

Via E-Mail

July 22, 2020

Committee on Policy and Governance  
Attn.: Deidre Cyprian  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94105

Re: June 16, 2020 Draft Enforcement Policy

To the Commission and Ms. Cyprian:

Shell Energy North America (US), L.P. (“Shell Energy”) submits its comments on the “Draft Enforcement Policy,” dated June 16, 2020, which was issued by the Commission’s Committee on Policy and Governance. Shell Energy is a marketer of natural gas and electricity to wholesale and retail customers throughout California and the western United States. Shell Energy is a registered electric service provider (“ESP”) in California; as such, Shell Energy sells electric power to direct access customers throughout the State. Shell Energy also sells gas to core and noncore customers, including through the core aggregation program. Shell Energy is a registered Core Transport Agent (“CTA”).

As an ESP and a CTA, Shell Energy is subject to registration, reporting and compliance obligations under various statutes and Commission decisions. As an ESP, for example, Shell Energy is subject to compliance and reporting obligations under the Resource Adequacy (“RA”), Renewables Procurement Standard (“RPS”), and Integrated Resource Planning (“IRP”) programs. The Commission has established a “citation” protocol, including an administrative process and prospective penalties, for the RPS and RA programs, and its considering a citation program for the IRP program.

Shell Energy is not a “public utility,” however. The Commission does not “regulate” Shell Energy, its costs, procurement contracts, or the prices or terms and conditions of Shell Energy’s contracts with its customers. The Commission does not guarantee recovery of Shell Energy’s costs, and the Commission does not approve Shell Energy’s budget.

Shell Energy’s comments on the Draft Enforcement Policy are twofold. First, the Commission should clarify that the Draft Enforcement Policy is intended to apply exclusively to “public utilities,” rather than to all entities that are subject to compliance obligations under

electric and gas industry programs. Second, the proposals in this Draft Enforcement Policy should not supersede existing citation programs that have been adopted and refined by the Commission in previous orders. The Commission Staff should not have unfettered discretion to override existing citation protocols.

A. The Commission Must Clarify That the Draft Enforcement Policy Applies Exclusively to Public Utilities

The Draft Enforcement Policy states that it applies to “regulated entities.” The Draft Enforcement Policy states as follows: “The California Public Utilities Commission (Commission) regulates a broad array of entities and industries, that include privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation entities (regulated entities).” Draft at p. 1. The Draft Policy fails, however, to clarify that “regulated entities” applies exclusively to “public utilities,” within the meaning of P.U. Code Section 216(a)(1).

The Draft Enforcement Policy states that “[t]he Public Utilities Act (Public Utilities Code § 201 et. seq.) requires the Commission to enforce the laws affecting regulated entities by promptly investigating and prosecuting alleged violations and imposing appropriate penalties.” Draft at p. 1. The Draft does not, however, cite to a specific statute that provides the basis for the Draft Enforcement Policy, or that identifies the entities to which the Policy applies.

P.U. Code Section 1702.5(a), for example, provides that “[t]he commission shall, in an existing or new proceeding, develop and implement a safety enforcement program applicable to gas corporations and electrical corporations which includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director.” (Emphasis added.) The safety enforcement program authorized by statute is directed specifically toward “gas corporations and electrical corporations.” The June 16, 2020 Draft Enforcement Policy, by contrast, does not provide specific statutory authorization and does not identify the “regulated entities” to which it applies.

The failure of the Draft Enforcement Policy to identify “public utilities” as the entities to which it applies is significant because entities that may be subject to the Draft Enforcement Policy must be provided advance notice of the Draft Policy and must be provided an opportunity to comment. Based on information and belief, the Draft Enforcement Policy was circulated to a list of entities and individuals that have subscribed to the Commission’s service list for Notice of Amendments to the Rules of Practice and Procedure or the Commission’s service list for General Order (GO) 96-B. If “regulated entities” is intended to extend beyond “public utilities,” there is no assurance that all “regulated entities” received notice of this Draft Policy.

The Draft Enforcement Policy states: “The Commission shall provide clear and consistent information about its enforcement actions and which entities it regulates.” Draft at p. 4 (emphasis added). Before the Commission issues any further version of the Draft Enforcement Policy, the Commission must clarify that “public utilities” are the “regulated entities” to which the Policy is intended to refer. The Commission must send formal notice to all entities that potentially may be affected. Furthermore, the Commission must provide all potentially affected entities a meaningful opportunity to provide comments.

B. The Draft Enforcement Policy Presents the Potential for Inconsistent Application of the RPS, RA, and (Potentially) IRP Citation Programs

As noted above, the Commission has established citation programs for the RPS and RA programs. The Energy Division also has circulated a draft Resolution (E-5080) setting forth a proposed citation program for the IRP program. The purpose of these citation programs is to provide consistency and certainty in the process for enforcement of the Commission’s compliance and reporting requirements, and consistency and certainty in the penalty structure.

The Draft Enforcement Policy makes reference to the Commission’s existing citation and compliance programs. Section III.A.8.a of the Draft Enforcement Policy provides that “[i]f staff discover a violation that can be addressed under an existing Citation and Compliance Program, staff shall determine whether to issue a citation as allowed under the Citation and Compliance Program or take a different enforcement action.” Draft at p. 11.

In other words, the Commission proposes to grant broad discretion to the Staff (Divisions) to address a potential rule violation (or noncompliance) either under the structure of an existing citation program or through an alternative process. This section of the Draft Enforcement Policy should be eliminated.

The purpose of the citation programs is to provide a structured, consistent process. The Draft Enforcement Policy states that “[t]he goals of the Policy are 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 (e.g., notice and an opportunity to be heard).” Draft at p. 1. Section III.A.8.a of the Draft Enforcement Policy, however, eliminates any limits on Staff’s approach to assessing and addressing a potential violation. This section, if adopted, would assign inordinate discretion to the Staff.

The Draft states: “To provide a consistent approach to enforcement, the Policy standardizes enforcement documents and procedures to the extent appropriate.” *Id.* at p. 2. Section III.A.8.a leaves open the possibility that there will be no consistency in enforcement at all. This section should be eliminated.

C. Conclusion

The Commission must clarify that the Draft Enforcement Policy is intended to apply exclusively to “public utilities.”. Once the Commission has clarified this point, the Commission must provide advance notice to all potentially affected entities and must provide an opportunity for comments.

In addition, the Commission should eliminate Section III.A.8.a of the Draft Enforcement Policy, which proposes to allow the Staff to override or ignore existing Commission-approved citation programs, at its discretion. This section is inconsistent with the Commission’s expressed intention “for this Policy to promote a consistent approach among Commission staff to enforcement actions . . . .” Draft at p. 1.

Respectfully submitted,



John W. Leslie  
of  
Dentons US LLP

on behalf of  
Shell Energy North America (US), L.P.