



**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.

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

**JOINT REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY
(U 338 E), SOUTHERN CALIFORNIA GAS COMPANY (U 904 G), SAN DIEGO GAS &
ELECTRIC COMPANY (U 902 M), PACIFIC GAS AND ELECTRIC COMPANY
(U 39 E), AND SOUTHWEST GAS CORPORATION (U 905 G) ON
PHASE 2A DRAFT PROPOSAL**

JANET S. COMBS
CAROL SCHMID-FRAZEE

JACKSON D. MCNEILL
MELISSA A. HOVSEPIAN

Attorneys for
SOUTHERN CALIFORNIA EDISON
COMPANY
2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-1337
Facsimile: (626) 302-1935
E-mail: Carol.SchmidFrazee@sce.com

Attorneys for
SOUTHERN CALIFORNIA GAS COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY
555 West Fifth Street, Suite 1400
Los Angeles, California 90013-1046
Telephone: (213) 244-2977
Facsimile: (213) 629-9620
E-mail: JMcNeill@semprautilities.com

ALYSSA KOO
PETER VAN MIEGHEM

KYLE O. STEPHENS

Attorneys for
PACIFIC GAS AND ELECTRIC
COMPANY
77 Beale Street
San Francisco, California 94105
Telephone: (415) 973-2902
Facsimile: (415) 973-5520
E-mail: ppv1@pge.com

Attorney for
SOUTHWEST GAS CORPORATION
5241 Spring Mountain Road
Las Vegas, Nevada 89150-0002
Telephone: (702) 876-7293
Facsimile: (702) 252-7283
E-mail: Kyle.Stephens@swgas.com

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
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I.

INTRODUCTION AND EXECUTIVE SUMMARY

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission or CPUC) Rules of Practice and Procedure and the Assigned Commissioner's Amended Scoping Memorandum and Ruling, dated December 30, 2016 (Amended Scoping Memo), regarding the Phase 2A Draft Proposal for Order Instituting Rulemaking (OIR) No. 14-11-001 (Phase 2A Draft Proposal), Southern California Edison Company (SCE), Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), and Southwest Gas Corporation (Southwest Gas)(collectively, the Joint Energy

Utilities) respectfully submit these Joint Reply Comments to the Opening Comments of the parties¹ in response to the Amended Scoping Memo.²

The Joint Energy Utilities were encouraged by the broad level of support in the Opening Comments for a reciprocal right of appeal for utility record submitters.³ However, there were two issues raised by other parties in their Opening Comments which the Joint Energy Utilities are compelled to address:

- Contrary to Bayview/Hunters Point's assertion, there is no need to modify Ordering Paragraph 1b of Decision (D.)16-08-024 because it is consistent with the Commission's rules and with D.08-04-023, which modified D.06-06-066; and
- The Commission should not extend the Phase 2A Draft Proposal to apply to the release of confidential information as TURN requests without an appeals process for record submitters in place; in the absence of an appeals process, TURN's request should be deferred to Phase 2B.

II.

CONTRARY TO ASSERTIONS OF BAYVIEW/HUNTERS POINT, ORDERING PARAGRAPH 1b of D.16-08-024 REQUIRES NO MODIFICATION

¹ The parties, in addition to the Joint Energy Utilities, submitting Opening comments were: The Utility Reform Network (TURN), Communications Industry Coalition (CIC), Consolidated Communications of California Company, Consolidated Communications Enterprise Services, and various other parties (Consolidated and the Small LECs), California Association of Competitive Telecommunications Companies (CALTEL), Independent Storage Providers (ISPs), Rasier-CA LLC (Rasier-CA), Bayview/Hunters Point Community Legal (Bayview/Hunters Point), Lyft, and California Water Association (CWA).

² Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure, the Joint Energy Utilities authorize SCE to sign and submit these comments on their behalf.

³ Consolidated and the Small LECs' Opening Comments, p.5; CIC's Opening Comments, pp.5-7; ISPs' Opening Comments, pp.2-3; CWA's Opening Comments, pp. 13-14; CALTEL's Opening Comments, pp.3-4; and Rasier-CA's Opening Comments, p.4.

Bayview/Hunters Point wrongly asserts that: “a party seeking confidential treatment of information in a formal proceeding must make a motion to file under seal.”⁴ This assertion is incorrect and inconsistent with Commission rules of practice and procedure, as well as precedent. As the Joint Energy Utilities stated in their Opening Comments, “the option to submit a declaration in a formal proceeding is entirely consistent with Rules 11.1 and 11.4, as well as Rule 11.5, as demonstrated by the process adopted in D.08-04-023, which modified D.06-06-066 (establishing the confidentiality process for electric procurement-related documents).”⁵

The process laid out in D.08-04-023, which has been followed for nine years, requires that motions be filed for (1) a filing/pleading filed with the docket office in a formal proceeding, or (2) material offered into evidence in a formal proceeding.⁶ These two categories of materials constitute the evidentiary record of a proceeding. There are two other categories of materials that are served or otherwise shared in formal proceedings are not yet part of the evidentiary record, for which a motion should not be required: (1) prepared testimony which is served on parties, but not yet entered into the evidentiary record, and (2) discovery/data request responses.⁷ In those situations, “[a] declaration under penalty of perjury will accompany the data...”⁸ The Joint Opening Comments of the Joint Energy Utilities, at pp.16-18, explains in more detail why D.16-08-024 is consistent with D.08-04-023 and the Commission’s Rules of Practice and Procedure.

⁴ Bayview/Hunters Point’s Opening Comments, p.17.

