

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California  
Date: September 13, 2012  
Resolution No.: L-441

**RESOLUTION**

**RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION CONSUMER PROTECTION AND SAFETY DIVISION CONCERNING ELECTRIC INCIDENT REPORTS, AND COMPLAINTS, RELATING TO CONTACT VOLTAGE AND/OR STRAY VOLTAGE, FILED WITH THE COMMISSION BETWEEN JANUARY 1, 2008 AND THE PRESENT, AND INVESTIGATION REPORTS RELATING TO SUCH INCIDENT REPORTS, TO THE EXTENT THE INCIDENT OR COMPLAINT INVESTIGATIONS HAVE BEEN COMPLETED, WITH APPROPRIATE REDACTIONS**

**BACKGROUND**

The California Public Utilities Commission (“Commission”) received a letter from Joshua N. Koenig on August 1, 2012, seeking disclosure of records regarding each electric incident report filed between January 1, 2008 and the present; each consumer complaint relating to contact voltage incidents or similar incidents involving electric service or transmission facilities during that time period; and each investigation report of the Commission or the Electric Safety and Reliability Branch related to such reported incidents or complaints. The Commission staff could not make the investigation records public without the formal approval of the full Commission. Mr. Koenig’s letter is treated as an appeal to the full Commission for release of the requested records pursuant to Commission General Order 66-C § 3.4.

**DISCUSSION**

The requested records are “public records” as defined by the California Public Records Act (“CPRA”).<sup>1</sup> The California Constitution, the CPRA, and discovery law favor disclosure of public records. The public has a constitutional right to

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<sup>1</sup> Cal. Gov’t. Code § 6250, *et seq.*

access most government information.<sup>2</sup> Statutes, court rules, and other authority limiting access to information must be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access.<sup>3</sup> New statutes, court rules, or other authority that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest.<sup>4</sup>

The CPRA provides that an agency must base a decision to withhold a public record in response to a CPRA request upon the specified exemptions listed in the CPRA, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.<sup>5</sup>

The Commission has exercised its discretion under Cal. Pub. Util. Code § 583, and implemented its responsibility under Cal. Gov't. Code § 6253.4(a), by adopting guidelines for public access to Commission records. These guidelines are embodied in General Order 66-C. General Order 66-C § 1.1 provides that Commission records are public, except "as otherwise excluded by this General Order, statute, or other order, decision, or rule." General Order 66-C § 2.2 precludes Commission staff's disclosure of "[r]ecords or information of a confidential nature furnished to or obtained by the Commission ... including: (a) Records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action." General Order 66-C § 2.2(a) covers both records provided by utilities in the course of a Commission investigation and investigation records generated by Commission staff.

Because General Order 66-C § 2.2(a) limits Commission staff's ability to disclose Commission investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, Commission staff denies most initial requests and subpoenas for investigation records. Commission staff usually informs requestors that their subpoena or public records request will be treated as an appeal under General Order 66-C § 3.4 for disclosure of the records.

There is no statute forbidding disclosure of the Commission's safety investigation records. With certain exceptions for incident reports filed with the Commission,

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<sup>2</sup> Cal. Const. Article I, § 3(b)(1).

<sup>3</sup> Cal. Const. Article I, § 3(b)(2).

<sup>4</sup> *Id.*

<sup>5</sup> The fact that records may fall within a CPRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records subject to a law prohibiting disclosure, CPRA exemptions are discretionary, rather than mandatory, and the Commission is free to refrain from asserting such exemptions when it finds that disclosure is appropriate. See Cal. Gov't. Code § 6253(e); *Black Panthers v. Kehoe* (1974) 42 Cal. App. 3d 645, 656.

we generally refrain from making most accident investigation records public until Commission staff's investigation of the incident is complete. Commission staff and management need to be able to engage in confidential deliberations regarding an incident investigation without concern for the litigation interests of plaintiffs or regulated entities.

The Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.<sup>6</sup> Disclosure of such records does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident or incident under investigation.<sup>7</sup> Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility accidents or incidents, the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident or incident.

