

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ- 377
Administrative Law Judge Division
April 16, 2020

RESOLUTION

RESOLUTION ALJ-377. Modifies and Makes Permanent the Citation Appellate Rules and General Order 156 Appellate Rules

SUMMARY

This Resolution modifies Resolution ALJ-299, which established the Citation Appellate Rules and General Order (GO) 156 Appellate Rules (Citation Appellate Rules), a pilot program that requires all citation appeals, revocation appeals¹ and GO 156 appeals² to be filed with the Commission's Docket Office. This resolution also makes the Citation Appellate Rules permanent, as opposed to a pilot program. Filing these appeals provides that all interested parties, Commission Staff, reviewing courts and the public at large will have a central location from which to access the record of citation appeals and GO 156 appeals.

The principal modification to the Citation Appellate Rules made here is to establish an Expedited Citation Appeal Procedure for citation appeals where the total citation amount is at or below the jurisdictional limit of the Small Claims Court in California. Other modifications to these rules: (a) increase the time for Staff to file a compliance filing (increase from seven business days to 14 calendar days); (b) modify the default burden of proof; and (c) update Appendix B to Resolution ALJ-299 with the key

¹ Under some of the citation programs described in Appendix B, the citation may revoke a carrier's license. (*See e.g.*, Resolution TL-19108.) We also refer to these programs in this resolution as "citation programs."

² General Order 156 concerns the rules governing the development of programs to increase participation of women, minority, disabled veteran and lesbian, gay, bisexual and transgender (LGBT) business enterprises in procurement of contracts from utilities as required by Pub. Util. Code §§ 8281-8286.

appellate provisions for each citation program and GO 156, including those programs enacted since Resolution ALJ-299 issued. The modifications to Appendix B also correct any inadvertent errors in Resolution ALJ-299.

This Resolution supercedes Resolution ALJ-299. The adopted Citation Appellate Rules are set forth in Appendix A to this resolution and are applicable on July 1, 2020. Appendix B to this resolution summarizes the key appellate provisions for each citation program and GO 156. For these key appellate provisions, Appendix B also indicates (for each GO and resolution) which sections of the GOs or resolutions are changed by this program.

1. BACKGROUND

A. Commission Implementation of Citation Programs

The Commission has broad regulatory authority, as set forth in Article XII of the California Constitution and § 701 of the California Public Utilities (Pub. Util.) Code.³ Section 701 authorizes the Commission to “supervise and regulate every public utility in the State . . . and do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”

As mandated in § 702:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

Pursuant to § 451 each public utility in California must:

Furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities, . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

³ All code citations are to the California Public Utilities Code unless otherwise stated.

Indeed, the Commission has stated that “[t]he duty to furnish and maintain safe equipment and facilities is paramount for all California public utilities.”⁴

Pursuant to § 2101, the Commission is directed “to see that the provisions of the Constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected . . .”

Existing law, such as § 7, allows the Commission to delegate certain tasks to Commission Staff. The Commission may lawfully delegate to its Staff the performance of certain functions, including the investigation of facts preliminary to agency action and the assessment of specific penalties for certain types of violations.⁵ The primary purpose of an effective enforcement program should be to deter misbehavior or illegal conduct by utilities and other entities subject to Commission jurisdiction, thereby ensuring that both the employees of the utility and the public it serves are properly protected from the inherent hazards of providing utility services.

Our jurisdiction to create citation programs is well-established. We have adopted citation programs in many areas. *See* Commission Resolutions ALJ-187 (appeal procedures for household goods carriers, charter party carriers, and passenger stage corporations); E-4195 (resource adequacy); ROSB-002 (transportation/railroad); UEB-002 (telecommunications); USRB-001 (propane); and W-4799 (water and sewer). More recently, we established additional citation programs in Rulemaking (R.) 14-05-013 (electric and gas citation programs); TL-19102 (household goods carriers); E-4550 (failure to comply with Permits to Construct or Certifications of Public Convenience and Necessity issued pursuant to the California Environmental Quality Act); TL-19108 (charter party carriers); SED ST-163 (rail transit); E-4720 (Renewables Portfolio Standard); SED-3 (communications facilities); T-17601 (telecommunications carriers); and UEB-003 (core transport agent). For a complete list of the Commission’s current citation programs and how this appellate program interacts with them, *see* Appendix B attached to this resolution.

B. The Citation Appellate Rules and Request for Comments on Proposed Revisions

In furtherance of due process, each citation program permits the cited entity to appeal the issuance of a particular citation. These citation appeals are heard by an

⁴ Decision (D.) 11-06-017 at 16.

⁵ D.09-05-020 at 8.

Administrative Law Judge (Judge). Prior to the enactment of Resolution ALJ-299, these citation appeals were not filed with the Commission’s Docket Office so there was no electronic docket card or central electronic location by which to access the citation appellate record. A similar situation existed with respect to GO 156 appeals, except the Clearinghouse issues the initial decision that is subject to appeal.⁶

Resolution ALJ-299 required all citation appeals and GO 156 appeals to be filed with the Commission’s Docket Office so as to establish a docket card and service list for each appeal. Interested parties, Commission Staff, reviewing courts and the public at large will have a central location from which to access the record of citation appeals and GO 156 appeals. These appellate records are now more easily accessible, thus enhancing due process in these expeditious proceedings. Resolution ALJ-299 also enacted several procedural appellate rules and harmonized others to further due process and administrative efficiency in processing citation appeals and GO 156 appeals.

Resolution ALJ-299 stated that the ALJ Division will monitor the success of the pilot program established by Resolution ALJ-299, and depending upon the initial results of the new procedure, and any additional needs that surface, the Commission might consider an expanded program or related rules changes in the future.

