



July 27, 2020

**VIA ELECTRONIC MAIL**

Mr. Ed Randolph  
Director, Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

**Re: Opening Comments on Draft Resolution E-5080**

Dear Director Randolph:

In accordance with Rule 14.5 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure and the notice accompanying Draft Resolution E-5080 (Draft Resolution), the California Community Choice Association (CalCCA) hereby submits these limited opening comments on the Draft Resolution.

**SUMMARY**

[Draft Resolution E-5080](#) “initiates a citation program authorizing Commission Staff to cite load serving entities (LSEs) for non-compliance with mandatory filing deadlines and reporting requirements of the Integrated Resource Planning (IRP) proceeding.”<sup>1</sup> The detailed filing requirements for the current IRP cycle remain unsettled even as the September 1, 2020 IRP Plan filing date approaches, as evidenced by the periodic updates of the Energy Division Frequently Asked Questions (FAQ) guidance. Commission Staff has also signaled that it desires flexibility in obtaining supplementary materials it considers related to the planning process. While this uncertainty is understandable considering the relative newness and complexity of the IRP process, it leaves the IRP filing process ill-suited to the Draft Resolution’s proposed penalties for every “deficiency,” even if cured, regardless of intent or the gravity or nature of the deficiency.

CalCCA appreciates the need for a citation program to address *knowing* violations of *unambiguous* IRP requirements, such as Commercial Energy’s eight-month delay in filing its IRP for the 2017-2018 cycle.<sup>2</sup> To acknowledge the current status of the IRP process and to conform to governing law, however, CalCCA offers these recommended changes:

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<sup>1</sup> Draft Resolution at 1.

<sup>2</sup> *Id.* at 3 (emphasis supplied).

- ✓ Make clear that the citation program will address only knowing violations of unambiguous, well-established IRP requirements.
- ✓ Require consultation with the LSE prior to issuing a citation for a Specified Violation.
- ✓ Modify the five-business-day cure period to provide a reasonable cure period of twenty business days, which may be extended if necessary given the nature of the violation and/or complexity of the information requested or deficiency.
- ✓ Modify the penalty structure to replace the schedule of penalties with a structure that considers the gravity and nature of any identified deficiency, and the LSE’s knowledge and complicity in the violation.
- ✓ Provide details of the grounds on which LSEs can appeal a citation determination.

Appendix A proposes modifications to the citation program.

## COMMENTS

### 1. **The Citation Program Should Be Limited to *Knowing* Violations of *Clear, Unambiguous* Requirements**

CalCCA’s proposed changes reflect the Commission’s general intent in D.19-04-040 to address timeliness and compliance with high level requirements. The Commission contemplated a citation program that would allow it to address violations like Commercial Energy’s eight-month late filing of its IRP. In referring to that violation, it stated:

*In future IRP cycles, we will implement a citation process so that entities **failing to provide any documentation** will face monetary sanctions.*<sup>3</sup>

The Commission also appears to have focused not on the detailed requirements but “overall requirements.”<sup>4</sup> Indeed, it acknowledged in D.19-04-040 the lack of clarity and potential confusion surrounding the IRP process:

*We also observe that there was some confusion over particular terms we created with respect to the IRP process, such as: LSE Plan vs. LSE IRP; Alternative LSE Plans vs. Alternative Plans for Standard LSE Plan filers, RSP vs. RSP with 2017 IEPR assumptions, etc. We will work on clarifying these types of references in the future to reduce confusion.*<sup>5</sup>

With these concerns in mind, CalCCA recommends adoption of a citation program addressing *knowing* violations of *unambiguous* requirements. This category of violations would include, for

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<sup>3</sup> D.19-04-040 at 83 (emphasis added).

<sup>4</sup> *Id.* at 150-151.

<sup>5</sup> *Id.* at 151.

example, late filing of IRP plans, failure to submit the portfolios ordered by the Commission at the outset of the cycle, failure to complete the data templates associated with the portfolios, and failure to respond to an Energy Division staff data request within a reasonable period of time.

The Commission should not, however, build the citation program around requirements that are susceptible to multiple interpretations or requirements that remain unstable as the process evolves. As quoted above, the Commission acknowledged in D.19-04-040 the lack of clarity and potential confusion surrounding the IRP process. While some progress has been made to clarify the IRP process, a good deal of uncertainty and confusion remain and the list of ambiguous requirements continues to grow. The fact that the Staff's "Frequently Asked Questions" is in its fifth version less than two months prior to IRP Plan submission dates highlights the degree of ambiguity in the development of portfolios and completion of templates.