Portions of incident investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act of 1977 ("IPA").<sup>8</sup> The IPA authorizes disclosure of personal information "[p]ursuant to the [CPRA]."<sup>9</sup> The CPRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy.<sup>10</sup> Incident investigation records may include information subject to the lawyer-client privilege, official information privilege, or similar disclosure limitations. The CPRA exempts such information from disclosure.<sup>11</sup>

The Commission's investigations of many of the incidents are complete; the disclosure of the Commission's records regarding those investigations will not compromise these investigations. The Commission investigations regarding a number of incidents remain open, however; the disclosure of the Commission's records regarding those investigations could compromise the Commission's investigations. Once the records of those investigations are complete, the Commission will determine whether any information in those files requires

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<sup>6</sup> Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of privacy, and other exempt or privileged information.

<sup>7</sup> See, e.g., Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in Decision 93-05-020, (1993) 49 P.U.C. 2d 241; L-309 *Re Corona* (December 18, 2003); L-320 *Re Knutson* (August 25, 2005).

<sup>8</sup> Cal. Civ. Code § 1798, *et seq.*

<sup>9</sup> Cal. Civ. Code § 1798.24(g).

<sup>10</sup> Cal. Gov't. Code § 6254(c).

<sup>11</sup> Cal. Gov't. Code § 6254(k).

redaction because its disclosure would constitute an unwarranted invasion of personal privacy, or because it is subject to the lawyer-client privilege or another Commission held privilege limiting disclosure. With the exception of such redactions, if any, we will authorize disclosure of these investigation records once the investigations are complete.

The Commission has often stated that Cal. Pub. Util. Code § 315, which expressly prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, “as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property,” offers utilities sufficient protection against injury caused by the release of requested investigation records.

### **COMMENTS ON DRAFT RESOLUTION**

The Draft Resolution of the Commission’s Legal Division in this matter was mailed to the parties in interest on August 13, 2013, in accordance with Cal. Pub. Util. Code § 311(g). Comments were filed on August 31, 2012, by San Diego Gas and Electric Company, Southern California Gas Company, Pacific Gas and Electric Company, and Southern California Edison. Comments were filed September 4, 2012 by AT&T, the California Cable and Telecommunications Association, Cox California Telecom, LLC; CTIA-The Wireless Association, Frontier Communications, the Small LECs; SureWest Telephone, and Verizon. Reply Comments were filed September 7, 2012, by Joshua Koenig, on behalf of the Contact Voltage Information Center.

### **Joint Commenters**

San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas) and Pacific Gas and Electric Company (PG&E) (collectively, Joint Commenters) submitted Joint Comments. Joint Commenters stated that: 1) the request for records of consumer complaints regarding “contact voltage incidents” or similar incidents involving electric service or transmission facilities” is too vague and overbroad and should be granted in part, and denied in part, with clarifications. Joint Commenters state that the phrase “contact voltage incidents” is not a phrase used in the energy industry, and is not clarified in the Draft Resolution.<sup>12</sup> Joint Commenters “presume that Mr. Koenig seeks consumer complaints related to ‘contact with transmission/distribution electrical conductors’ and recommend that the request be treated as requesting such documents.”<sup>13</sup>

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<sup>12</sup> Joint Comments at 2.

<sup>13</sup> *Id.*

Joint Commenters recommend that the Commission only provide formal consumer complaints to the requester:

As the Commission noted in Resolution L-332, the formal complaint files “have long been open for public inspection in the Commission’s Central Files Office” because the act of filing the formal complaint can be seen as the complainant’s assent to the disclosure of his or her personal information. [Footnote omitted.] Conversely, the Commission has noted that the “fact that a person files an informal complaint with a state agency, - this Commission – does not in our view constitute an open invitation to the world to view the complainants’ personal information.”<sup>14</sup>

Joint Commenters state that “All Confidential information Must be Redacted Before Public Disclosure, Not Just Personal and Privileged Information.”<sup>15</sup> Joint Commenters:

concur with the Commission that personal information contained in responsive documents must be redacted. As the Commission noted in response to a similar PRA request seeking gas incident reports, “[t]he Commission’s widespread distribution of personal information concerning incident victims and witnesses [to a party without interest in the incident] in response to Public Records Act requests – which then makes that same information available to anyone filing a similar request (Government Code § 6254.5) - lacks appeal.” [Footnote 14] The same privacy concerns exist in the instant matter, and as such, the same redactions of personal information in any responsive documents are necessary and appropriate.<sup>16</sup>

Joint Commenters further state that:

The redactions must not be limited solely to personal and privileged information, however,” since responsive records may “contain additional confidential information that must be redacted prior to