Since the enactment of Resolution ALJ-299 in early 2015⁷ until December 31, 2019, the Commission has had 65 citation appeals filed, and has closed 52 of these appeals. The chart below provides useful information for the average time a proceeding has remained open.

	Appeals Filed	Appeals Closed	Range of Days Open	Average Days Open (total cases)
2015	18	18	45-519	163
2016	10	10	83-220	148
2017	6	6	107-287	145
2018	5	3	101-300	300
2019	26	15	50-325	132

⁶ GO 156 § 1.3.22 defines Clearinghouse as “a Commission-supervised program that shall conduct WMLGBTBE verifications and maintain a database of WMDVLGBTBEs [women, minority, disabled veteran, and lesbian, gay, bisexual or transgender person-owned businesses] for the use of utilities and the Commission.”

⁷ The Citation Appellate Rules were enacted on June 26, 2014, and became applicable on January 1, 2015.

On February 5, 2019, Chief Judge Simon sent a letter to the preliminary service list for Resolution ALJ-299, as supplemented by other service lists,⁸ soliciting comments on proposed revisions to Resolution ALJ-299. The letter advised that after the initial round of comments, the mailing list of the Commission's Rules of Practice and Procedure would be utilized as the service list for this modification process. Interested persons, both those submitting comments in response to the letter, as well as other interested persons, were advised that if they wished to receive further notice of this process, they should sign up to be on the mailing list for the Commission's Rules of Practice and Procedure.

<http://www.cpuc.ca.gov/General.aspx?id=1620>

The issues the letter set forth for comment are set out below.

- A. Establish an expedited appeals process for citation appeals where the total citation amount is at or below the jurisdictional limit of the Small Claims Court in California. (New proposed Rule 6.1.)
- B. Modify the amount of time for Staff to file the Compliance Filing from seven business days to 14 calendar days. (Citation Appellate Rule 7.)
- C. Modify the default burden of proof. (Citation Appellate Rule 11.)

⁸ The preliminary service list of this proceeding consisted of those who commented on or requested to be placed on the service list of Resolution ALJ-299, the State Clearinghouse, as well as the service lists of any subsequent citation programs that the Commission has established since the enactment of Resolution ALJ-299, or any citation or revocation programs which Resolution ALJ-299 inadvertently omitted. These service lists include the service lists for R.14-05-013 (the electric and gas citation programs); Resolution SED ST-163 dated December 18, 2014 (rail transit); Resolution E-4720 dated August 27, 2015 (Renewables Portfolio Standard); Resolution SED-3 dated December 1, 2016 (communications facilities); Resolution T-17601 dated June 21, 2018 (telecommunications carriers); and Resolution UEB-003 dated October 25, 2018 (core transport agent). In addition, Resolution ALJ-299 inadvertently omitted citing to updates to the Resource Adequacy Program by means of D.10-06-002 and D.11-06-002 in R.09-10-032, and Resolution TL-18336 dated May 23, 1990 (passenger and property carriers). Therefore, the service lists for these two rulemakings and the resolution were served. Several citation programs which preceded and are cited in Resolution CE 2-92 (CE 1-86, CE 9-86, CE 11-86, and CE 10-90) were also inadvertently omitted, and therefore two industry transportation organizations (the California Bus Association and the Greater California Livery Association) as well as the service list for the TNC (Transportation Network Companies) Rulemaking, R.12-12-011 were served. The letter was also served on the service list for R.12-11-005 concerning Resolution E-4887 (violations of the Self-Generation Incentive Program rules), and the service list for the Commission's Rules of Practice and Procedure.

- D. Whether to make any further modifications to Resolution ALJ-299 before making the Citation Appellate Rules permanent.
- E. Miscellaneous: Updating Appendix B with the specifics of the citation programs that have issued since the Commission enacted Resolution ALJ-299, or which were inadvertently omitted. Appendix B will also reflect any modifications to Resolution ALJ-299 which are adopted.

The letter stated that a new draft resolution modifying Resolution ALJ-299 would issue following the receipt of comments, and interested persons also would have an opportunity to comment on that draft resolution before the Commission considered it on its agenda. The following interested persons responded to the proposed modifications in Chief Judge Simon's letter: the Commission's Communications Division Staff and Legal Division (CD); the law firm of Goodin, MacBride, Squeri & Day (MacBride); the Joint Investor Owned Utilities (Joint IOUs)⁹; and the Commission's Transportation and Enforcement Branch (TEB). We integrate interested persons' responses in the discussion set forth below.

2. INTERPLAY BETWEEN THIS RESOLUTION AND THE EXISTING AND FUTURE CITATION PROGRAMS OR GO 156

Prior to discussing the modifications to the Citation Appellate Rules, it is useful to understand how these rules interact with existing and future citation programs or GO 156. Many of the existing GOs and resolutions have appellate rules; most address similar topics but not all the rules are consistent in content. The pilot Citation Appellate Rules adopted by Resolution ALJ-299 strove for consistency among the rules to the extent practicable. The pilot program rules also enacted several new procedural appellate rules and harmonized others to further due process and administrative consistency. To the extent the pilot program rules superseded an appellate provision in an existing citation GO or resolution, or in GO 156, Appendix B to the resolution so stated. Resolution ALJ-299 also stated when the Commission was standardizing an appellate rule among all GOs and resolutions or adopting a new rule not present in the existing GOs and resolutions.

The modified Citation Appellate Rules adopted today are to be read together with the existing citation programs and GO 156. Appendix B, which is adopted by this resolution, summarizes key existing appellate provisions for each citation program and GO 156. For these key appellate provisions, Appendix B also indicates (for each GO

⁹ Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure (Rules of Practice and Procedure), Southern California Edison Company (Edison) submitted comments on behalf of itself, Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E).

and resolution) which sections of the GOs or resolutions are changed by the Citation Appellate Rules. If the Commission establishes new citation programs, these Citation Appellate Rules, or their successor, are also applicable to the new citation programs.