Beyond including additional clarifying information as questions arise, the guidance in these documents has changed materially on specific issues from one version to the next, introducing uncertainty and confusion for LSEs well into the process of developing their filings. For an example of changing standards on a fundamental question, the guidance in response to the fundamental question of "Can an LSE submit an IRP which includes a Conforming Portfolio using a lower GHG target than the GHG target assigned by Energy Division?" changed in foundational ways from the initial FAQ document to the next version, and then changed again in a subsequent release.

In addition, the "final" templates, which constitute both the framework and core of the IRP filing, were initially released in May, but then revised a month later. The revisions were not immaterial or explanatory, but rather significantly altered the values of and guidance around the GHG targets LSE IRPs must meet, which is a fundamental constraint of a conforming portfolio. Overall, LSEs attempting to perform a meaningful, robust analysis to support their IRP filings have met with multiple false starts and course corrections. Additionally, continual changes also create challenges for CCAs to receive timely approval of their IRPs from their Boards, which are subject to Brown Act noticing requirements.

CalCCA does not raise these issues to criticize Staff's efforts to clarify, correct and improve upon the resources and tools provided to LSEs. Rather, CalCCA seeks to highlight the mutual evolution and education that has occurred throughout this IRP cycle, an evolution and education that continues up to and beyond the filing of these comments. To introduce punitive measures at this stage fails to acknowledge the inchoate, dynamic nature and ambiguity of the current IRP process.

**a. CalCCA recommends designing the citation program to address only *knowing* violations**

Public Utilities Code §2111 – the provision the Draft Resolution cites as the basis of citation authority over community choice aggregators (CCAs) – limits citations to one who "knowingly violates" Commission requirements. Yet nowhere in the citation program or Draft Resolution does the word "knowing" appear. The program thus must be modified to comport with applicable law. For example, penalizing a CCA for the failure, unknowingly, to conform to an

unpublished or new requirement developed by Energy Division staff would not meet the applicable legal standard.

**b. CalCCA also recommends designing the citation program to address only violations of *clear, unambiguous requirements***

If a requirement lacks clarity, or reasonable people could differ in their interpretation of a requirement, the requirement does not provide sufficient notice to support a defensible citation and penalty. A core concept of due process is that notice must be adequate. (*Personal Watercraft Coalition v. Marin County Bd. of Supervisors* (2002) 100 Cal.App.4<sup>th</sup> 129, 138; *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4<sup>th</sup> 1090, 1115.) Statutes, as the U. S. Supreme Court has found, “must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.” (*Connolly v. General Const. Co.* (1926) 269 U.S. 385, 391; see *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4<sup>th</sup> 1090, 1115.) To achieve this, the terms used must be clear and unambiguous. A statute or ordinance “which 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.” (*Connolly v. General Const. Co.* (1926) 269 U.S. 385, 391; see *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4<sup>th</sup> 1090, 1115; *Peterson v. Safeway Stores, Inc.* (1960) 185 Cal.App.2d 24, 27.)

Several facets of the draft citation program would not meet this standard. For example, the core components of the IRP filing (the narrative template, resource data template, and clean system power calculator) are admittedly “incomplete” at this time. Thus, an LSE cannot reasonably be sure that what it submits “adheres to filing requirements standards” as required in section 2.1. In addition, the draft program allows Commission Staff to request “additional supporting data” “reasonably related” to the implementation of the IRP program. There are no criteria establishing the scope of the material that could theoretically be requested. Penalizing a CCA for the failure to conform to unspecified, unpublished, newly created or modified requirements developed by Energy Division staff cannot meet the standard required under due process.

**2. LSEs Must be Consulted by Energy Division Staff Prior to the Issuance of a Citation**

The draft citation program provides only that Commission Staff is authorized to issue a citation “after appropriate informal investigation and verification that a Specified Violation . . . has occurred.” However, the draft program fails to define the parameters of that investigation. CalCCA recommends that the program be designed so that no citation may be issued until staff has consulted with the relevant LSE, and the LSE has been given the opportunity to clarify information submitted, or correct alleged errors.

