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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Improve Public
Access to Public Records Pursuant to the
California Public Records Act.

Rulemaking 14-11-001
(Filed November 6, 2014)

**RULING OF ASSIGNED COMMISSIONER SCHEDULING WORKSHOP,
DIRECTING THE COMMISSION'S STAFF TO LEAD WORKSHOP AND
SCHEDULE ADDITIONAL WORKSHOPS, AND DIRECTING
DEVELOPMENT OF RECORDS MATRIX TO FACILITATE
PRODUCTION OF DOCUMENTS PURSUANT TO THE CALIFORNIA
PUBLIC RECORDS ACT**

Summary

This Assigned Commissioner's Ruling sets the time, place, scope, and preliminary agenda of a workshop lead by the Commission staff and directs the parties to develop a reporting matrix for the confidential treatment of information. The workshop is scheduled as follows:

Workshop
Tuesday, February 2, 2016
10:00 a.m. - 4:00 p.m.
California Public Utilities Commission
505 Van Ness Avenue
Courtyard Room
San Francisco, California 94102

**Information on how to participate by
WebEx and Conference Call
will be provided in the Commission's Daily Calendar**

As discussed further below, the workshop should also facilitate discussion and seek consensus on identifying specific records, classes of information, and data (collectively, Records) that can and should be readily disclosable

to the public because they are not privileged, confidential, or otherwise should be withheld from public disclosure. This ruling also authorizes staff to set additional workshops consistent with the scope of workshops set forth herein.

1. Background

The Commission instituted this rulemaking to improve the public's access to public records in the possession of the Commission and its employees. The Order Instituting Rulemaking (OIR) underlying this proceeding orders that the Commission's General Order (GO) 66-C be modified to comply with the California Public Records Act (CPRA).¹ At the Commission's invitation, persons and parties filed comments and reply comments on the OIR's proposed revised general order (proposed GO 66-D) and issues to be considered.

The assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) on March 3, 2015. There was significant support among the parties for workshops. Some parties also expressed concern that the Commission's process for producing public records not diminish appropriate protections for legally privileged, propriety or commercially-sensitive, privacy-related, and critical safety information, and other Records that are justified under the law as being withheld from public disclosure.

The *Assigned Commissioner's Scoping Memo and Ruling* (Scoping Memo) was issued on August 11, 2015 and contains a draft proposal for

¹ GO 66-C sets forth the process and procedures for obtaining Records.

improving the Commission's efficiency in responding appropriately to CPRA requests. The Scoping Memo's draft proposal also sets forth the legal framework underlying the proposed improved process. That legal framework cites to the California Constitution's mandate that laws shall be broadly construed to permit public access to Records, and shall be narrowly construed where the law would deny such access, and it also cites to the CPRA's strong presumption "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."² The draft proposal devotes considerable attention to statutory exemptions from disclosure of Records, such as Cal. Gov. Code § 6254.15 concerning corporate financial records and corporate proprietary information such as trade secrets. As well, the draft proposal's legal framework discussed that Cal. Pub. Util. Code § 583 does not provide a substantive protection from the Commission's disclosure of Records independent of the CPRA or other law, but that § 583 provides for a process for the Commission to deal with claims that a Record is confidential.³

Parties were instructed to file comments and reply comments on the Scoping Memo's draft proposal and were specifically instructed to brief legal issues raised by the draft proposal. As at the PHC, there was broad

² Scoping Memo, Attachment A (Draft Proposal – OIR on Public Records Act – R.14-11-011), quoting Cal. Gov. Code § 6250.

³ Scoping Memo, Draft Proposal, citing Decision (D.) 06-06-066, *mimeo* at 28-29; *In Re Southern California Edison Company [Mohave Coal Plant Accident]*, D.91-12-019 (1991) 42 CPUC 2d 298, 300; and *Southern California Edison Company v. Westinghouse Electric Corporation* (9th Cir. 1989) 892 F.2d 778, 783.

support for workshops to identify and establish those Records that might be deemed confidential or not confidential.

There is an existing Commission process governing the identification and treatment of confidential data relating to electricity procurement, as approved in D.06-06-066 (as modified by D.07-05-032). D.06-06-066 established guidelines and a reporting matrix that identified confidential data, and a process for the submission of confidential data: data for which a claim of confidentiality is made must be submitted along with a signed declaration referencing the provision of the Matrix of Allowed Confidential Treatment for Investor Owned Utility (IOU) Data (IOU Matrix)⁴ denoting the data's eligibility for confidential treatment. Although the substance of the IOU Matrix may require updating (in another, appropriate proceeding), as the Commission's electric procurement programs have evolved over the last ten years, the process for submitting confidential data established in D.06-06-066 has proven successful in balancing the Commission's, the public's, and commercial interests in openness and protecting confidentiality. Further, D.06-06-066 makes clear that a party seeking confidential treatment bears the burden of proving such entitlement for any records, and not just those listed in the Matrix.

2. Discussion and Scope of Workshop

As discussed, parties have expressed a general consensus on the potential value of holding workshops for the purposes of identifying those

⁴ D.06-06-066, Appendix 1 (IOU Matrix). *See also* D.06-06-066, Appendix 2 ([Energy Service Providers] Matrix).

Records that can be established as public and those Records that can be established as confidential and therefore should be withheld from public disclosure. On that basis, this Ruling schedules at least one workshop for parties to discuss this matter and explain the bases for claims of confidential protection. As parties are representing varied interests, staff shall lead this workshop and produce a final agenda consistent with the scope for workshops as set forth in this Ruling.

The Scoping Memo determined that GO 66-C contains several categories of documents that are exempt from public disclosure, which exemptions are inconsistent with the CPRA. As the purpose of this rulemaking is to improve the public's access to public records pursuant to the CPRA, GO 66-C's inconsistency with the CPRA is a fundamental infirmity that must be corrected. The Commission will resolve the legal issues raised in the Scoping Memo, but for purposes of the workshops (to the extent any legal framework is discussed), the parties shall premise their discussion on the Scoping Memo's draft proposal's legal framework.

Parties should come to the workshop prepared with a list of documents they consider should generally be considered non-confidential and thus generally should be disclosed, and documents they consider should generally be considered confidential and thus generally should not be disclosed to the public. Parties' preparatory work should identify Records with a level of specificity that is practical to developing a matrix. The workshop will focus on submission of documents prospectively rather than documents already in the Commission's possession.

3. Preliminary Agenda

The following is the preliminary agenda. Commission staff will finalize and circulate a final agenda prior to the workshop. All workshop discussions shall be consistent with the scope of this proceeding. Staff may schedule subsequent workshops as it deems appropriate.

Preliminary Agenda

- a. Legal Division presentation on PRA request case studies;
- b. Points of agreement on characteristics of documents that should remain confidential;
- c. Points of agreement on characteristics of documents that should be public;
- d. Utilizing a confidentiality matrix approach similar to that in D.06-06-066;
- e. Responsibility of the IOUs and other entities subject to the Commission's regulation for categorizing sub items within documents according to confidentiality; and
- f. Public Comment.

IT IS RULED that a workshop is scheduled in this proceeding for Tuesday, February 2, 2016 at 10:00 a.m., at the Commission's headquarters, 505 Van Ness Avenue, San Francisco, California.

Dated January 12, 2016, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker
Assigned Commissioner