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<sup>14</sup> *Id.* at 3, quoting Resolution L-332 at 7.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 4; *see also*, fn 14: “Resolution L-332 at 6. In Resolution L-332, the Commission required Staff to redact the names, addresses, and telephone numbers of and family of a deceased individual, or party witnesses not associated with the utility, the Commission, or the injured or deceased individual’s employer as well as the victim’s personal information prior to public release. *Id.* at OP 1. The Commission explained that the order to redact did not stem from “a desire to shield utilities from appropriate public scrutiny, but rather [from] a desire to insulate accident victims from involuntary exposure to a potentially unwelcome public spotlight.” *Id.* at 17 (quoting Resolution L-272 at 10).”

disclosure. For example, electric distribution circuit maps may contain critical energy infrastructure information, the disclosure of which would not serve the public interest,” and “proprietary corporate information.”<sup>17</sup>

### **Southern California Edison Comments**

Southern California Edison (SCE) comments the Draft Resolution is too vague to facilitate meaningful public review, and functionally violates Cal. Pub. Util. Code 311(g)<sup>18</sup> since it fails to provide sufficient factual details regarding the incidents, locations, dates, utilizes, or conditions at issue, unlike other resolutions authorizing disclosure which identify individual incidents and locations. SCE believes:

[T]he Draft Resolution does not enable SCE and other parties to ensure the proper handling of confidential information. Utilities provide confidential information to the Commission under the protection of Public Utilities Code section 583 and General Order 66-C, including information of the type sought by the requesting party. The California Public Records Act contains many exemptions to disclosure, and General Order 66-C similarly restricts the Commission’s discretion in disclosing information. Other state and federal laws also limit the Commission’s authority to release records.”<sup>19</sup>

SCE believes that: “Without a more specific description of the documents to be sought to be disclosed, SCE cannot ensure the proper treatment of its confidential information and the confidential information of its customers and employees.”<sup>20</sup>

### **Communications Industry Coalition**

AT&T [Pacific Bell Telephone Company dba AT&T California; AT&T Communications of California, Inc.; TCG San Francisco; TCG Los Angeles, Inc.; and TCG San Diego]; the California Cable and Telecommunications Association, Cox California Telecom, LLC; CTIA-The Wireless Association, Frontier Communications [Citizens Telecommunications Company of California Inc. dba Frontier Communications of California; Frontier Communications West Coast Inc.; and Frontier Communications of the Southwest Inc.]; the Small LECs [Calaveras Telephone Company; Cal-Ore Telephone Co.; Ducor Telephone

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<sup>17</sup> *Id.* at 4-5.

<sup>18</sup> SCE Comments at 2.

<sup>19</sup> *Id.* at 2, with SCE footnote 4 citing Cal. Gov’t. Code § 6254(k).

<sup>20</sup> *Id.* at 2.

Company; Foresthill Telephone Co.; Happy Valley Telephone Company; Hornitos Telephone Company; Kerman Telephone Company; Pinnacles Telephone Company; The Ponderosa Telephone Company; Sierra Telephone Company, Inc.; The Siskiyou Telephone Company; Volcano Telephone Company; and Winterhaven Telephone Company]; SureWest Telephone, and Verizon [Verizon California Inc.; MCImetro Access Transmission Services LLC; MCI Communications Services, Inc.; and Cellco Partnership dba Verizon Wireless]; collectively, The Communications Industry Coalition (CIC).

CIC comments that the Draft Resolution is unclear as to the scope of records to be released, rendering it impossible to undertake an adequate analysis of their confidential status.<sup>21</sup>

CIC also comments that the Draft Resolution sets forth unsubstantiated conclusions of law and thus preempts ongoing Commission consideration of these issues. CIC states that:

Issues regarding public access to Commission records and requests for confidential treatment of documents are the subject of another Draft Resolution – Draft Resolution L-436. Draft Resolution L-436 has engendered significant controversy regarding the correct interpretation of California law as it pertains to the confidentiality of documents submitted to the Commission. This controversy has resulted in several parties urging the Commission to commence a rulemaking to provide for the creation of a formal record upon which to address such critical and far-reaching issues. [Footnote omitted.]

Draft Resolution L-441 appears to preempt the consideration of these issues by needlessly setting forth conclusions of law that would undermine the confidentiality protections afforded public utilities regulated by the Commission. The Draft Resolution would do so absent the vigorous analysis necessary to render such conclusions.<sup>22</sup> Adoption of the Draft Resolution by the Commission would establish an unwarranted precedent that would impair parties whose records are not even at issue in the resolution. The Commission should not allow for such an end-around parties' procedural rights.”<sup>23</sup>

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<sup>21</sup> CIC Comments at 2.