The draft citation program would permit staff to assess a flat penalty for every day a required piece of information is missing or needs correction. Again, it is problematic to impose such a penalty structure at this stage of the IRP process, where the requirements are unclear, and in some cases subject to revision in real-time. In recognition of the incipient state of the IRP process, and in deference to basic concepts of fundamental fairness, LSEs should be consulted before the imposition of any penalty. In addition, the administrative burden inherent in a citation

process and consequent rights to an appeal could potentially be avoided in a majority of cases by means of a simple discussion between the LSE and Energy Division staff. CalCCA thus requires clarification that notice and an opportunity to cure must be given *before* issuing a notice of citation and penalty.

### **3. The Program Should Provide an Opportunity to Cure that is Reasonably Tailored to the Nature and Gravity of the Violation**

The draft program fails to provide a reasonable opportunity to cure most foreseeable “deficiencies.” The draft provides:

*3.3. “Deficiency cured within five business days from the date of notification” means a failure to submit complete and accurate data before the formally established reporting deadline where the filing deficiency was remedied within five business days after notification by Energy Division staff. After identification of a filing deficiency by Energy Division staff, Energy Division staff shall notify the LSE of the deficiency and the LSE would be able to cure the deficiency within five business days of such notification with a set penalty.*

Thus, the program would allow only five business days to cure *any* violation, *regardless of the nature* of that violation.

There may be instances in which the five business day cure period is “reasonable” (e.g. the LSE merely put the wrong information in the wrong place in a template). However, other more material “deficiencies” may reasonably take more time to assess and cure. The draft program should have the flexibility to tailor the assessment and response to the materiality of the deficiency. For example, if certain Narrative responses are deemed incomplete or inadequate, the LSE may have to engage in further analytical work that may require time in excess of five days to procure external technical expertise, if needed, and perform additional modeling.

Concerningly, the draft citation program provides for the imposition of a penalty based on an LSE’s failure to provide whatever unspecified information Commission Staff may determine is “reasonably related” to the IRP program. Even assuming this to be an appropriate delegation of authority to Energy Division staff, it would be impossible to determine whether such information could reasonably be submitted within five business days of a request.

CalCCA thus recommends modification of the program to allow a reasonable cure period, proposed to be twenty business days, which may be extended by staff as necessary to allow LSE’s to provide the potentially detailed information requested or complicated calculation deficiency identified.

### **4. The Citation Program Should Specify the Criteria That Will be Used to Determine the Level of Penalty**

The draft citation program fails to specify the “set penalty” that would be imposed even if the deficiency is cured. The draft program also fails to specify the “set penalty” that would be imposed if the deficiency is cured after the period allowed. This may or may not differ from the “Scheduled Penalty” assessed “Specified Violations”. In any event, the draft program would

allow penalties to double if a deficiency is not cured within the five business days provided, regardless of the complexity of the information requested, if a second “violation” occurs in the same IRP cycle.

The draft program’s “Scheduled Penalty” for “Specified Violations” is “\$1,000 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.” As noted, this is apparently intended to apply *whether or not the deficiency is in fact “cured”* by the submission of the missing information. This assessment of a fixed penalty, to be assessed without regard to the nature of the deficiency or of the circumstances, appears to contravene established Commission precedent and the prohibitions against excessive penalties contained in the U. S. and California constitutions. The Eighth Amendment of the U.S. Constitution prohibits states from imposing excessive fines. (*Timbs v. Indiana* (2019) 139 S.Ct. 682, 685, 2019 U.S. LEXIS 1350.) The California Constitution specifically prohibits the imposition of excessive fines. (Cal. Const., art. I, §17.)

Consistent with these requirements, the Commission has consistently applied a five-factor test when determining whether and how much penalty should be imposed. These standards originated in 1998 in D.98-12-075<sup>6</sup>, and remain the Commission’s standard, as noted and applied in D.13-12-053<sup>7</sup> regarding the natural gas pipeline explosion. These standards include:

1. The severity of the offense;
2. The conduct of the utility before, during, and after the offense;
3. The financial resources of the LSE;
4. The amount of the fine in relation to prior Commission decisions; and
5. The totality of the circumstances in furtherance of the public interest.<sup>8</sup>

CalCCA recommends the draft program be recast so that the penalty structure incorporates all of the above factors to comply with applicable law and Commission precedent. For example, the imposition of a \$1,500 fine assessed for a mere clerical error, or failure to complete a requested item in a required template, that is easily remedied the next business day, does meet the above standard. By contrast, an LSE’s continued failure to respond to staff requests, or to file requested templates at all, may require the assessment of a different penalty, or one that reflects the gravity of the failure to comply and the LSE’s complicity in the behavior. For these reasons, CalCCA proposes that the schedule of penalties be set as the maximum level, subject to Staff discretion below the specified levels depending upon the gravity of the offense.

