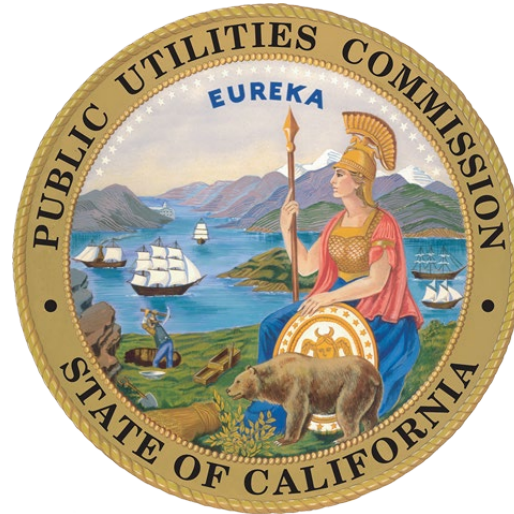




# Draft Enforcement Policy



## Policy and Governance Committee

California Public Utilities Commission

September 2, 2020





# Meeting Agenda

- Participation today
- High-level Review of July Comments (ppt slides 4-9)
- Stakeholder Comment
- Public Comment





# Meeting Participation

If you would like to provide comments or ask a question, there are two options:

**Dial** 1-800-857-1917 and enter code 7218384 and press star one (\* 1)

**OR**

**Email** [PolicyandGovernance@cpuc.ca.gov](mailto:PolicyandGovernance@cpuc.ca.gov)





# Process & Next Steps

2018 – ongoing

Internal review of CPUC enforcement programs and practices

2019 – 2020

Policy and Governance Committee Mtgs

Q4 2020

Draft Resolution proposes Enforcement Policy for CPUC approval with opportunity for public comment





# CPUC Enforcement Tools in One Document

- The Draft Policy would establish two new enforcement tools but otherwise does not modify existing policies, procedures or practices
- Does not change or undermine the existing Citation Programs, or create a disincentive to issuing citations or adding new citations
- Does not change existing practice where the Commission or staff may suspend, alter, amend, or revoke the license of certification of a regulated entity consistent with existing Commission decisions and orders and as permitted by the Public Utilities Act





# Delegation Authority

- Statutory authority based on Pub. Util. Code §§ 701, 702, 451, 2107, and 7
- New enforcement tools provide staff ability to propose administrative enforcement actions for Commission review and approval
- Decisions (D.) 02-02-049, D.06-01-047 and D.09-05-020 explain why this is not an improper delegation of authority. Also see Resolution ALJ-377





## Due Process

- The due process provided to a regulated entity that has been served with a proposed enforcement order is the same due process provided following the issuance of a citation (Resolution ALJ-377)
- Draft Policy does not change current practice with respect to actions such as oral communications, warning letters, and notices of violation





# Consistency and Separation of Duties

- The Draft Policy promotes a consistent approach to each case by establishing the same set of tools to be used Commission-wide
- The formation of Division and Commission Enforcement Teams promotes training, coordination and consistency
- Procedural fairness requires internal separation between advocates and decision-makers to preserve the neutrality of decision-makers and fairness among advocating entities







# Penalty Accrual & Corrective Actions upon Appeal

- The Draft Policy would stay penalty payment for Administrative Enforcement Orders, however penalties for a continued violation would accrue during the appeal process
- The Draft Policy states that corrective action requirements in proposed order remain in effect, notwithstanding the filing of a request for hearing. This is to protect public health and safety and the environment during the pendency of an appeal and is consistent with past practices





# Stakeholder Comments



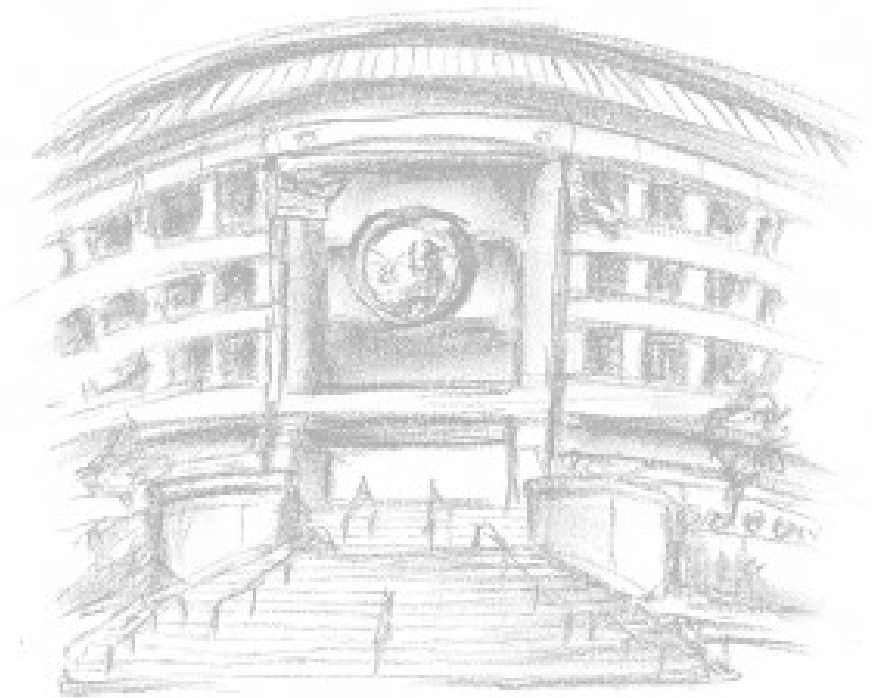


# Public Comment





Thank you for participating in today's  
Policy and Governance Committee  
meeting





# Appendix

Statute excerpts & ppt slides  
from July 1, 2020 P&G Meeting





## Public Util. Code § 451

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

(Amended by Stats. 1977, Ch. 700.)





## **Public Util. Code § 701**

The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

(Enacted by Stats. 1951, Ch. 764.)





## Public Util. Code § 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.

(Enacted by Stats. 1951, Ch. 764.)







## Public Util. Code § 2107

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.

(Amended by Stats. 2018, Ch. 626, Sec. 37. (SB 901)  
Effective January 1, 2019.)





## Public Util. Code § 7

Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

(Enacted by Stats. 1951, Ch. 764.)





# Enforcement Policy

- Articulates principles to guide enforcement activities
- Builds on existing practices
- Applies to all CPUC enforcement activities
- Designed to promote maximum compliance & establish consistent enforcement practices







# Guiding Principles

- Promote maximum compliance
- Enforcement that is:
  - Consistent
  - Firm & provides meaningful deterrence
  - Timely
  - Progressive
- Transparency in enforcement activities
- Attention to Environmental Justice and disadvantaged communities
- Adaptive management





# Elements of Policy

- Creation of Division & Commission Enforcement Teams
- Range of Enforcement Tools
- Penalty assessment methodology
- Settlement process





# Enforcement Teams

## Division Enforcement Teams

- Make recommendations about how to proceed with cases
- Prioritization and resource allocation
- Track enforcement activities
- Make public information accessible

## Commission Enforcement Team

Discuss enforcement matters with the goal of promoting consistency and efficiency





# Range of Enforcement Tools

In-Person or Telephone Communication

Warning Letter or Email

Request for Information

Subpoena

Cease & Desist / Stop Work Order

Notice of Violation

**Administrative Consent Order (New)**

Citation and Compliance Programs

OR

**Administrative Enforcement Order (New)**

Order Instituting Investigation

Order to Show Cause

Suspension, Alteration, Amendment, and Revocation/ Receivership

Civil or Criminal Action

Referral to Another Agency





# New Administrative Tools

- Administrative Consent Order
  - Staff may negotiate with regulated entities; subject to Commission approval
  
- Administrative Enforcement Order
  - Staff may issue in lieu of a citation or other enforcement tool; orders are subject to Commission approval
  - Parties entitled to hearing if requested