<sup>22</sup> CIC Comments at 3, fn. 7 “*See, e.g.,* Conclusion of Law No. 2 (setting forth conclusion regarding requirement of the California Constitution vis-à-vis disclosure of documents); Conclusion of Law No. 5 (determining that Cal. Pub. Util. Code § 583 does not limit the Commission’s ability to order disclosure of records.)”

<sup>23</sup> CIC Comments at 2-3.

**Contact Voltage Information Center Comments**

On September 7, 2012, Mr. Koenig, representing the Contact Voltage Information Center (CVIC) filed a clarification of the initial records request, “in response to critical comments by representatives of several regulated utility operators,” as well as “representatives of the Communications Industry Coalition,” expressing “concern with the scope of the proposed grant of document access that is described in the Draft Resolution in response to our original, seemingly broad, request dated August 1.” Mr. Koenig noted that:

It is not the purpose of the CVIC at this time to engage in the on-going dispute at the Commission regarding the broader policies for public access to records, particularly as that may have impact on other issues before the Commission, except to commend and support the Commission staff for what appears to be a proper application of the well-established policies to favor the least restrictive grant of records public access consistent with California law and agency rules and policies. Nonetheless, we are sensitive to the concerns of the commenting companies that our original request may be interpreted as overly broad or inadequately specific. We believe that our request for records may be understood on its face as reasonably narrow and specific. However it may be helpful to all concerned for us to make more clear the discrete scope of documentation sought, and to possibly narrow further the type and range of records that would be useful to CVIC.

As noted in our letter request of August 1, the Contact Voltage Information Center has a distinguished history of active support for public safety enforcement regarding the fatal threat of contact voltage from electric distribution lines and facilities, and has appeared before the legislative and regulatory authorities of a number of States. As a not-for-profit public interest advocate and advisory organization, the CMC has taken a particular interest in the real threats to life and injury imposed particularly on unaware pets, who may encounter high voltage surfaces, devices, and other sources of dangerous electric shock at public areas and publicly accessible locations, such as public streets, sidewalks and ways, and nearby fences, poles and other energized objects including manhole covers, hydrants, signs and incidental metal objects.

As this real threat, already proven fatal in too many specific instances, has been given more serious and formal attention by a number of States and industry organizations, it has become clear that



the most significant sources of danger relate to busy pedestrian and public areas with underground (or under-street) electric lines.

This is an emergent issue in the utility industry, which may explain the confusion raised by some commenters in regard to the term used to describe the issue. As an industry, the nation's electric companies have actively organized to share information and experience on this problem and to coordinate increasingly detailed programs for its treatment. The IEEE convened a "Working Group on Voltages at Publicly and Privately Accessible Locations" and has been conducting working sessions since June of 2007. In 2010 it adopted working definitions of "Stray Voltage" and "Contact Voltage."

Stray Voltage: A voltage resulting from the normal delivery or use of electricity which may be present between two conductive surfaces that can be simultaneously contacted by members of the general public or their animals. Stray voltage is not related to power system faults, and is generally not considered hazardous. (See also Contact Voltage)

Contact Voltage: A voltage resulting from power system faults which may be present between two conductive surfaces that can be simultaneously contacted by members of the general public or their animals. Contact voltage is not related to the normal delivery or use of electricity, and can exist at levels that may be hazardous. (See also Stray Voltage)

The term most often used to describe the threat was originally "Stray Voltage," but has gradually been replaced more generally by use of the term "Contact Voltage. In either case, the problem is the same.

To help avoid needless confusion or an unnecessarily broad consideration of our document request, CVIC is willing to ask that its document request be considered amended to seek only those utility incident reports (starting in 2008) that relate to events of either "Stray Voltage" or "Contact Voltage," and only for those incidents that may be described as having occurred in the circumstances in which the terms "stray voltage" and "contact voltage" are generally understood to be a public threat by regulators and utilities, in publicly accessible locations such as on streets, sidewalks, and grounds that are proximate to underground electric distribution and service lines.

Likewise, we would ask that our request for the resulting investigation reports issued by the ESRB for the referenced incidents

be limited to only those types of incident reports described here above. With respect to the reports of the ESRB that are issued to address other complaints, we would wish to make clear that our request relates only to such complaints that can be described as relating to shocks or injuries from "contact voltage" or "stray voltage" in publicly accessible places, and only to the extent that these were not also included in the appropriately filed utility incident reports (as they might be presumed to have been under the rule).

We do not seek to obtain information on instances of a victim's direct "**physical contact with energized electric lines**," which is described in the SDGE comments as what they understand to be "**contact incidents**." *Comments of SDGE and others, August 31, 2012, at 2, footnote 5.* Events where a victim (person or pet) suffers a shock exclusively caused by direct "physical contact with energized electric lines," or direct "contact with transmission/distribution electrical conductors." *Id.*, at proposed revised draft Resolution would not qualify as cases of Contact Voltage, or Stray Voltage, unless the contact occurred because of defective equipment, improper installation or other condition consistent with the definition developed by the IEEE.

The very real and now too frequent threats that we seek to understand better in California are a danger to those walking on the sidewalks, streets and nearby grounds of public ways, especially the most innocent pets and service animals; we are not asking for reports of events that may have caused harm to electric company employees on poles, or working in vaults or conduits, or inside the fences of electric generation facilities. Moreover, consistent with the provisions of Cal. Pub. Util. Code Sect. 315, we hereby confirm that CVIC does not seek to obtain the requested records or documents for the purpose of admission into evidence in any action for damages based on or arising out of loss of life or injury to person or property. The CVIC is not acting on behalf of tort litigation attorneys and is not attempting to identify potential clients or claimants for claims.

### **Response to Comments**

#### **Burdensome Nature of the Records Request**

The Commission agrees with Joint Commenters, SCE, and CIC that Draft Resolution L-441 did not provide a great deal of detail regarding the specific incident and/or complaint records to be disclosed, and that the original records request, as initially interpreted by the Commission and utilities, appeared both

difficult to understand and quite burdensome. The term “contact voltage incident” is not one historically used by California utilities and the Commission, and was interpreted as referencing a variety of types of incidents in which someone physically encounters an electric line. We anticipated that a substantial percentage of the over 500 electric incidents reported to the Commission during the period in question might involve incidents covered by the records request, and that a substantial amount of staff, and utility, time would be required to develop a comprehensive response to the request.

We note that requests seeking records relating to electric or gas incidents during a period of several years are not unprecedented, and that the burdensome nature of a request is not necessarily a sufficient reason for denial.<sup>24</sup> In Resolutions L-265 (January 7, 1998) and L-272 (December 17, 1998), for example, we responded to a request by the California Alliance for Utility Safety and Education (“CAUSE”) seeking authority to inspect and/or copy “all incident reports filed with the Commission in the past ten years by Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), San Diego Gas & Electric (“SDG&E”), (together, “Electric Utilities”), Sierra Pacific Power Company (“Sierra Pacific”), and Pacific Power and Light (“PacificCorp”) in areas served by overhead or underground lines.” And in Resolution L-332 (June 15, 2006), we responded to a request by KNBC for copies of : “1. “Gas Incident reports,’ ‘Utility Quarterly Reports,’ ‘Safety Related Condition reports’ for Southern California Gas and Southern California Edison for 2003 and 2004 and any available for 2005” and 2. “All consumer complaints for 2004 and those available for SCG and SCE about gas leaks.”

Resolutions L-265, L-272, and L-332 each wrestled with issues related to the disclosure of personal information regarding incident victims, family members, incident witness, and utility employees involved in investigating or reporting such incidents.<sup>25</sup>

In the current matter, the requester’s reply to the utilities’ comments should greatly reduce the burden on both staff and the utilities. We will modify our disclosure authorization to reflect the narrower scope of the revised, or clarified, records request.

### **Complaint Records (Formal vs. Informal)**

While Joint Commenter’s recommendation that we limit our disclosure of responsive complaint records to only records of formal complaints is a well-

<sup>24</sup> *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4<sup>th</sup> 1177.

<sup>25</sup> See, e.g., L-265 at 20-22; 24-27, 27, Finding of Fact 3, 28, Conclusions of Law 8 and 9, and Ordering Paragraph 1; L-272 *passim*; L-332 at 2, 5-7, 9-15, 17-21, 21, Finding of Fact 3 and 6, 22-23, Conclusions of Law 9 and 23, and Ordering Paragraphs 1-3.

intentioned effort to protect the privacy of those filing informal complaints, in a manner similar to our own Resolution L-332 effort to protect the privacy of gas incident victims and their families, there are several reasons we do not find such a restriction appropriate.