⁵ Joint Energy Utilities’ Joint Opening Comments, p.16.

⁶ See D.08-04-023, at p. 21.

⁷ See *id.* at p. 22.

⁸ *Id.* at pp. 22-23.

III.

TURN’S REQUEST TO APPLY THE PHASE 2A DRAFT PROPOSAL TO THE RELEASE OF COMMISSION HELD INFORMATION ABSENT A CPRA REQUEST SHOULD BE CONSIDERED IN PHASE 2B AND RECORD SUBMITTERS SHOULD BE AFFORDED AN APPEALS PROCESS

TURN’s opening comments request that the Phase 2A Draft Proposal be extended to cover situations in which the Commission might release information in its possession even absent a CPRA request.⁹ This extended process, TURN envisions, would mirror the Phase 2A Draft Proposal¹⁰ and is needed in order to “to supply the public, including legislators and other government officials, with information of significant public interest... [even] absent a Public Records Act request.”¹¹ The Joint Energy Utilities are concerned about the extension of the Phase 2A Draft Proposal to situations where the Commission might release confidential information outside of a CPRA request because, at present, the Phase 2A Draft Proposal offers no opportunity for record submitters to appeal the release of documents. While the Amended Scoping Memo recognizes that additional processes for releasing information in the Commission’s possession outside of the context of a CPRA request may need to be developed, it appropriately reserved consideration of such broader issues for Phase 2B. Further, it is critical that an appeals process be part of both the Phase 2A Proposal for CPRA requests and any other proposal for release of record submitters’ confidential information outside of a CPRA request.

Phase 2B is the more appropriate place to develop or refine processes for releasing Commission held information in contexts outside of a CPRA request.¹² Phase 2B’s scope is

⁹ TURN’s Opening Comments, at pp. 2, 6-7.

¹⁰ *Id.* at p. 7.

¹¹ *Id.* at p. 2.

¹² *See, e.g.*, Assigned Commissioner’s Amended Scoping Memorandum and Ruling (Amended Scoping Memo), dated Dec. 30, 2016, Appendix A, p. A-1 (“In Phase 2A of this proceeding, the Commission addresses the process used by the Commission to release records *in response to a California Public Records Act request.*”)(emphasis added).

broader, as the Amended Scoping Memo specifically contemplates that Phase 2B will address other processes related to confidentiality issues, including determining the “process [that] should be used to challenge a designation of a specific document” and other related matters.¹³

Accordingly, any process for handling the release of Commission held information outside of a CPRA request should be reserved for Phase 2B of this proceeding in order to particularly consider the appropriate appeals process for such a release.

Should the Commission decide to consider TURN’s changes to the Phase 2A Draft Proposal and expand the scope of the proposal beyond the CPRA context, the Joint Energy Utilities respectfully request that record submitters be afforded the opportunity to appeal any contested determination by Legal Division to the full Commission before any information deemed confidential by the record submitter is released to the public.¹⁴ Although TURN’s proposal focuses on release of documents “not entitled to confidentiality,”¹⁵ that determination is left solely to Legal Division as the final arbiter, with no opportunity to be heard by the full Commission if Legal Division is mistaken.¹⁶ An appeals process is imperative regardless of the context in which record submitters’ information held by the Commission is released; after all, due process must still be met, the procedural language of Pub. Util. Code Section 583 still applies, and – more importantly – the same irreparable harm will still result if confidential information is inadvertently or inappropriately released, no matter whether in response to a CPRA request, or for some other purpose. As such, if the Commission adopts TURN’s request to expand the scope of the Phase 2A Draft Proposal to other contexts, an opportunity to appeal by record submitters must be expanded to those contexts as well.

¹³ *Id.* at 4.

¹⁴ Joint Energy Utilities’ Opening Comments, at pp. 3-8.

¹⁵ TURN’s Opening Comments, at p. 7.

¹⁶ *Id.*

IV.

CONCLUSION

The Joint Energy Utilities appreciate this opportunity to submit reply comments on the Phase 2A Draft Proposal and urge the Commission to further refine it as they recommend in their opening and reply comments.

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Respectfully submitted on behalf of the Joint Energy
Utilities,

JANET S. COMBS
CAROL SCHMID-FRAZEE

/s/ Carol Schmid-Frazee

By: Carol Schmid-Frazee

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-1337
Facsimile: (626) 302-1935
E-mail: Carol.SchmidFrazee@sce.com

JANET S. COMBS
CAROL SCHMID-FRAZEE

JACKSON D. MCNEILL
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Attorneys for
SOUTHERN CALIFORNIA EDISON
COMPANY
2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-1337
Facsimile: (626) 302-1935
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Attorneys for
SOUTHERN CALIFORNIA GAS COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY
555 West Fifth Street, Suite 1400
Los Angeles, California 90013-1046
Telephone: (213) 244-2977
Facsimile: (213) 629-9620
E-mail: JMcNeill@semprautilities.com

ALYSSA KOO
PETER VAN MIEGHEM

KYLE O. STEPHENS

Attorneys for
PACIFIC GAS AND ELECTRIC
COMPANY
77 Beale Street
San Francisco, California 94105
Telephone: (415) 973-2902
Facsimile: (415) 973-5520
E-mail: ppv1@pge.com

Attorney for
SOUTHWEST GAS CORPORATION
5241 Spring Mountain Road
Las Vegas, Nevada 89150-0002
Telephone: (702) 876-7293
Facsimile: (702) 252-7283
E-mail: Kyle.Stephens@swgas.com

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