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Via Electronic Mail

Commissioner Liane M. Randolph
Commissioner Clifford Rechtschaffen
Committee on Policy and Governance
California Public Utilities Commission
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RE: Comments on the California Public Utilities Commission Enforcement and Penalty Assessment Policy, Draft Resolution M-4846

Dear Commissioners:

The California Attorney General's Office appreciates the opportunity to offer comments regarding the California Public Utilities Commission's Enforcement and Penalty Assessment Policy ("Enforcement Policy" or "Policy"). We submit these comments to support the Policy's environmental justice provision and suggest ways the Commission could strengthen its protections for environmental justice communities.

We support and commend the Commission in setting out a guiding principle in the Enforcement Policy to address the needs of environmental justice communities by tailoring the Commission's enforcement actions to those needs. We offer for consideration several measures that the Commission could articulate within the Policy to help it achieve its goal of achieving environmental justice. The Policy could: (1) define what is meant by "vulnerable and disadvantaged communities;" (2) include a supplemental environmental project ("SEP") policy for enforcement actions that prioritizes SEPs that benefit environmental justice communities, if the Commission determines that it has the authority to include SEPs as part of its settlements; (3) provide for training on environmental justice to enforcement staff; (4) provide for coordination with other agencies to effectively address problems in vulnerable communities; and (5) set out guidelines for engaging with Commission staff who have environmental justice responsibilities and expertise.

BACKGROUND

A. The Commission's Enforcement Policy

Pursuant to Public Utilities Code section 201 *et. seq.*, the Commission enforces laws affecting privately-owned energy, telecommunications, water, rail transit, and passenger transportation entities by investigating and prosecuting alleged violations and imposing penalties. The Enforcement Policy is intended to articulate overarching principles to guide the Commission's enforcement activities; promote the regulated entities' compliance with the law, including Commission rules and requirements; ensure that the regulated entities provide services and facilities to the public in a safe, reliable, non-discriminatory, just, and reasonable manner; prioritize enforcement action by the Commission as a method of regulation; and promote consistency in enforcement actions. One of the guiding principles set out in the Policy is that the Commission will focus on environmental justice communities in its enforcement responses:

G. Environmental Justice and Disadvantaged Communities

The Commission shall promote enforcement of all statutes within its jurisdictions in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations in the state. This includes tailoring enforcement responses to address the needs of vulnerable and disadvantaged communities.

The Commission is tasked with providing all Californians with safe and affordable utility and transportation services, but some communities in California face higher barriers to accessing these services. A history of unfair treatment of communities, predominantly communities of people of color and low-income communities, have subjected those communities to disproportionate impacts from environmental hazards, excluded them in policy-setting or decisionmaking processes, and left them out of the protections and benefits afforded to other communities, such as regulations enacted to control pollution. Emphasizing environmental justice in its enforcement framework is one important way for the Commission to address these inequities.

B. The Commission's Environmental and Social Justice Action Plan

In February 2019, the Commission adopted an Environmental and Social Justice Action Plan that outlines a comprehensive mission and operating framework with which the Commission should address environmental and social justice issues.¹ The Action Plan sets out

¹ California Public Utilities Commission, Environmental and Social Justice Action Plan (Feb. 21, 2019), <https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/Energ>

Commission goals with respect to such issues, including: consistently integrating equity and access considerations throughout Commission proceedings; increasing investment in clean energy resources to benefit environmental and social justice communities, especially to improve local air quality and public health; enhancing outreach and public participation opportunities for these communities to meaningfully participate in the Commission's decision-making process and benefit from Commission programs; enhancing enforcement to ensure safety and consumer protection for these communities; and improving training and staff development related to environmental and social justice issues in the Commission's jurisdiction.²