We now turn to a discussion of the specific modifications to the Citation Appellate Rules adopted by this resolution.

3. EXPEDITED CITATION APPEAL PROCEDURE

A. The Proposal

The Citation Appellate Rules apply to all citation appeals issued to entities subject to the Commission's jurisdiction. However, based on the past several years of experience, some of the smaller entities the Commission regulates appeal the citation not to contest it, but because they wish to make a payment plan. Furthermore, these smaller entities are sometimes unrepresented by counsel, making it challenging for them easily to comply with some of the Citation Appellate Rules.

The proposal adds Rule 6.1 to the Citation Appellate Rules to provide utilities with a more streamlined process by which to appeal the monetarily smaller citations. This procedure would be similar to the Expedited Complaint Procedure currently in place at this Commission¹⁰ and would apply to citations at or below the jurisdictional limit of the California Small Claims Court. Under the proposed expedited procedure, no party to these expedited citation appeals would be represented by counsel, and the expedited procedure would not apply to license revocation proceedings, because these proceedings fundamentally could affect continuation of appellant's operations. A hearing would occur without a court reporter, and separately stated findings of fact and conclusions of law would not be made, although the resolution addressing the appeal may set forth a brief summary of the facts. The Judge would have the authority to discontinue the expedited procedure when the public interest so required (such as if appellant wished to opt out of the expedited procedure and proceed under the formal Citation Appellate Rules). Additionally, the notice of appeal would state the amount of the citation.

B. Responses to the Proposal

The Commission's TEB and MacBride commented on this proposed rule. TEB supports an Expedited Citation Appeal Procedure for the smaller citations. TEB notes that in 2018, it issued 106 citations with fines ranging between \$1,000 and \$20,000, the highest fine amount delegated to TEB by Resolution CE 2-92. The median fine was \$3,000 and

¹⁰ See Rule 4.6 of the Rules of Practice and Procedure.

the bulk of TEB's citations went to passenger carriers. TEB recommends that the Expedited Citation Appeal Procedure recognize that the Commission should not hold the same expectations for an appeal filed by a one or two person limousine company as one filed by a billion-dollar utility, and that the expedited procedure should not be so complicated as to discourage a carrier from seeking due process.

TEB recommends clarifying proposed Rule 6.1(a), which refers to "...the jurisdictional limit of the small claims court, as referenced in Public Utilities Code § 1702.1," advocating that the rule be more precise, since § 1702.1 refers to two separate California Code of Civil Procedure (CCP) code sections. TEB recommends the Commission use the \$10,000 limit set forth in CCP § 116.221, rather than the \$5,000 limit in CCP § 116.220(a)(1). TEB states that fines above \$10,000 are usually reserved for egregious violators, so that the \$10,000 limit is more appropriate for the Commission's expedited procedure.

TEB also points out that under the proposed Expedited Citation Appeal Procedure, a hearing would be held without a court reporter, no findings of fact or conclusions of law are required, and the parties have the right to apply for rehearing. TEB queries upon what basis an application for rehearing can be made if there is not a full record.

MacBride argues that the proposed Expedited Citation Appeal Procedure rests on somewhat tenuous legal grounds, and urges the Commission to ensure the modifications recognize existing statutory requirements. MacBride states that while the proposed Expedited Citation Appeal Procedure, which embraces many of the features of the Expedited Complaint Procedure enacted by the Legislature, may make sense from a practical perspective, it lacks a comparable statutory mandate. Specifically, MacBride argues that the following proposed Expedited Citation Appeal Procedures are contrary to statute: elimination of findings of fact; participation without an attorney (the comments also question whether the cited authority can be represented by a non-attorney under the expedited procedure); and the lack of transcripts. MacBride recommends that the expedited procedure be "opt-in" for the appellant, but adds that it is unclear if an "opt-in" procedure remedies the perceived statutory deficiencies. MacBride also argues that the \$5,000 limit set forth in CCP § 116.220(a)(1) is the appropriate limit for this expedited procedure.

C. Adopted Rule

In response to comments, we modify proposal for Rule 6.1(a) as follows.

We retain the requirement that citation appeals of a certain dollar value are classified as expedited citation appeals, subject to Rule 6.1 concerning the Expedited Citation Appeal Procedure. However, we clarify that appellant may opt out of the expedited procedure at any time up until the first day of evidentiary hearings before the first witness is sworn in. Because of the expedited nature of the process, there may not be a hearing prior to the evidentiary hearings, and an appellant should have adequate time to gain an understanding of the expedited procedure and opt out of it if desired. Furthermore, the Judge will have the discretion to remove the proceeding from the expedited procedure at any time prior to filing a resolution addressing the expedited citation appeal. We believe these two provisions provide an appropriate balance of a timely resolution of the proceeding and due process concerns.

We also modify the proposed rule to require that resolutions resolving the expedited citation appeal contain findings of fact and conclusions of law. Because there is no court reporter in these appeals, the findings and conclusions will assist the parties to more clearly understand the basis of the decision.

We also clarify that parties to the Expedited Citation Appeal Procedure cannot be represented by an attorney or other representative. That is, they must be self-represented. If the parties wish to have representation, they should request that the proceeding be removed from the expedited procedure.

We decline to modify the proposed rule to further specify a dollar threshold as suggested by TEB, but clarify how we will apply the rule. Proposed Rules 6.1(a), which language we adopt, states that the Expedited Citation Appeal Procedure applies to citation appeals where the total citation amount does not exceed the jurisdictional limit of the small claims court, as referenced by § 1702.1.

Section 1702.1 applies to an analogous procedure to this one, namely the Commission's expedited complaint procedure. In § 1702.1, the Legislature stated that the expedited complaint procedure should apply to the smaller complaints "when the amount of money claimed does not exceed the jurisdictional limit of the small claims court as set forth in subdivision (a) of § 116.220 or § 116.221 of the Code of Civil Procedure [CCP]." [emphasis added.] CCP § 116.220 (a) currently has a dollar limit of \$5,000. CCP § 116.221 currently has a dollar limit of \$10,000 for natural persons (as opposed to corporations) bringing a small claims court case.¹¹

¹¹ The Legislature could change these amounts in the future.

Although we do not modify the proposed rule, we clarify that we will interpret Rule 6.1 as we do in expedited complaints before the Commission. Expedited complaints generally involve natural persons; therefore, the Commission applies the statutory limit set forth in CCP § 116.221 (currently \$10,000) to an expedited complaint. For consistency with the expedited complaint procedure, and to eliminate potential confusion and ambiguity, we will apply a similar limit here. This limit is also appropriate because smaller citations often involve individual persons either on their own or “doing business as” an entity. This interpretation is also reasonable because TEB’s statistics indicate that fines above \$10,000 are usually reserved for the egregious violators, thus making the limit set forth in CCP § 116.221 (currently \$10,000) an appropriate cut off for the Commission’s Expedited Citation Appeal Procedure. However, we modify proposed Rule 2 to better track the language in Rule 6.1(a).

TEB also recommends that Rule 6.1(i) be modified to state the title (instead of only the number) of each applicable/non-applicable rule to the Expedited Citation Appeal Procedure, because the rule numbers could change. We make this modification.

Additionally, Chief Judge Simon’s letter proposed that Rules 3 and 5 be modified so that appellant state the amount of the citation appealed from in the caption and body of the Notice of Appeal. No person filed comments on this proposal and we modify Rules 3 and 5 accordingly.

Rule 6.1 Expedited Citation Appeal Procedure; Rule 2 Definitions; Rule 3 Filing the Notice of Appeal; and Rule 5 Minimum Content of the Notice of Appeal, are modified as follows:

Rule 6.1 Expedited Citation Appeal Procedure, is modified as follows:

- a) This procedure is applicable to citation appeals where the total citation amount does not exceed the jurisdictional limit of the small claims court, as referenced in Public Utilities Code § 1702.1. The Expedited Citation Appeal Procedure does not apply to Citation Appeals which include a license revocation or to General Order 156 appeals.
- b) No representative (attorney at law or other representative) shall represent any party other than himself under the Expedited Citation Appeal Procedure. Rule 13 of these Rules, only as to party representative, does not apply.
- c) No pleadings other than the Notice of Appeal (see Rules 3-6 of these Rules) and the Compliance Filing (see Rule 7 of these Rules) are necessary.

- d) A hearing without a court reporter shall be held within the time period specified by Rule 10 of these Rules.
- e) Separately stated findings of fact and conclusions of law will be made in the resolution addressing the Expedited Citation Appeal.
- f) A party who is subject to the Expedited Citation Appeal Procedure may at any time prior to the swearing in of the first witness at the evidentiary hearing request termination of the Expedited Citation Appeal Procedure, and that the matter be recalendared for hearing under the Commission's regular procedure for Citation Appeals. The Commission or the assigned Administrative Law Judge, when the public interest so requires, may at any time prior to the filing of a resolution addressing the Citation Appeal, terminate the Expedited Citation Appeal Procedure and recalendar the matter for hearing under the Commission's regular procedure for Citation Appeals.
- g) The parties shall have the right to file applications for rehearing pursuant to Rule 20 of these Rules. If the Commission grants the rehearing, the rehearing shall be conducted under the Commission's regular procedure for Citation Appeals.
- h) Resolutions rendered pursuant to the Expedited Citation Appeal Procedure shall not be considered as precedent or binding on the Commission or the courts of this state.
- i) The following Citation Appellate Rules continue to apply to the Expedited Citation Appeal: Rule 1 Applicability; Rule 2 Definitions; Rule 3 Filing the Notice of Appeal; Rule 4 Extension of Time to File the Notice of Appeal; Rule 5 Minimum Content of the Notice of Appeal; Rule 6 Minimum Service Requirements for the Notice of Appeal; Rule 7 Compliance Filing; Rule 8 Service List and Parties to An Appeal; Rule 10 Commencement of Hearing; Rule 11 Burden of Proof; Rule 12 Hearing Venue; Rule 13 Party Representative/Evidence (only as to evidence, not as to party representative); Rule 15 Obtaining an Interpreter; Rule 16 Submission of the Record; Rule 17 Issuance Date of Draft Resolution; Rule 18 Issuance of Draft Resolution for Comment; Rule 19 Ex Parte Communications; Rule 20 Rehearing ; Rule 21 Service of These Rules and Resolution Adopting them With All Citations and Clearinghouse Decisions Concerning General Order 156; and Rule 22 Applicable Procedure When Pilot Program Appellate Rules Are Silent. The following Citation Appellate Rules do not apply to an Expedited Citation Appeal: Rule 9 Exchange of Information; Rule 13 Party Representative/Evidence) (only as to

party representative, not as to evidence); and Rule 14 Obtaining a Transcript.

Rule 2 Definitions, is modified as follows so that an additional definition is added to Rule 2:

“Expedited Citation Appeal” means an appeal from a citation issued pursuant to a citation program where the total citation amount does not exceed the jurisdictional limit of the small claims court, as referenced in Public Utilities Code § 1702.1. An Expedited Citation Appeal does not apply to Citation Appeals which include a license revocation or to General Order 156 appeals.

The last line of Rule 3 Filing the Notice of Appeal, is modified as follows so that appellant would state the amount of the citation appealed from in the caption of the appeal:

The caption of the appeal shall read: “Appeal of [who] from [Citation 12345] or [Clearinghouse Decision 12345] in the amount of [\$XXX.XX] issued by [Commission Division which issued the citation] or [the Clearinghouse].”

