



DRA

*Division of Ratepayer Advocates
California Public Utilities Commission*

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April 1, 2013

Honorable Cristina Garcia
California State Assembly
State Capitol Room 5162
Sacramento, CA 95814

RE: AB 415 (Garcia) – Oppose

Dear Assemblymember Garcia,

DRA (Division of Ratepayer Advocates) is the independent consumer advocate within the California Public Utilities Commission (CPUC). The CPUC is statutorily required to protect consumers and ensure the provision of safe, reliable utility service and infrastructure at reasonable rates. DRA's statutory mandate is to advocate for the lowest possible rate for utility service consistent with reliable and safe service levels.

DRA opposes your AB 415, which would establish a defense against CPUC enforcement activities of "reasonable good faith reliance upon the direction and advice of commission staff." AB 415 defines "reasonable good faith reliance" as "a reasonable belief that the action of an entity acting on the direction and advice of the staff of the commission, is legal and consistent with the direction and advice provided."

AB 415 would have the unintended consequence of significantly diminishing the CPUC's and DRA's ability to ensure safe, reliable and affordable investor-owned utility (IOU) services. For context purposes, the CPUC fulfills its statutory mandates through establishing a record in their proceedings, issuing decisions and commencing enforcement actions. All of these activities are essential for protecting consumers and ensuring regulated entities are complying with the law. DRA augments this record by advocating on behalf of IOU customers so that the CPUC Commissioners can make well-informed decisions in their proceedings and enforcement actions. This bill would directly interfere with the CPUC and DRA's statutory responsibilities by impeding the CPUC's established decision making process through a de facto delegation of the CPUC's decision making authority to staff.

By using vague language to create a defense to CPUC enforcement actions this bill would likely:

- Discourage the CPUC from commencing enforcement proceedings which are the proper forum for the CPUC, DRA and the public to learn about and investigate the events that triggered the enforcement action;
- Provide opportunities for specified entities to avoid enforcement actions by simply alleging they relied on anything CPUC or DRA staff said. Advice or direction from CPUC or DRA staff cannot make legally binding decisions for the State of California - this violates established CPUC policy that "the Commission speaks only through its written decisions" (CPUC Decisions 00-09-042 and 12-10-018) and longstanding Administrative Law principle that decision makers cannot delegate their decision making authority to staff;
- Impact CPUC proceedings by discouraging CPUC and DRA staff from engaging in informal communications with utilities which are currently commonplace. By encouraging staff to communicate with regulated entities only through formal proceedings it would unnecessarily

impact and delay DRA discovery and review of IOU expenses, revenues and general operations and infrastructure.

DRA opposes your AB 415 because the good faith reliance defense it seeks to establish creates a large loophole regulated entities can use to escape culpability for their failure to comply with the law. If you have any questions or would like to discuss this matter further, please call DRA's Deputy Director Matthew Marcus, at (916) 327-3455 or me at (415) 703-2381.

Respectfully,

Joseph P. Como, Acting Director
Division of Ratepayer Advocates

By

Matthew Marcus
Deputy Director