In addition, the Action Plan established a designation of "Environmental and Social Justice Communities" for purposes of Commission policy and programs, consisting of communities that are predominantly people of color or low-income; underrepresented in the policy setting or decisionmaking process; subject to a disproportionate impact from one or more environmental hazards; and likely to experience disparate implementation of environmental regulations and socioeconomic investments. According to the Plan, these communities typically include ones located in the most environmentally and socioeconomically impacted California census tracts, as determined by those scoring in the highest 25 percent in CalEnviroScreen 3.0.³ The Action Plan also identifies native and indigenous people living on tribal lands, low-income households (household incomes below 80 percent of the area's median income), and low-income census tracts as communities typically considered vulnerable or disadvantaged.⁴

Finally, to implement the Action Plan and increase capacity and knowledge on addressing environmental and social justice issues across the Commission, one Environmental and Social Justice liaison is designated to represent each division at the Commission, including the enforcement divisions.⁵ The liaisons track the implementation of the Action Plan, help ensure compliance of the actions outlined in the Action Plan, and share lessons learned across the Commission.⁶

[yPrograms/Infrastructure/DC/Env%20and%20Social%20Justice%20ActionPlan_%202019-02-21.docx.pdf](#).

² *Id.* at 15-19.

³ *Id.* at 9. CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that considers environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a higher pollution burden than one with a low score.

⁴ *Id.* at 9-10.

⁵ California Public Utilities Commission, Environmental and Social Justice Action Plan Status Report at 2 (May 2020),

[https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/ESJ%20Action%20Plan_Status%20Update%20May%202020%20\(rev%205.18.2020\).pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/ESJ%20Action%20Plan_Status%20Update%20May%202020%20(rev%205.18.2020).pdf).

⁶ *Id.*

COMMENTS ON THE ENFORCEMENT POLICY

We support and commend the Commission’s goal of addressing environmental justice in its Enforcement Policy. However, there are several ways the Commission could strengthen the Policy. We recommend the Policy be revised to define the communities to which the environmental justice provision refers and include more specific provisions to ensure that the Commission achieves its stated goals of promoting equity and environmental justice.

A. Define “Environmental Justice and Disadvantaged Communities”

California law defines environmental justice as “[t]he fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of all environmental laws, regulations and policies.” (Gov. Code, § 65050.12, subd. (e).) Environmental harms are disproportionately located in low-income communities and communities of color. Air quality in these communities, for example, is often measurably worse than in other communities because of the disproportionate share of industrial facilities, power plants, large-scale agricultural operations, and heavy-duty freight operations that are located in these areas. These communities may also be particularly vulnerable to companies or individuals selling products or services that undermine safety or consumer protections. Such injustices and inequality are driven by and perpetuated in part by historic underinvestment by government agencies in these communities. Thus, for the Commission to serve all Californians equitably, it must allocate resources in a way that addresses the fact that the underserved populations in California face higher barriers to accessing clean, safe, and affordable utility services.

The Enforcement Policy commits the Commission to tailor its enforcement responses to address the needs of these “vulnerable and disadvantaged communities,” but it does not define any factors to identify these communities. Without any definition or guidance for who these communities are, the Commission and the public would neither be able to know when the environmental justice provision applies nor monitor whether the Commission’s enforcement actions are tailored toward vulnerable communities, and thus hold the Commission accountable to its stated goals.

We therefore urge the Commission to include definitions and examples in its Policy for environmental justice communities. According to the Commission’s Environmental and Social Justice Action Plan, these underserved communities commonly are identified as those where residents are predominantly communities of color or low-income; underrepresented in the policy setting or decisionmaking process; subject to disproportionate impact from one or more environmental hazards; and likely to experience disparate implementation of environmental regulations and socio-economic investments in their communities.⁷ As it has in its Action Plan, the Commission can use CalEnviroScreen to guide its definition—designating the census tracts that score at the highest 25 percent for environmental burdens as the communities in need of tailored enforcement actions. The Commission can also echo the Action Plan’s other

⁷ *Id.* at 9.