Rule 5 Minimum Content of the Notice of Appeal, is revised as follows so that appellant would state the amount of the citation appealed from in the text of the Notice of Appeal:

The Notice of Appeal for a Citation Appeal must at a minimum state: (a) the date and dollar amount of the citation that is appealed; and (b) the rationale for the appeal as specifically instructed in the Citation Program.

The Notice of Appeal for a General Order 156 Appeal must set forth (a) the date and dollar amount of the Clearinghouse Decision that is appealed; and (b) the grounds for the appeal as required by General Order 156 § 7.3.1.

4. COMPLIANCE FILING - NEW RULE (RULE 7)

A. The Proposal

The citation appeal process envisions an expeditious hearing and resolution of the appeal. As discussed below, if appellant requests a hearing, and a hearing is appropriate, the hearing occurs promptly. In order for the hearing to be meaningful and for all parties and the Judge to have the appropriate documents, Resolution ALJ-299 established a new requirement for Staff issuing the citations and for the Clearinghouse under GO 156.

Rule 7 established a new requirement that, no later than seven business days after the notice of appeal is filed, Staff issuing the citation must file with the Commission's Docket Office and serve a compliance filing which includes the complete citation, including all attachments. Similarly with respect to GO 156, no later than seven business days after the notice of appeal is filed, the Clearinghouse must file with the Commission's Docket Office and serve a compliance filing which attaches a complete copy of the Clearinghouse's appealed decision, including all attachments. In this way, interested parties and the Judge promptly will have a copy of what is at issue in the proceeding.

The proposed modification is to increase the time for Staff to file the compliance filing from seven business days to 14 calendar days. Based on our experience with Resolution ALJ-299, the time within which Staff currently has to file the compliance filing, seven business days, is short, given that internally it takes some time for the notice of the appeal to reach the interested Staff respondents. It is anticipated that modifying the timeline to 14 calendar days would decrease requests for extensions of time to comply and result in a more streamlined process. We note that we are proposing to add only about two to three extra days to this timeline, as we are proposing to shift from seven business days to 14 calendar days.

B. Responses to the Proposal

MacBride states that the slight increase in time to prepare the compliance filing is appropriate. TEB also supports this modification and seeks clarification that the 14 days is computed from the date the appeal is filed by the Docket Office, and not when the Commission receives the appeal. The Joint Utilities do not address this change of time limit but recommend that the rule addressing compliance filings be modified to require that when appellant files a notice of appeal of a citation, the prosecuting party issuing the citation must include in its compliance filing all documents relevant to the citation, because Staff has the burden of proof in a citation appeal. This recommendation also is made in conjunction with the Joint Utilities' proposed revisions for Rule 11, Exchange of Information, discussed below. The Joint Utilities also believe that this rule should explicitly state that it is not intended to prohibit further discovery of relevant evidence in Staff's possession, whether that request is made prior to or following the filing of the notice of appeal.

C. Adopted Rule

We modify Rule 7 addressing the Compliance Filing to increase the time for Staff to file the compliance filing from seven business days to 14 calendar days. This recommendation was unopposed and as stated above, we anticipate that modifying the timeline to 14 calendar days should decrease requests for extensions of time to comply with Rule 7, and result in a more streamlined appeal process.

We decline to adopt the Joint Utilities' recommendations. The Compliance Filing is not intended to address discovery in general, but to ensure "interested parties and the Judge promptly will have a copy of what is at issue in the proceeding." (See Resolution ALJ-299 at 9.) We therefore do not transform Rule 7 into a rule addressing discovery in general. We note that the Citation Appellate Rules do not reinvent every adopted rule in the Commission's Rules of Practice and Procedure. Rather, Rule 22 states that if the Citation Appellate Rules are silent on a procedural issue, the Commission's Rules of Practice and Procedure apply. Rule 10.1 of the Commission's Rules of Practice and Procedure addresses discovery in general. To the extent not superceded by the Citation Appellate Rules, the Judge may refer to Rule 10.1 of the Commission's Rules of Practice and Procedure.

Rule 7 Compliance Filing, is modified as follows:

For a Citation Appeal, no later than 14 days after the Notice of Appeal is filed, Staff issuing the citation must file with the Commission's Docket Office a Compliance Filing which includes a complete copy of the citation, including all attachments, which is appealed. The Compliance Filing must be served on the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) and appellant on the same day the Compliance Filing is filed. Staff must file a proof of service to this effect at the same time it files the Compliance Filing.

For a General Order 156 Appeal, no later than 14 days after the Notice of Appeal is filed, the Clearinghouse must file with the Commission's Docket Office a Compliance Filing which includes a complete copy of the decision, including all attachments, which is appealed. The Compliance Filing must be served on the Chief Administrative Law Judge (with an electronic copy to: ALJ_Div_Appeals_Coordinator@cpuc.ca.gov) and appellant on the same day the Compliance Filing is filed. The Clearinghouse must provide a proof of service to this effect at the same time it files the Compliance Filing.

5. BURDEN OF PROOF

A. The Proposal

Most of the existing citation GOs or resolutions address who has the burden of proof. The Citation Appellate Rules made no modifications in that regard. However, for citation statutes, GOs or resolutions that are silent on this issue, Rule 11 of the pilot program adopts the following language with respect to the burden of proof:

Staff has the burden to prove a *prima facie* case supporting its issuance of the citation for the alleged violation; the burden then shifts to

appellant to demonstrate that a violation did not occur and the citation should not issue or that the amount of the penalty is inappropriate.

Since the enactment of the Citation Appellate Rules, it appears that a burden of proof involving the preponderance of the evidence is used more frequently. Therefore, the Commission proposes to modify the default burden of proof to that used in more of the citation programs. Again, if a citation program uses a different burden of proof, the language in the individual citation program will govern.

