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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard G. Wilbur as Trustee for the
Richard G. Wilbur Revocable Trust,

Complainant,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 11-05-014
(Filed May 11, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING IN PART
AND DENYING IN PART PACIFIC GAS AND ELECTRIC COMPANY'S
FIRST MOTION TO FILE UNDER SEAL, AS AMENDED**

This ruling grants Pacific Gas and Electric Company's (PG&E) first motion to file under seal, as amended, to the extent the motion seeks to file documents under seal. The motion is denied to the extent PG&E seeks to keep documents under seal permanently. The documents shall remain under seal at the Commission for two years pursuant to this ruling.

Background

At the prehearing conference on July 8, 2011, the assigned Administrative Law Judge (ALJ) directed PG&E to file certain documents and information (together, "documents"). PG&E filed the documents on July 22, 2011, along with a motion to file some of the documents under seal. On August 1, 2011, the

Complainant filed a response opposing PG&E's motion to file under seal (MFUS). PG&E filed a reply on August 11, 2011.

On March 14, 2012, the ALJ directed PG&E to file an amended MFUS. PG&E did so on April 4, 2012. The Complainant filed a response opposing PG&E's amended MFUS on April 19, 2012. PG&E filed a reply on April 30, 2012. The Complainant withdrew his opposition in a notice filed on May 9, 2012.

Summary of PG&E's Amended Motion to File Under Seal

In its amended MFUS, PG&E requests permission to file under seal the following documents labeled by PG&E as "confidential exhibits" (CEs):

CE 1: PG&E's Transmission Vegetation Management Program, including all exhibits thereto.

CE 3: PG&E's Maintenance Practices - 2010.

CE 4: The California Independent System Operator 2010 Maintenance Review.

CE 5: The Western Electricity Coordinating Council Compliance Audit Report, Confidential Non-Public Version.

CE 6 & 7: Engineering Schematics of PG&E's Transmission Facilities.

The amended MFUS states that PG&E no longer seeks confidential treatment for CEs 2, 8, and 9.

PG&E argues that the documents it seeks to file under seal are confidential and should be protected from public disclosure because (1) PG&E has protected their confidentiality at all times; (2) the documents have been deemed confidential by state and/or federal agencies; (3) PG&E was allowed to file several of the documents under seal by an ALJ in another proceeding; (4) the documents are protected from disclosure by federal and/or state statutes; (5) the documents are exempted from mandatory disclosure by the California Public

Records Act; and (6) the public interest would be undermined by the forced disclosure of the documents. PG&E claims that the confidentiality of the documents cannot be protected by aggregation or redaction.

PG&E asserts that the need to keep the documents under seal will not dissipate over time. For this reason, PG&E requests that CEs 1, 3, 4, 5, 6 and 7 be placed under seal permanently.

Discussion

PG&E's amended MFUS provides sufficient factual support and legal justification to file under seal CEs 1, 3, 4, 5, 6, and 7. Therefore, the amended MFUS is granted to the extent that PG&E requests authority to file these documents under seal. However, PG&E's request to keep these documents under seal permanently is contrary to the Commission's practice of limiting protection to two years. Accordingly, the amended MFUS is denied to the extent PG&E requests authority to keep documents under seal for more than two years.

Consistent with an e-mail that was sent to PG&E on April 12, 2012, from the Commission's Docket Office, PG&E shall file by May 25, 2012, an amended public version of PG&E's Response to Data Request of ALJ Kenney (originally filed July 22, 2011) that includes CE 2, CE 8, and CE 9.

Recent Developments

On May 18, 2012, at approximately 4:39 p.m., counsel for PG&E sent an email to the service list that appears to indicate that prior versions of some of the documents placed under seal pursuant to today's ruling "were produced without confidentiality protection in prior civil litigation several years ago." PG&E's email states, in relevant part, as follows:

In the course of preparing for briefing and while double checking exhibits, PG&E has realized that certain proprietary

and confidential documents involved in this matter were produced without confidentiality protection in prior civil litigation several years ago. These documents include certain prior versions of PG&E's CAISO Maintenance Practices, prior CAISO Maintenance Reviews/Final Reports, and portions of PG&E's then-existing Transmission Vegetation Management Program.

PG&E continues to maintain that the documents provided in this matter and supporting its Prepared Testimony (which have been designated by PG&E as confidential and are being treated as confidential pursuant to your May 11, 2012 Ruling) are indeed proprietary and confidential, and that continued confidential treatment is appropriate as ordered. Further, there has been no apparent prejudice to the complaint process or any complainant (since all designated confidential documents in this matter have been disclosed to the immediate parties and the ALJ).

Today's ruling placing PG&E documents under seal may be revised or rescinded after further review of the production of prior versions of the PG&E documents in previous civil litigation.

IT IS RULED that:

1. Pacific Gas and Electric Company's amended motion to file under seal that was filed on April 4, 2012, is denied to the extent the amended motion requests authority to file documents under seal for a period in excess of two years. The amended motion is granted in all other respects.

2. Pacific Gas and Electric Company (PG&E) may file under seal the entire confidential version of *Pacific Gas and Electric Company Response to the Data Request of ALJ Kenney* dated July 22, 2011. This document shall remain under seal for a period of two years from the date of this Ruling. During that period, the document shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the

assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If PG&E believes further protection of the document is needed after two years, PG&E may file a motion stating the justification for further withholding the document from public inspection, or for such other relief as the Commission's Rules may then provide. This motion must be filed at least 30 days before the expiration of this Ruling.

3. Pacific Gas and Electric Company (PG&E) shall file by May 25, 2012, an amended public version of *Pacific Gas and Electric Company Response to the Data Request of ALJ Kenney* (originally filed on July 22, 2011) that includes what PG&E previously labeled as Confidential Exhibits 2, 8, and 9, but which PG&E now states are not confidential.

Dated May 21, 2012, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge