

Comments of Goodin, MacBride, Squeri & Day  
on  
Draft Enforcement Policy

Like the Citation Appeal Program adopted in Resolution ALJ-377, the proposed Enforcement Policy rests on a flawed presumption- that the Commission may impose a fine without first initiating an adjudicatory proceeding pursuant to Sections 1701.1-1701.2 of the Public Utilities Code. For the reasons set forth at pp. 1-9 of our Comments on Draft Resolution ALJ-377 (April 1, 2020), we do not believe the Legislature has vested the Commission with that authority.<sup>1</sup> A copy of our comments on Res. ALJ-377 is attached.

We do not dispute that the Commission's legitimate enforcement objectives would be furthered were the Commission staff able to initiate an enforcement action without first obtaining a formal order from the Commission. Moreover, it is more than likely that the Legislature would look favorably on a proposal to permit the Commission to authorize its staff to do so. To date, however, the Legislature has not provided that authority and, to the best of our knowledge, the Commission has not asked the Legislature to do so.<sup>2</sup> We continue to believe that the most prudent course for the Commission to follow is to seek express statutory authority for abbreviated enforcement procedures rather than relying on statutes that plainly provide none.<sup>3</sup>

We appreciate the opportunity to comment.

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<sup>1</sup> The exception to this general observation are citation programs related to gas and electric safety. See Public Utilities Code Section 1702.5

<sup>2</sup> Senator Hill's SB 982 appeared to offer a vehicle for doing so since it proposed broadening the reach of Public Utilities Code Section 1702.5, the lone statute that authorizes enforcement actions to proceed through abbreviated procedures such as citations. SB 982 has been in the Senate Rules Committee since February 20, 2020.

<sup>3</sup> See our April 1, 2020 Comments on Draft Resolution ALJ-377 at pp. 4-7.

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