B. Responses to the Proposal

MacBride states that the proposed modification to the burden of proof improves the rule. Similarly, the Joint IOUs support the modified rule. TEB objects to the modified default burden of proof insofar as TEB believes that the Judge should not have discretion to alter the order of presentation at hearing, since TEB bears the burden of proof.

C. Adopted Rule

No party objects to the proposed modification of the rule regarding shifting to a preponderance of the evidence standard and we adopt it. With respect to TEB's objections that the Judge should not have the discretion to alter the presentation at hearings, this discretion was present in many of the citation programs existing prior to the adoption of Resolution ALJ-299¹², and is the type of discretion a presiding officer needs to conduct fair and impartial proceedings. We therefore retain the language providing the Judge such discretion.

Rule 11 Burden of Proof, is modified as follows:

The burden of proof in a Citation Appeal or a General Order 156 Appeal is governed by the language in the Citation Program or General Order 156. For Citation Programs which are silent as to which party has the burden of proof, the following rule applies:

Staff has the burden of proof by a preponderance of the evidence and accordingly shall open and close the hearing. Respondent/Appellant has the burden to prove affirmative defenses it might raise. The Administrative Law Judge may, in his or her discretion, alter the order of presentation at the hearing.

¹² See e.g. GO 167 (Section 13.3.8.7; Resolution ALJ-187, Section 4.h; Resolution UEB-001, Section 7.h; Resolution USRB-001, Section 11.g.)

6. ADDITIONAL PROPOSED MODIFICATIONS

A. Overview

In addition to comments on the above proposed modifications, the Commission requested proposals from interested persons as to whether other modifications to the Citation Appellate Rules should be made before making the Citation Appellate Rules permanent.

CD requests that the Commission consider scheduling the time and location of hearings in clusters to promote efficient use of staff time and traveling costs. CD also suggests that the Citation Appellate Rules permit Staff to use alternative technologies to in person appearances. TEB requests to eliminate the requirement of serving a copy of the Citation Appellate Rules with a citation and makes two other proposals for modifications concerning service of the citation and Docket Office review of the citation. The Joint Utilities propose to modify the rule regarding exchange of information before hearing as well as a modification limiting the application of the *ex parte* rule. We discuss each of these proposals below.

B. Scheduling Hearings in Clusters and Alternatives to In Person Appearances

CD's suggestion to schedule the time and location of citation appeals in clusters is a good one, and the Administrative Law Judge Division has been implementing this process during the pilot program. No change in the Rules is necessary to continue with this efficient process.

CD also proposes the Rules permit Staff to use alternative technologies to in person appearances, such as appearances by telephone or teleconferencing. As an example, CD believes this proposal would be useful to minimize travel costs or to assist Staff who cannot travel for medical reasons.

The Judge currently has discretion in conducting the hearings, consistent with the law, to ensure due process. (*See e.g.* Rule 1.2 of the Commission's Rules of Practice and Procedure.)¹³ For example, if it is unnecessary for the appellant (the cited party) to question Staff in person, and Staff is constrained in making an in person appearance, a telephonic appearance may be appropriate. However, if due process requires that the appellant be able to confront the witness in person, an in person appearance would be

¹³ Rule 1.2 of the Commission's Rules of Practice and Procedure, Construction, states as follows: "These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, and within the extent permitted by statute, the Commission may permit deviation from the rules."

necessary. Maintaining the Judge's discretion in this rule will enhance due process for all parties. We therefore make no further changes to these rules in light of CD's proposal.

C. Modify Information Exchange

Currently, Rule 9 of the Citation Appellate Rules provides that no later than three business days prior to the scheduled hearing, the parties must exchange all information they intend to introduce into the record at the hearing which is not included in the citation or GO 156 decision and the Compliance Filing already filed with the Commission pursuant to Rule 7, unless otherwise directed by the Judge.

As stated above, the Joint Utilities propose that Rule 7 addressing the Compliance Filing be modified to require that when appellant files a notice of appeal of a citation, the prosecuting party issuing the citation must include in its Compliance Filing all documents relevant to the citation. These comments call for early disclosure of all materials supporting the prosecuting party's decision to issue the citation and level of penalty. Similarly, the Joint Utilities propose that Rule 9 concerning Exchange of Information also be modified in light of their suggested modification of Rule 7, so that the exchange of information deals with information appellant intends to introduce at the hearing (because appellant has already received Staff's information pursuant to Rule 7) and any post-appeal information gathered by Staff that it intends to use at the hearing.

For the reason set forth in our discussion above, we decline to modify Rule 7 addressing the Compliance Filing. We also decline to adopt the Joint Utilities' proposed modification to Rule 9. Rule 9 was adopted "to expedite [citation] appeals and to eliminate potential delay." (See Resolution ALJ-299 at 10.) The appellant will obtain all information exchanged in the Compliance Filing quite early in the citation appeal. A subsequent exchange of information closer to the hearing, pursuant to Rule 9, will decrease the element of surprise and ensures that both parties are prepared for the hearing. We decline to adopt further special discovery rules here. We also note that this Joint Utilities' proposal is similar to a proposal made prior to the adoption of Resolution ALJ-299 that there be a staggered, not simultaneous exchange of information with Staff exchanging the information first. (See Resolution ALJ-299 at 19, note 17.) We failed to adopt that proposal then and decline to do so now.

D. Limit Application of Current *Ex Parte* Rule

The Joint Utilities also proposed that the duration of the *ex parte* restrictions should be limited to the time period set forth for formal proceedings in Rule 8 of the Commission's Rules, so that the restrictions commence with the filing of the appeal (not from the date a citation issues) and end either after the period for filing an application

for rehearing has expired or after the Commission has resolved an application for rehearing.