## **5. The Citation Program Should Include Detailed Grounds for Appeal**

The draft program provides a process by which an LSE may appeal a citation, but no information regarding what grounds or factors will be considered in resolving an LSE’s appeal. At this time, when the basic elements of the information required are still “incomplete” or yet to be drafted, the issues applicable to the request for information apply equally to the potential for appeal.

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<sup>6</sup> D.98-12-075, 1998 Cal. PUC LEXIS 1016.

<sup>7</sup> D.13-12-053 at 18-19.

<sup>8</sup> *Id.*

Without some basis on which to ground an appeal, LSEs will receive no benefit from the right to pursue one. In addition to more and better detail regarding the requirements of the information to be submitted, the draft program should include specific grounds on which a citation may be appealed.

CalCCA also recommends the draft program specify that, if appealed, the penalty assessed for a particular violation may not exceed the originally proposed Scheduled Penalty. The program should be administered such that LSEs who raise legitimate questions regarding the interpretation of staff's requirements, or the information to be collected, are not penalized merely for having raised the issue.

## CONCLUSION

CalCCA appreciates the Commission's attempt to bring accountability to the IRP process, and understands staff's continued frustration with filings that are incomplete, incorrect, and/or not filed on time. However, given the level of uncertainty concerning some of the most basic requirements for the documents to be submitted, and that violations range from minor clerical errors to repeated patterns of noncompliance, CalCCA believes the "one size fits all" approach taken in the draft citation program does not meet legal requirements. CalCCA recommends the Draft Resolution be modified prior to adoption as specified herein.

Respectfully,

CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION



Evelyn Kahl  
General Counsel

cc via email:

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Service Lists for R.16-02-007 and R.20-05-003

## Appendix A

### IRP Citation Program

#### 1. Citation Program Definitions

- 1.1. Conforming Portfolio – A “Conforming Portfolio” is demonstrated to be consistent with the Reference System Portfolio and conforms to expressly stated IRP Planning Standards, achieves at a minimum the 2030 LSE-specific GHG Emissions Benchmark, uses of the LSE’s assigned load forecast; uses of inputs and assumptions matching those used in developing the Reference System Portfolio, ~~as well as other IRP requirements including the filing of~~ and includes a reasonably complete Narrative Template, a Resource Data Template and Clean System Power Calculator.
- 1.2. Integrated Resources Planning Standards: the set of CPUC IRP rules, guidelines, formulas and metrics, timely and expressly stated in a CPUC decision or ruling or in Staff guidance documents, that LSEs must include in their Standard LSE Plans.
- 1.3. Data Templates – Data provided by the LSE should be reported in the “Resource Data Template” and similar guidance documents provided by the Energy Division Staff.
- 1.4. Load Serving Entities: Include investor owned utilities (IOUs), electric service providers (ESPs), rural electric cooperatives and community choice aggregators (CCAs).
- 1.5. Reference System Plan – The Reference System Plan refers to the Commission-approved integrated resource plan that includes an optimal portfolio (Reference System Portfolio) of future resources for serving load in the CAISO balancing authority area (BAA) and meeting multiple state goals, including meeting GHG reduction and reliability targets at least cost.
- 1.6. Standard LSE Plan - A Standard LSE Plan is the type of integrated resource plan that an LSE operating within the CAISO BAA is required to file. For 2020, each Standard LSE Plan includes three completed template documents; the incomplete versions of these documents are posted on the CPUC website: a [Narrative Template](#), a [Resource Data Template](#) and a [Clean System Power Calculator](#).
  - 1.6.1. Narrative Template – This document is to be used by each LSE to describe how it developed its Standard LSE plan, present results of analytical work and demonstrate to the Commission and the stakeholders the LSE’s action plans. This template documents is posted on the CPUC website [here](#).
  - 1.6.2. Resource Data Template – a workbook is for reporting the LSE’s existing and planned energy and capacity contracts in the context of IRP. This template document is posted on the CPUC website [here](#).
  - 1.6.3. Clean System Power Calculator – a tool for LSEs to use in estimating the GHG and criteria pollutant emissions of their portfolios. The tool also calculates emissions from

other generation sources that can be attributed to an LSE's resource portfolio. This template document is posted on the CPUC website [here](#).