First, as Joint Commenters note, records of formal complaint proceedings are available to the public, with the understanding that those who file such complaints are themselves voluntarily making their identities and other personal information public. There is no need for a resolution authorizing disclosure of such formal proceeding records, since such records are already available, though the Docket Card links on our internet site, and/or our Central Files Office.

Second, we have been making informal complaint records available to the public for many years. If the request for such records is received from the complainant his or herself, or the utility that is the subject of the complaint, we provide the entire file; if the request is from someone else, we redact the informal complainant's name, address, telephone number, e-mail address, account number, and other personal information prior to disclosure. This process is sometimes burdensome, but does permit us to segregate information subject to a CPRA exemption such as the Cal. Gov't. Code § 6254(c) exemption for "records, the disclosure of which would constitute an unwarranted invasion of personal privacy," while still allowing us to provide the public with information regarding the substance of the complaint. The CPRA requires us to disclose records that include exempt information if the exempt information is reasonably segregable from the remainder of the records.<sup>26</sup>

Third, the majority of complaints regarding the safety of utility facilities are informal, rather than formal, and the disclosure restriction recommended by Joint Commenters would preclude public access to the bulk of complaints that may have been received regarding voltage contact (stray voltage) incidents of most interest to the requester.

### **Relationship between Draft Resolution L-436 and Draft Resolution L-441**

CIC fears that, by adopting Conclusions of Law 2 and 5 in Draft Resolution L-441, we are reaching unwarranted conclusions of law without adequate analysis, making an end-run around the procedures contemplated in the Draft Resolution L-436 proceeding involving a comprehensive review of our records disclosure policies, and thus are prejudicing the outcome of the Draft Resolution L-436 proceeding and depriving parties of due process.<sup>27</sup>

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<sup>26</sup> Cal. Gov't. Code § 6253(a) states in part that: "Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law."

<sup>27</sup> CIC Comments at 2-3.

We feel compelled to note that the same, or similar, Conclusions of Law have been included in our resolutions authorizing disclosure of incident investigation records for many years, and amount to standard provisions reflecting longstanding Commission interpretations of the California Constitution and Cal. Pub. Util. Code § 583.<sup>28</sup> Since the Commission received a records request seeking records currently requiring a Commission order authorizing disclosure, staff circulated a Draft Resolution for public comment, and Commission action, in a manner consistent with standard Commission procedures for responding to such requests. The apparent breadth and scope of the request, coupled with the receipt of the request while our more comprehensive review remains pending, may have generated concerns at odds with our intentions.

We invite CIC to compare the language of Conclusion of Law 2 to the language of Article 1, 3 of the California Constitution.

Draft Resolution L-441, Conclusion of Law 2 reads in part as follows:

2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the peoples' business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. Cal. Const. Article I, §§ 3(b)(1) and (2).

Article 1, § 3, of the California Constitution reads as follows:

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings

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<sup>28</sup> See, e.g.; Conclusions of Law Nos. 2 and 6 in L-332 (June 15, 2006); L-333 (August 24, 2006); L-334 (August 24, 2006); L-337 (October 19, 2006); L-344 (June 26, 2007); L-345 (July 26, 2007); L-352 (November 16, 2007); L-356 (February 28, 2008); L-360 (June 26, 2008); and L-371 (January 29, 2009). This list is illustrative rather than comprehensive. See also, Resolution L-265, Conclusions of Law 2 and 3: "2. Both Public Utilities Code § 583 and General Order 66-C

of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

- (2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

In our view, Conclusion of Law 2 accurately reflects the language in Article 1, § 3(b)(1) and (2) of the California Constitution.

Draft Resolution L-441 Conclusion of Law states: “8. Cal. Pub. Util. Code § 583 does not limit the Commission’s ability to order disclosure of records.” This conclusion reflects standard analysis in numerous Commission resolutions authorizing disclosure of records, and other Commission decisions as well.