Rule 19 of the Citation Appellate Rules standardizes the rules in the various citation appeal resolutions and limits *ex parte* communications from the date the citation or decision concerning a GO 156 appeal issues through the date a final order is issued on the citation appeal.¹⁴

We see no reason to shorten this period, as once the citation issues, deliberations on whether to appeal the citation are best not addressed in *ex parte* discussions with decisionmakers. Similarly, if a citation appeal decision is being considered by a reviewing court, *ex parte* discussions would be problematic, as the matter could be remanded to the Commission.

In fact, in comments to a draft ALJ resolution that became Resolution ALJ-299, the utilities made a similar proposal, which we denied in Resolution ALJ-299:

Edison, PG&E, and SoCalGas/SDG&E recommend that the period for the *ex parte* prohibition to commence should be the filing of the citation appeal or GO 156 appeal, not the issuance of the citation. We decline to modify Rule 19 which prohibits *ex parte* communications from the date the citation issues through the date a final order issues (either by the Commission or the courts). The triggering event for the appeal is the citation; therefore *ex parte* communications should be prohibited from when the citation is issued. (See e.g. General Order 167 and Resolution ALJ-274 which both contain this provision.) Similarly, the prohibition should continue until a final order is issued, whether by the Commission or the courts. (See Resolution ALJ-299 at 20.)

We therefore make no changes to Rule 19 of the Citation Appellate Rules.

E. Requirement To Serve A Copy of the Citation Appellate Rules With a Citation

¹⁴ Final order means the date when the period to apply for rehearing of the Commission resolution on the appeal has expired and no application for rehearing has been filed, or if an application for rehearing is filed, the date when the period to seek judicial review of the decision finally resolving the application for rehearing has passed without any party seeking judicial review; or if judicial review is sought, the date any court cases are finally resolved.

Rule 21 requires that Commission Staff serve a copy of the Citation Appellate Rules and the resolution adopting them with the citation. A similar provision applies to the Clearinghouse with respect to Clearinghouse decisions concerning GO 156.

TEB states that Resolution ALJ-299 consists of 79 pages (including appendices), and many pages do not apply to TEB's citation program. According to TEB, this service requirement is confusing to many appellants, especially to small transportation carriers for whom English is a second language. TEB states that the requirement is also unwieldy for its agents, especially those issuing many citations for on the spot inspections, for example, at an airport. TEB requests that Rule 21 be modified to give it (and other Commission Divisions) the flexibility to serve a concise summary of appeal instructions with the citation, instead of a complete copy of Citation Appellate Rules and the resolution adopting them.

We adopt this recommendation with the proviso that, if the Division elects not to serve a complete copy these Citation Appellate Rules and the Resolution adopting them with the citations issued, the Division must issue with the citation a concise summary of appeal instructions applicable to the cited entity, reviewed and approved prior to their use by the Commission's Legal Division, and that these instructions contain an electronic link to the complete copy of the Commission's Citation Appellate Rules and the resolution adopting them.

The Clearinghouse did not voice any objections to Pilot Program Rule 21; we therefore make no changes to this rule as it applies to the Clearinghouse.

Rule 21 Service of these Rules and Resolution Adopting Them With All Citations and Clearinghouse Decisions Concerning General Order 156, is modified as follows:

Commission Staff must serve either (a) a copy of these Rules and the Resolution adopting this program with all citations issued; or (b) a concise summary of appeal instructions applicable to the cited entity, provided these instructions have been reviewed and approved prior to their use by the Commission's Legal Division and that the instructions contain an electronic link to the complete copy of the Commission's Citation Appellate Rules and the resolution adopting them.

The Clearinghouse must serve a copy of these Rules and the Resolution adopting this program with all Clearinghouse Decisions concerning General Order 156.

F. Other TEB Proposals

TEB proposes to modify Rule 6 concerning the minimum service requirements for citation appeals. Currently, Rule 6 provides that the Citation Appeal shall be served at

a minimum on the Chief Judge and an e-mail address for the Administrative Law Judge Divisions, as well as the Director of the Division issuing the citation.

TEB states that proper service of citation appeals is a continuous problem for appellants of TEB citations. TEB states it is problematic and ineffective to serve the Division Director and requests that appellants serve the TEB Program Manager, the investigator that served the citation, and the existing TEB citations appeal electronic address. Or alternatively, TEB recommends service on one TEB email address.

Rule 6 provides a minimum service requirement for citation appeals. It is also important to note that TEB is not the only Division at the Commission that issues citations. Therefore, a TEB electronic email address would be insufficient for service of all citation appeals.

However, Rule 6 requires an appellant to also serve other entities if required by the Citation Program, as Rule 6 sets forth the minimum service requirements.¹⁵ Thus, TEB can designate any additional service requirements in its Citation Programs. We therefore make no major changes to Rule 6. We do, however, make minor modifications to Rule 6 in response to TEB's comments that it is now under the Commission's Consumer Protection and Enforcement Division, not under the Commission's Safety and Enforcement Division.

TEB also proposes that the Docket Office review all Citation Appeals pursuant to Rule 5 of the Citation Appeal Rules (which requires appellant to provide the rationale for the appeal as specifically instructed in the citation program), and only accept appeals that demonstrate a just and reasonable rationale for the appeal.

We decline to adopt this proposal. If TEB believes the stated grounds for the Citation Appeal are unreasonable, TEB should formally raise this issue with the Judge who can determine the sufficiency of the appeal. We decline to delegate this determination to the Docket Office, provided the appeal meets the technical requirements of Rule 5.

7. MAKING THE CITATION APPELLATE RULES PERMANENT

A. The Proposal

The Commission also sought comments on whether, with the modifications proposed herein, and any other appropriate modifications suggested by interested persons, the Citation Appellate Rules should be made permanent.

¹⁵ Rule 6, in relevant part, states "The Notice of Appeal must also be served on other entities if required by the Citation Program."