recommended indicators to define the underserved communities—residents on tribal lands; residents with household incomes below 80 percent of the area’s median income; or census tracts with average household incomes below 80 percent of the state median income.⁸

B. Prioritize Supplemental Environmental Projects in Disadvantaged Communities

The Commission should analyze its legal authority to include SEPs in its settlements with regulated entities and, if the Commission concludes that it has that authority, address how it will handle SEPs in the Enforcement Policy. A SEP is an environmentally beneficial project included as part of a settlement for environmental violations. Violators can voluntarily agree to undertake a SEP in lieu of part of a penalty assessed for the violations. In 2015, the Legislature adopted Assembly Bill 1071 (Atkins, Chapter 585), requiring California Environmental Protection Agency (“CalEPA”) to establish a policy on SEPs that specifically benefits disadvantaged communities. Since then, each of CalEPA’s boards and departments with enforcement authority has established a SEP policy. Examples of SEPs that benefit disadvantaged communities include: installing air filtration devices in schools, community centers, and residences to reduce the community’s exposure to air pollution; monitoring groundwater quality from infiltrating stormwater to detect harmful contaminants; providing regular health screenings for affected communities; or providing community members training to enable them to identify environmental violations and to notify regulatory agencies of those violations.

The Commission could look to the SEP policies of CalEPA boards and departments for examples on how it could encourage SEPs that benefit disadvantaged communities. For example, the California Air Resources Board’s SEP policy provides for a public process to solicit potential SEPs from disadvantaged communities, gives priority to projects in disadvantaged communities, and allows for the amount of the SEP to be up to 50 percent of the settlement penalties.⁹ Examples of potential SEPs that the Commission may adopt include free rooftop solar installations for low-income households and providing for broadband infrastructure to bridge the digital divide experienced by low-income communities, public housing, and others facing socioeconomic barriers. If the Commission concludes that it has the authority to include SEPs in settlements, the Commission should address in its Enforcement Policy how it will handle SEPs, including its public process for soliciting SEPs and prioritizing SEPs that benefit disadvantaged communities. The Policy can also include a section in the penalty assessment methodology under Appendix I to factor SEPs into the setting of penalties against regulated entities.

⁸ *Id.* at 10.

⁹ California Air Resources Board, Supplemental Environmental Project (SEP) Policy & Audit, <https://ww2.arb.ca.gov/our-work/programs/supplemental-environmental-projects-seps/supplemental-environmental-project-sep> (last visited Sept. 30, 2020).

C. Train Enforcement Staff in Environmental Justice Issues, Tools, and Communications

Effective enforcement that is tailored to environmental justice communities requires a workforce of enforcement personnel who are well-versed in the environmental justice issues that communities experience, well-trained in the tools for identifying and monitoring environmental justice burdens, and skilled in interacting meaningfully and transparently with impacted communities. Enforcement staff should therefore take part in required, regular professional development to accrue knowledge and develop background understanding of relevant environmental justice issues in the execution of their duties.

We urge the Commission to incorporate provisions in its Policy for trainings in community engagement and outreach. For example, enforcement staff may be required to attend various annual trainings, such as the Government Alliance on Race & Equity (“GARE”) training to learn about environmental justice communities and how to directly engage of them,¹⁰ general trainings in implicit bias, as well as instruction on using tools like CalEnviroScreen. The Policy should also include protocols about how the Commission’s enforcement staff will communicate with affected communities the results of the Commission’s enforcement actions, such as inspections, citations, and penalties. In addition, because the impacted communities are a resource for information on violations by the regulated entities, the Commission should include protocols for receiving and elevating community complaints and incorporating community-based information in Commission inspectors’ data gathering efforts.

