

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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

R.14-11-001
(Filed November 6, 2014)

**REPLY COMMENTS OF CALIFORNIA WATER ASSOCIATION
ON PROPOSED DECISION OF COMMISSIONER PICKER**

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July 25, 2016

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Improve)	
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In accordance with Rule 14.3(d) of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), California Water Association (“CWA”) hereby submits its reply comments on the Proposed Decision (“PD”) of Assigned Commissioner Michael J. Picker, issued on June 28, 2016, in the above-captioned rulemaking.

CWA received opening comments from eight sets of parties to the proceeding,¹ all of whom identified significant problems with the PD and expressed concerns with the Commission’s evolving approach to its handling of confidential documents. CWA agrees with certain of the points made, but not others. The energy and telecommunications utilities, for example, offer some excellent points with which CWA agrees. In particular, CWA supports AT&T’s recommendation that the Commission consider a “back-loaded” confidentiality process that activates only upon receipt of a request for disclosure² and notes that other state agencies

¹ CWA received service of opening comments from AT&T; the California Association of Competitive Telecommunications Companies; the Independent Storage Providers; San Diego Gas & Electric Company, together with Southern California Gas Company and Southwest Gas Corporation; the Imperial Irrigation District; Southern California Edison Company, together with Pacific Gas and Electric Company; Communications Industry Coalition; and Raiser-CA, LLC.

² Comments of AT&T, at 1-3, 4-8.

follow a similar model.³ Additionally, CWA concurs with SCE and PG&E that a provisional designation process for complicated or voluminous submissions should be discussed and developed.⁴ On the other hand, CWA recommends that the Commission accord little weight to the comments filed in the name of the Imperial Irrigation District (“IID”), which are replete with erroneous statements of law and facts.⁵

While many issues are in controversy, and while CWA agrees with many of the arguments other parties have made, we do not believe that the Assigned Commissioner is seeking, by the present PD, to resolve all of the many controversial issues debated over the course of this proceeding. Instead, CWA understands the main purpose of this PD as being to establish a date -- the date the Commission adopts the PD -- from which all utilities and related parties will be on notice that they need to take certain steps to protect the confidentiality of information they submit to the Commission, to the extent such protection is warranted. CWA considers this an appropriate approach for the Commission to take at this time, so long as the PD does not reach back to prejudge the confidentiality of any category of documents submitted in the past.

³ For example, the California Air Resources Board (“CARB”) requires any person submitting records claiming to be confidential to identify the portions of the records containing such confidential information and to provide the name and contact information of the individual to be contacted in the event of a request for disclosure of such information, or if the agency seeks to disclose the information itself. At such time, the CARB informs the individual and the person claiming confidentiality has five days to file documentation in support of the confidentiality claim, which deadline may be extended upon a showing of good cause. The CARB regulations also list the specific types of information required to be included in such documentation, sets a deadline for a CARB determination regarding disclosure, and address judicial review of that determination. 17 CCR 91000 *et seq.*

⁴ Joint Opening Comments of SCE and PG&E, at 6.

⁵ For example, the IID comments attribute statements and requirements to Senate Bill 1488 (Stats., 2004) that are nowhere to be found within the four corners of that one-page statute. See IID Comments, at 3.

Accordingly, CWA respectfully requests that the PD be revised so that:

- (1) All categories of potentially confidential documents submitted prior to the adoption of the PD, including those submitted without any confidentiality markings at all, are afforded Due Process protections (recognizing that the exact process for providing those protections will be determined at a later date);⁶ and
- (2) The requirements for claiming confidentiality in connection with submitting documents to the Commission are clear and not unduly burdensome.

Resolving the remaining issues will require significant discussion, negotiation, and consensus, including, especially, how adequate notice and opportunity to object will be furnished to a provider of information claimed confidential prior to its disclosure to a third party. CWA concurs with many of the parties that workshops are the best means to address these issues going forward.

For the foregoing reasons, CWA respectfully requests that the Commission revise the PD in accordance with its opening and reply comments, and hold one or more workshops to thoroughly vet and resolve the open issues.

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⁶ See recommended revision in CWA's Opening Comments, at 5.