For example, Resolution L-296 (March 21, 2002), states that:

Public Utilities Code § 583 “assures that staff will not disclose information received from regulated utilities unless that disclosure is in the context of a Commission proceeding or is otherwise ordered by the Commission.” (*Re Southern California Edison Company (Edison)* [Decision (D.) 91-12-019] (1991) 42 Cal.P.U.C.2d 298, 300.) Section 583 neither creates a privilege of nondisclosure for a utility, nor designates any specific types of documents as confidential. (*Id.*, 42 Cal.P.U.C.2d at 301.) As we noted in *Edison, supra*:

The Commission has broad discretion under Section 583 to disclose information. See, for instance, *Southern California Edison Company v. Westinghouse Electric Corporation*, 892 Fed. 2d 778 (1989), in which the United States Court of Appeals for the Ninth District stated (at p. 783):

“On its face, Section 583 does not forbid the disclosure of any information furnished to the CPUC by utilities. Rather, the statute provides that such information will be open to the public

if the commission so orders, and the commission's authority to issue such orders is unrestricted."<sup>29</sup>

D.06-06-066, as modified by D.07-05-032, similarly states that:

As we stated in the OIR, § 583 does not limit our ability to disclose information. As the United States Court of Appeals for the Ninth District noted in *Southern California Edison Company v. Westinghouse Electric Corporation* (9th Cir. 1989) 892 F. 2d 778, 783: "Section 583 does not forbid the disclosure of any information furnished to the CPUC by utilities. Rather, the statute provides that such information will be open to the public if the commission so orders, and the commission's authority to issue such orders is unrestricted." Similarly, In *Re Southern California Edison Company [Mohave Coal Plant Accident]*, D.91 12 019, 42 CPUC 2d 298, 300 (1991), states that § 583 "assures that staff will not disclose information received from regulated utilities unless that disclosure is in the context of a Commission proceeding or is otherwise ordered by the Commission" but does not limit our broad discretion to determine whether certain information should be disclosed to the public and under what circumstances. [Footnote omitted]

Nothing in § 583 gives utilities a substantive right to confidential treatment for any type of information. Rather, the statute provides a process for handling information a party believes is confidential. We made this point clear in *In Re Southern California Edison Company, supra*: "Section 583 does not create for a utility any privileges of nondisclosure. Nor does it designate any specific types of information as confidential. To justify an assertion that certain documents cannot be disclosed, the utility must derive its support from other parts of the law." [Footnote omitted]<sup>30</sup>

### **Summary**

As noted earlier, we initially anticipated that the CVIC records request would impose substantial burdens on our staff. Staff notes there have been over 500 electric incidents during the period for which records were requested, and that a large portion of such incidents involved contact with electric lines, primarily overhead lines. While many incident investigations have been closed, a number remain open. Since we generally find it is in the public interest for us to disclose incident investigation records only after an investigation has been completed, and

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<sup>29</sup> Resolution L-296 at 2-3.

<sup>30</sup> D.06-06-066, as modified by D.07-05-032, at 28-29, quoting D.91-12-019.

are fully aware of the need for a careful review completed investigation records to determine what information must or should be redacted or otherwise kept confidential, we expected staff would need to devote a substantial amount of time to the development of a comprehensive responsive the request.

The comments Mr. Koenig filed on behalf of CVIC helpfully clarify the specific types of records and information CVIC is interested in, and should alleviate utility concerns regarding the perceived extensive breadth and scope of the initial records request.

At this time, we are aware of only a few informal complaints that raise concerns regarding voltage contact/stray voltage, and only a few electric incidents that may involve voltage contact/stray voltage, as defined by the requester. Preliminary review of our electric incident database suggests that the number of electric incidents within California that are related to voltage contact/stray voltage have been so few that our tracking database does not include a specific category for tracking such incidents. Thus, incidents involving stray voltage may be identified as falling within one of the specific categories of incidents we do track, such as aircraft contacts, vegetation contacts, or the “other” category, rather than one uniquely dedicated to stray voltage incidents.

We are amending the Findings of Fact, Conclusions of Law, and Ordering Paragraphs to reflect the amended and greatly clarified scope of CVIC’s records request. As we locate records responsive to the clarified records request, we will make any necessary redactions before providing the records to the requester. If we identify information in these records that has been identified by a utility as sensitive or confidential, we will, as appropriate, consult with the utility and determine whether there is a legal basis and sound reason for refraining from disclosing such information. We note that the official information privilege set forth in Cal. Evid. Code § 1040 is a privilege the Commission holds and may assert to protect information acquired in confidence from utilities in appropriate circumstances. Given our only recent understanding of the specific types of information CVIC is most interested in, we cannot be more specific at this time.

This Resolution responds to a single, specific, records request. We will address broader issues regarding disclosure of safety records, and other Commission records, at a future appropriate time.

