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**VIA EMAIL**

Commissioner Committee on Policy and Governance  
[PolicyandGovernance@cpuc.ca.gov](mailto:PolicyandGovernance@cpuc.ca.gov)

**Re: Pacific Gas and Electric Company Comments on the Draft Enforcement Policy**

To the Commissioner Committee on Policy and Governance:

Pacific Gas and Electric Company (PG&E) provides the following comments on the Draft Enforcement Policy (Draft Policy). The goal of Commission's Draft Policy is to promote maximum compliance with Commission rules and requirements through the adoption and application of consistent enforcement practices and to develop a sufficient record that ensures that regulated entities subject to an enforcement action receive due process. PG&E supports the Commission's goal; however, as discussed below, PG&E is concerned with implementation of the Draft Policy. PG&E recognizes that there are many areas that still need to be addressed. Specifically, PG&E seeks a greater understanding of the details regarding how the newly formed Division and Enforcement Teams and Commission Enforcement Team will use their range of enforcement tools. PG&E's comments below seek to pose questions for the Committee's consideration as the Committee deliberates the implications of the Draft Policy.

**A. The Draft Policy Raises Several Questions that Need to Be Resolved**

PG&E urges the Committee to continue to revise the Draft Policy and outline the procedural mechanisms with greater transparency. The Draft Policy requires greater detail than what has been provided thus far. For a subject as important and critical as enforcement, the Draft Policy raises several questions that should be addressed prior to its adoption.

First, it is unclear why the new Administrative Consent Order and Administrative Enforcement Order are needed. Is the Commission trying to address a specific problem through adoption of these new tools? PG&E suggests greater discussion on whether there are preferable alternatives such as making enhancements to the current Citation Programs to address any perceived gaps or weaknesses in currently available

enforcement tools. PG&E questions whether the new Administrative Enforcement Order will conflict or undermine the Commission's Citation Programs. What guidance will the Commission provide to Staff and parties about the circumstances under which it is appropriate to use these new tools compared to existing tools? Furthermore, the Draft Policy makes little mention of Public Utilities Code Sections 2107 and 2108 regarding penalties. The Draft Penalty Assessment Methodology should be reconciled with the Citation Program so that participants have a full understanding of the potential penalties. Similar to the Citation Program, shouldn't the Commission establish a maximum penalty that Staff may impose on regulated utilities in the absence of Commission intervention through an OII or Order to Show Cause? PG&E suggests that the Committee hold a workshop to outline the Administrative Enforcement Order and allow for further questions on the processes involved with this new program.

Second, PG&E has concerns regarding the separation of investigative and adjudicative functions. The Draft Policy creates Division Specific Enforcement Teams and a Commission Enforcement Team and explains their directives and responsibilities at a very high level. Without understanding the operation of the two teams, it is unknown whether the Commission will implement safeguards to prevent against communication that may violate principles that require separation of functions. Furthermore, PG&E requests that the Commission clarify delegation of the authority to Commission Staff under the Administrative Enforcement Order without a legislative directive. In brief, PG&E would like a better understanding of the statutory authorization that supports the additional flexibility outlined in the Draft Policy.

Third, PG&E questions whether the new enforcement tools ensure due process to entities subject to the Draft Policy. PG&E is asking the Committee to review and address the minimum due process requirements and clearly address the burden of proof for Administrative Consent Orders and Administrative Enforcement Orders. Currently, the Draft Policy is vague and lacks details surrounding the options for due process outside of requesting a hearing of an Administrative Enforcement Order. PG&E seeks clarification on how due process protections are provided under a delegated enforcement process pursuant to the Draft Policy.

#### **B. PG&E Urges the Committee to Consider A Rulemaking on the Issues**

PG&E encourages the Committee to consider a different procedural mechanism to address the new enforcement tools including the new Penalty Assessment Methodology. Adopting the Draft Policy through a resolution is not proper given the level of complexity involved with enforcement proceedings. It is unclear what rules apply to the new range of enforcement tools, specifically the Administrative Consent Order and the

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Administrative Enforcement Order. By giving Commission Staff alternatives to the Citation Programs, the Committee is creating new enforcement rules and regulations that should fall within a rulemaking proceeding. For example, the Electric Citation Program was developed in a multiphase rulemaking where the Commission committed to review and refine elements of the program. The development of these alternative programs should not be treated differently than the procedural process in which the Commission created the Citation Programs. By utilizing a rulemaking on these issues, the Commission will provide greater opportunity to understand and comment on the details involved in the Draft Policy.

Thank you for your consideration of these comments.

Sincerely,

Ali Ward