insufficient when compared to the apposite provisions of the federal and state constitutions. See *United States Constitution*, Fifth, Eighth and Fourteenth Amendments; also, *California Constitution*, Article 1, Sections 1, 7(a), 15, and 17, and Article XII, Sections 2 and 5.

<sup>25</sup> See Public Utilities Code Section 1702.5(a).

<sup>26</sup> See *Opening Comments of San Diego Gas & Electric Company (U-902-E) re the Commission’s Proposed Electric Safety Citation Program*, *supra*, at p.5, citing *Musser v Utah*, 333 U.S. 95, 96-97 (1947).