B. Responses to the Proposal

TEB recommends these new rules not be made permanent, but rather than the modified rules be tested for a short finite period (six to 12 months) before the parties again comment on the efficacy of the proposed modifications.

C. Discussion

The pilot Citation Appellate Rules have been operational since January 1, 2015. The modifications we make today are modest. We believe that these rules have been operational for a sufficient period that, with today's modifications, the Citation Appellate Rules can be made permanent. Of course, existing Commission rules regarding specific requests to modify a Commission decision or resolution would permit interested persons to seek clarification or modification in the event of an unforeseen problem.

D. Miscellaneous

Additionally, the proposal stated it would contain an update to Appendix B of Resolution ALJ-299 with the specifics of the citation programs that have issued since the Commission enacted Resolution ALJ-299, or which were inadvertently omitted. Appendix B will also reflect any modifications to Resolution ALJ-299 which are adopted in this resolution. Appendix B attached hereto reflects these changes.

NOTICE OF COMMENT

A draft of this Resolution was served on the mailing list for the Commission's Rules of Practice and Procedure. Comments were allowed under Rule 14.5 of the Commission's Rules of Practice and Procedure.

On April 1, 2020, MacBride served timely comments on the draft Resolution. On April 2, 2020, Edison served timely comments on the draft Resolution.

Edison makes similar arguments to those made by the Joint Utilities (of which Edison is a part) concerning Section 4 (regarding the Compliance Filing); Section 6.C (regarding the Information Exchange); and Section 6.D (regarding limiting the application of the current *ex parte* rule). MacBride sets forth in more detail his arguments set forth in Section 3.B above that the Expedited Citation Appeal Procedure rests on somewhat tenuous legal grounds, and also questions the statutory authority for citation programs in general. For the reasons set forth above in Sections 1, 3, 4 and 6, we make no changes to the draft Resolution in response to comments.

FINDINGS AND CONCLUSIONS

1. Pub. Util. Code § 701 authorizes the Commission to supervise and regulate every public utility in the State.
2. Pub. Util. Code § 702 mandates every public utility to obey and promptly comply with every Commission order, decision, direction, or rule.
3. California law, including Pub. Util. Code § 7, authorizes the commission to delegate certain powers to its Staff, including the investigation of acts preliminary to agency action, and the issuance of citations for certain types of violations in specified amounts.
4. The Commission's citation programs permit the cited entity to appeal the issuance of a particular citation. These citation appeals are heard by an Administrative Law Judge. A similar situation exists with respect to Clearinghouse decisions issued pursuant to GO 156.
5. Based upon the past several years of experience, some smaller utility appellants appeal the citation not to contest it, but because they wish to make a payment plan. Some of these utilities are also unrepresented by counsel, making it challenging for them easily to comply with some of the Citation Appellate Rules.
6. It is reasonable to adopt an Expedited Citation Appeal Procedure for citations where the total dollar amount does not exceed the amount specified in § 1702.1.
7. It is reasonable to modify Rule 7 addressing the Compliance Filing to modestly increase the time for Staff to make such filing. This proposal was unopposed and should streamline the citation appellate process by decreasing requests for extension to comply with Rule 7.
8. It is reasonable to modify the default burden of proof in Rule 11 to that used the most frequently in the resolutions establishing the various citation programs.
9. It is reasonable to adopt several other procedural modifications to the Citation Appellate Rules and harmonize others to further due process and administrative efficiency in processing citation appeals and GO 156 appeals.
10. Appendix B summarizes key existing appellate provisions for each citation program and GO 156. For these key appellate provisions, Appendix B also indicates (for each GO and resolution) which sections of the GOs or resolutions are changed by these rules. It is reasonable to adopt the changes to the various GOs and resolutions set

forth in Appendix B in order to implement the Citation Appellate Rules and this resolution.

11. If the Commission establishes new citation programs, the Citation Appellate Rules, or their successor, are also applicable to the new citation programs.
12. The Citation Appellate Rules and GO 156 Appellate Rules, attached to this resolution as Appendix A, are reasonable and should be adopted. The Citation Appellate Rules and GO 156 Appellate Rules attached to this resolution shall be applicable on July 1, 2020.
13. Any changes to the existing citation GOs and resolutions and to GO 156 are to the appeal process. No other portion of these GOs or resolutions is intended to be modified by this resolution.
14. This resolution should be effective today so that the modifications to, and implementation of these modified Citation Appellate Rules can become effective by July 1, 2020.

THEREFORE, IT IS ORDERED that:

1. The Citation Appellate Rules and General Order (GO) 156 Appellate Rules, attached hereto as Appendix A, are adopted and apply to all Commission citations issued and to all decisions of the Clearinghouse issued pursuant to GO 156 as of July 1, 2020.
2. Appendix B to this resolution is adopted. The citation General Orders (GO) and resolutions listed in Appendix B, and GO 156, are changed as set forth in Appendix B and this decision in order to implement this program. Appendix B summarizes key existing appellate provisions for each citation program and for GO 156. For these key appellate provisions, Appendix B also indicates (for each GO and resolution) which sections of the GOs or resolutions are changed by these rules.
3. Any changes to the existing citation General Orders (GO) and resolutions and to GO 156 are to the appeal process. No other portion of these GOs or resolutions is intended to be modified by this resolution.

This resolution is effective today.

I hereby certify that this Resolution was duly introduced, passed, and adopted by the Public Utilities Commission of the State of California at its regular business meeting held on April 16, 2020. The following Commissioners approved it:

/s/ ALICE STEBBINS

Alice Stebbins
Executive Director

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners

Appendix A: Citation Appellate Rules and General Order 156 Appellate Rules (Revised Rules Applicable on July 1, 2020)

Appendix B: Citation Programs and General Order 156 and How These Programs Interact with the Rules Adopted in Appendix A