## 2. **Criteria for Determination of Completeness of Data Templates**

2.1. LSEs should fully and accurately complete the LSE filing documents for the current IRP cycle in a way that adheres to the filing requirements standards expressly specified in Section 1 and the instructions within each of these posted documents.

## 3. **Specified Violations and Scheduled Penalties**

3.1. "Specified Violation" means the knowing failure, absent an extension formally approved by the Commission's Executive Director or Deputy Executive Director for Energy and Climate Policy, to submit a completed plan or template as specified in Section 1: (a) Standard LSE Plan, baseline resource data, new resource data, or other required LSE Integrated Resource Plan filings in the time and manner reasonably required.

3.2. "Specified Violation" also means the knowing failure, absent an extension formally approved by the Commission's Executive Director or Deputy Executive Director, to submit other supporting data clearly and reasonably requested by Commission Staff that Staff can demonstrate is reasonably related to the implementation of the Commission's Integrated Resource Planning program.

3.3. Cure Periods "~~Deficiency cured within five business days from the date of notification~~" means a failure to submit complete and accurate data before the formally established reporting deadline where the filing deficiency was remedied within five business days after notification by Energy Division staff. After identification of a filing deficiency by Energy Division staff, Energy Division staff shall notify the LSE of the deficiency and the LSE ~~will~~ would be able to cure the deficiency within five twenty business days of such notification ~~with a set penalty. If the LSE cures the deficiency within twenty business days of notification, the LSE will not be assessed a penalty. Depending on the complexity of the information requested, staff may determine that more than twenty business days is required, and in such case will notify the LSE of the appropriate cure period.~~

~~Deficiency cured after five business days from the date of notification~~" means a failure to submit complete and accurate data before the formally established reporting deadline where the filing deficiency was remedied after five business days after notification by Energy Division staff. After identification of a filing deficiency by Energy Division staff, Energy Division staff shall notify the LSE of the deficiency and the LSE is able to cure the deficiency after five business days of such notification for a set penalty. In addition, penalties double if a second violation occurs in the same IRP cycle.

"Scheduled Penalty" is the reasonable maximum amount of monetary fine imposed upon an LSE with a Specified Violation that has not been cured. The fine shall be subject to

Energy Division staff discretion considering: (1) the severity of the offense; (2) the conduct of the utility before, during, and after the offense; (3) the financial resources of the LSE; (4) the amount of the fine in relation to prior Commission decisions; and (5) the totality of the circumstances in furtherance of the public interest. The fine may not exceed a maximum of \$1,000 per incident, plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.

#### **4. Procedures for Citation Program**

- 4.1. Citations for Specified Violations. If a potential Specified Violation is identified, Energy Division staff will conduct an informal investigation to verify that a Specified Violation has occurred. The informal investigation must include consultation with the LSE and an opportunity for the LSE to respond to requests for information or clarification.
- 4.2. After appropriate informal investigation and verification that a Specified Violation defined in this Resolution has occurred, the Commission's Consumer Protection and Enforcement Division is authorized to issue a citation. The Specified Violations and the corresponding Scheduled Penalties that may be levied are described in this document.
- ~~4.3. Respondent. An LSE that has received a citation for a Specified Violation from the Consumer Protection and Enforcement Division been assessed with~~ shall be provided a Cure Period of twenty business days. ~~by Commission Staff that has not been cured within five business days.~~
- 4.4. Service of Citations. Citations shall be sent by Energy Division ~~Commission~~ Staff by first class mail ~~or~~ and e-mail to the Respondent at the address of the agent for service of process.
- 4.5. Content of Citations. Citations ~~shall~~ should state the alleged violation(s), the evidence supporting the alleged violation, and the proposed Scheduled Penalty. The citation must include a summary of ~~may summarize~~ the evidence and Commission Staff shall ~~should~~ make the evidence available for timely inspection upon request by the Respondent. Citations also shall ~~should~~ include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative at the hearing, and to request a transcript.  
The proposed Scheduled Penalty stated in the citation shall not increase during the time periods specified herein for the Respondent to either accept the citation or appeal the citation.
- 4.6. Response to Citation. A Respondent may either: (1) accept the citation and the proposed Scheduled Penalty; or (2) appeal the citation.
- 4.7. Filing with Commission Staff. Unless otherwise specified, "notify Commission Staff," "filing," or "file" means to send an email to the address specified in the order or citation that requires the filing or notification.
- 4.8. Acceptance of Scheduled Penalty. In the event the proposed Scheduled Penalty is accepted, the Scheduled Penalty indicated in the Citation will be final. ~~The~~ Respondent should notify Commission Staff in writing and should pay the Scheduled

~~Penalty~~ in full as set forth in ~~Subsection 3.8~~, below within (30) days of the date of the citation.