D. Conduct Cross-Agency Enforcement

Environmental justice often requires coordination of multiple local, state, and federal agencies to effectively address the full set of problems that a community faces. CalEPA, for example, recognized the importance of cross-agency coordination to address environmental justice issues in its February 2020 Environmental Enforcement Memorandum. The Commission’s Enforcement Policy should similarly provide for or discuss coordination with other agencies’ enforcement efforts to potentially pursue actions alongside other agencies to more effectively address environmental problems faced by disadvantaged communities.

There may be opportunities to more effectively and efficiently conduct enforcement efforts that address a broad range of environmental violations that harm a particular community. In addition, there may be opportunities for such coordinated enforcement efforts against a particular facility or industry that harms many environmental justice communities. For example, the Commission is one of several transportation authorities that shares regulatory jurisdiction over transportation services. Environmental justice communities often endure dilapidated buses,

¹⁰ Local and Regional Government Alliance on Race & Equity, <https://www.racialequityalliance.org/> (last visited Sept. 30, 2020).

long waits, poor connections, service cuts, overcrowding, and exposures to vehicle pollution.¹¹ In some cases, community members have reported that rideshare services like Uber are practicing “redlining,” or systematically providing for unequal passenger transportation services by raising rates or reducing services.¹² To address problems like these, the Commission can coordinate with local law enforcement agencies, the California Highway Patrol, as well as federal enforcers like the Federal Trade Commission to conduct inspections and investigate complaints to ensure transportation carriers are providing services in safe, legal, and equitable manners.

E. Coordinate with Environmental and Social Justice Liaisons

To implement the 2019 Environmental and Social Justice Action Plan, the Commission designated a team of liaisons that coordinates across the Commission’s divisions to promote and address environmental justice goals in the Commission’s regulatory scheme. The liaisons work to ensure effective coordination, share lessons learned across the agency, and build capacity and knowledge base on how to address environmental and social justice issues.¹³ Since their appointments, the liaisons have recommended nearly 100 action items for the Commission to adopt or monitor in the course of its regulatory work that are tailored to protect environmental and social justice communities.¹⁴ We urge the Commission, in its Enforcement Policy, to explicitly provide a framework for regular communications with the Environmental and Social Justice liaisons to ensure that the Commission’s enforcement actions are consistent with its stated goals of protecting environmental justice communities.

¹¹ California Department of Housing and Community Development, “Over-commuting,” <https://www.hcd.ca.gov/policy-research/specific-policy-areas/housing-transportation.shtml> (last visited Sept. 30, 2020); David Reichmuth, “Air Pollution from Vehicles in California: People of Color Bear the Biggest Burden,” Energy Foundation (Feb. 7, 2019), <https://www.ef.org/2019/02/07/air-pollution-from-vehicles-in-california-people-of-color-bear-the-biggest-burden/>.

¹² California Public Utilities Commission, Action Plan, *supra* note 1 at 37 (6.4); Carolyn Said, “Uber Makes Major Changes to California Rides as Gig-Work Law Takes Effect,” S.F. Chronicle (Jan. 8, 2020), <https://www.sfchronicle.com/business/article/Uber-makes-major-changes-to-California-rides-as-14957326.php>; Carolyn Said, “Uber’s New Policies Could Encourage Discrimination, Advocates Fear,” Greenlining (Jan. 22, 2020), <https://greenlining.org/press/news/2020/ubers-new-policies-could-encourage-discrimination-advocates-fear/>.

¹³ California Public Utilities Commission, Action Plan Status Report, *supra* note 5 at 2.

¹⁴ California Public Utilities Commission, Action Plan, *supra* note 1 App’x A at 21-45.

CONCLUSION

We commend the Commission's focused attention on environmental justice in its Enforcement Policy. However, we recommend the Commission consider several additional measures to help the Commission achieve its environmental justice goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Yuting Chi". The signature is fluid and cursive, with the first name "Yuting" and the last name "Chi" clearly distinguishable.

YUTING CHI
Deputy Attorney General

For XAVIER BECERRA
Attorney General

cc: Sean Simon, Chief of Staff to Commissioner Rechtschaffen