### **FINDINGS OF FACT**

1. The Commission received a letter dated August 1, 2012, Joshua N. Koenig, on behalf of the Contact Voltage Information Center (CVIC) which seeks disclosure of the Commission’s investigation of each electric incident report filed between January 1, 2008 and the present; each consumer complaint relating to contact voltage incidents or similar incidents involving electric



service or transmission facilities during that time period; and each incident investigation report of the Commission or the Electric Safety and Reliability Branch related to such reported incidents or complaints.

2. Access to the records in the Commission's investigation files was denied in the absence of a Commission order authorizing disclosure.
3. Mr. Koenig subsequently: 1) amended the request "to seek only those utility incident reports (starting in 2008) that relate to events of either 'Stray Voltage' or 'Contact Voltage,' and only for those incidents that may be described as having occurred in the circumstances in which the terms 'stray voltage' and 'contact voltage' are generally understood to be a public threat by regulators and utilities, in publicly accessible locations such as on streets, sidewalks, and grounds that are proximate to underground electric distribution and service lines;" 2) asked that the request for resulting investigation reports issued by the ESRB for the referenced incidents be limited to only those types of incident reports described here above. Mr. Koenig also stated: "With respect to the reports of the ESRB that are issued to address other complaints, we would wish to make clear that our request relates only to such complaints that can be described as relating to shocks or injuries from 'contact voltage' or 'stray voltage' in publicly accessible places, and only to the extent that these were not included in the appropriately filed utility incident reports (as they might be presumed to have been under the rule)."<sup>31</sup>
4. The Commission's investigation of many of the electric incidents and complaints subject to this records request are complete. The disclosure of the Commission's records of its investigations of those incidents would not compromise the Commission investigations.
5. The Commission's investigations regarding some of the electric incidents and complaints subject to this records request may still be open; therefore, the disclosure of those Commission's investigation records could compromise the Commission's investigations.
6. At this time, the public interest does not favor disclosure of the requested Commission's investigation records to the extent the investigations are still open.
7. Given the Commission's need to conduct its investigations effectively and efficiently, the public interest in non-disclosure of active investigation records outweighs the necessity for public disclosure during the time these investigations remain open.

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<sup>31</sup> CVIC Comment, at 3.

8. Once investigations are complete, the public interest favors disclosure with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission's lawyer-client or other privilege.

### **CONCLUSIONS OF LAW**

1. The documents in the requested Commission's investigation files and reports are public records as defined by Cal. Gov't. Code § 6250, *et seq.*
2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the peoples' business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. Cal. Const. Article I, §§ 3(b)(1) and (2).
3. The general policy of the CPRA favors disclosure of records.
4. Justification for withholding a public record in response to a CPRA request must be based on specific exemptions in the CPRA or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Cal. Gov't. Code § 6255.
5. Cal. Gov't Code § 6254(c) exempts from mandatory disclosure personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy.
6. Cal. Gov't Code § 6254(k) exempts from disclosure of records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.
7. The Commission has exercised its discretion under Cal. Pub. Util. Code § 583 to limit Commission staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. General Order 66-C § 2.2 (a).
8. Cal. Pub. Util. Code § 583 does not limit the Commission's ability to order disclosure of records.

9. Cal. Pub. Util. Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, “as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property.”

### **ORDER**

1. The request for disclosure of the Commission records concerning each electric incident report and complaint relating to contact voltage and/or stray voltage filed with the Commission between from January 1, 2008 and the present, and each investigation report of the Commission or the Electric Safety and Reliability Branch related to the investigation of such reported incidents or complaints, is granted, with regard to investigations that are complete, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission’s lawyer-client or other privilege.
2. With regard to investigations that are not yet complete, the request for disclosure of the Commission records concerning its each electric incident report relating to contact voltage and/or stray voltage filed with the Commission between from January 1, 2008 and the present, and; each consumer complaint relating to contact voltage and/or stray voltage incidents or similar incidents involving electric service or transmission facilities during that time period; and each incident investigation report of the Commission or the Electric Safety and Reliability Branch related to the Commission’s investigation of such reported incidents or complaints is granted, once the investigations are complete, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission’s lawyer-client or other privilege.
3. Once the investigations are complete, Commission staff will release the requested records, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission’s lawyer-client or other privilege.
4. The effective date of this order is today.

I certify that this Resolution was adopted by the California Public Utilities Commission at its regular meeting of September 13, 2012, and that the following Commissioners approved it.

/s/ PAUL CLANON

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PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON  
Commissioners