- 4.9. Appeal of Citation. In lieu of accepting the Scheduled Penalty, a Respondent may appeal the citation and request a hearing. In the event of an appeal, any remedy available may be imposed, and the remedy should not be mandated but may not exceed ~~or limited to~~ the proposed Scheduled Penalty.
- 4.9.1. Notice of Appeal. To appeal a citation, the Respondent must submit a written Notice of Appeal. The Notice of Appeal must state the grounds for appeal and be submitted to Commission Staff within thirty (30) days of the date of the citation. A citation may be appealed on the following grounds or as otherwise may be provided in state or federal law:  
Insufficient clarity of the request;  
Lack of reasonable relationship between the information requested and staff's implementation of the IRP program;
- 4.9.2. Referral to Administrative Law Judge. Upon receipt of a timely Notice of Appeal, Commission Staff should promptly provide an electronic copy of the Notice of Appeal to the Chief Administrative Law Judge. The Chief Administrative Law Judge should promptly designate an Administrative Law Judge to hear the Appeal.
- 4.9.3. Time of Hearing. No less than ten (10) days after the Notice of Appeal is filed, the assigned Administrative Law Judge ~~shall should~~ schedule the matter for hearing promptly unless the LSE waives its right to hearing. The Administrative Law Judge, may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- 4.9.4. Location of the Hearing. Appeals of citations should be heard in the Commission's San Francisco office on regularly scheduled days.
- 4.9.5. Transcripts. The Respondent may order a transcript of the hearing and should pay the cost of the transcript in accordance with the Commission's specified procedures.
- 4.9.6. Representation at Hearing. The Respondent may be represented at the hearing by an attorney or other representative, but any such representation would be at the Respondent's expense.
- 4.9.7. Evidentiary Hearing. At an evidentiary hearing, Commission Staff bears the burden of proof and, accordingly, ~~should shall~~ open and close. The Administrative Law Judge may, in his or her discretion to better ascertain the truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received at the discretion of the Administrative Law Judge.
- 4.9.8. Submission. ~~Ordinarily, t~~The matter ~~shall should~~ be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.

- 4.9.9. Decision. The Administrative Law Judge ~~should~~ shall issue a draft Resolution resolving the appeal not later than thirty (30) days after the appeal is submitted in accordance with subsection 3.7.8, and the draft Resolution shall ~~should~~ be placed on the first available agenda, consistent with the Commission's Rules of Practice and Procedure.
- 4.9.10. Communications. From the date that a citation is issued to and including the date when the final decision is issued, neither the Respondent nor Commission Staff, or any agent or other person on behalf of the Respondent or Commission Staff, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, or Administrative Law Judge, except as expressly permitted under these procedures.
- 4.9.11. Payment of Scheduled Penalties. Payment of Scheduled Penalties ~~should~~ shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the Public Utilities Commission for the credit of the State General Fund.
- 4.10. Default. If the Respondent: (a) notifies Commission Staff of acceptance of a Scheduled Penalty and fails to pay the full amount of the Scheduled Penalty within thirty (30) days of the date of the written acceptance of the Scheduled Penalty; or (b) fails to notify Commission Staff of acceptance of a Scheduled Penalty or fails to file a written Notice of Appeal in the manner and time required, then the citation and proposed Scheduled Penalty indicated in the citation ~~should~~ becomes final and the Respondent is in default. Upon default, any unpaid balance of a Scheduled Penalty should accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.
- 4.11. Reporting. Commission Staff should regularly report to the Commission summarizing actions taken pursuant to this Resolution. The report should include a summary of the citations and penalties imposed, penalties paid and the disposition of any appeals.

### Specified Violations and Scheduled Penalties

Specified Violation	Scheduled Penalty
Failure to <u>meet the requirements specified in Section 1</u> file Individual Integrated Resource Plans at the time and manner required.	<u>A maximum of \$1,000</u> per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter <u>until the deficiency is cured.</u>
Failure to respond at the time and manner required to Commission Staff requests to submit other supporting data that is reasonably related to the implementation of the Commission's Integrated Resource Planning program.	<u>A maximum of \$1,000</u> per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter <u>until the deficiency is cured.</u>