PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California
Date: April 10, 2014
Resolution No.: L-459

R E S O L U T I O N

RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION SAFETY AND ENFORCEMENT DIVISION'S INVESTIGATION OF AN ELECTRICAL INCIDENT THAT OCCURRED ON APRIL 16, 2013 IN SAN JOSE, CALIFORNIA

BACKGROUND

The California Public Utilities Commission ("Commission") received a request seeking disclosure of the Commission Safety and Enforcement Division's investigation records of an electrical incident that occurred on April 16, 2013, in San Jose, California. The Commission staff could not make the investigation records public without the formal approval of the full Commission. The request is treated as an appeal to the full Commission for release of the requested records pursuant to Commission General Order (G.O.) 66-C § 3.4.

DISCUSSION

The requested records are "public records" as defined by the California Public Records Act ("CPRA").[1] The California Constitution, the CPRA, and discovery law favor disclosure of public records. The public has a constitutional right to access most government information.[2] 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.[3] 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.[4]

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[1] Cal. Gov't. Code § 6250, *et seq*.

[2] Cal. Const. Article I, § 3(b)(1).

[3] Cal. Const. Article I, § 3(b)(2).

[4] *Id.*

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.[5]

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 G.O. 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 G.O. 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 G.O. 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, 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.

[5] 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.

The Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.[6] 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.[7] 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").[8] The IPA authorizes disclosure of personal information "[p]ursuant to the [CPRA]."[9] The CPRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy.[10] 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.[11]

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.

The Commission investigation of the electrical incident was completed on June 24, 2013; therefore, the public interest favors disclosure of the requested Commission's investigation 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.

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[6] 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.

[7] *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).

[8] Cal. Civ. Code § 1798, *et seq*.

[9] Cal. Civ. Code § 1798.24(g).

[10] Cal. Gov't. Code § 6254(c).

[11] Cal. Gov't. Code § 6254(k).

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution of the Commission's Legal Division in this matter was mailed to the parties in interest on February 6, 2014, in accordance with Cal. Pub. Util. Code § 311(g). Comments were received March 3, 2013, from Pacific Gas and Electric Company (PG&E). PG&E: (1) supports the general principle that the people have a right to access information concerning the conduct of the people's business, and the general policy of the California Public Records Request Act (CPRA) that favors disclosure of public records; (2) acknowledges that the Commission has ordered disclosure of completed safety incident investigation records on numerous occasions; and (3) agrees that most documents associated with this investigation can be released without harm to its facilities, employees, and the public.

PG&E believes, however, that certain information should remain confidential since the incident is still being investigated by the FBI and the information, if disclosed, could be used to do harm to PG&E's electric system, its employees, and the public. Examples include: specific plans PG&E has to improve system security, specific details about how the attack was undertaken, internal Company protocols associated with security breaches, names of PG&E inspectors and other internal PG&E information which might be utilized by an individual or individuals seeking to initiate other such attacks. PG&E notes that it has a procedure for the response to alarms at its critical/National Energy Reliability Corporation (NERC) defined transmission substations that provide detailed information on how PG&E security and law enforcement would respond to these types of intrusion alarms. The procedures also provide specific information on the type of security PG&E has in place to protect those facilities and how security assesses different types of alarm activation. PG&E states that this type of information needs to remain confidential to ensure its security is not compromised by an intruder.

PG&E notes that Resolution L-436 states that:

> Disclosure of detailed schematic diagrams, facility location information, and unnecessary employee information may in some situations create a risk of harm to utility facilities, employees, and the public, without providing significant additional insight into the operations of the utility and the CPUC. Such records, or portions of records, may be exempt from disclosure in response to CPRA requests, pursuant to Cal. Gov't. Code §§ 6254(c), 6254(k), or other CPRA exemptions. (Res. L-436, at, 8.)

and that:

> where our staff … is working with law enforcement agencies or other governmental entities, public disclosure of our investigation records and/or of investigation records we receive from such entities may be prohibited by law, and/or restricted by our need to conduct our investigations efficiently and effectively. Public disclosure of such records may be both unlawful and inappropriate. (Res. L-436, at 10.)

PG&E also refers to Cal. Gov't. Code § 6255, which provide that an agency is justified in not disclosing certain information when the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure. (PG&E Comments, at 2.)

PG&E contends that while specific information should remain confidential, it can state that its electric system is resilient, with redundancy and technology that allows it to reroute power around damaged equipment and help keep the lights on for its customers. PG&E explains that immediately after the attack, PG&E increased security, deploying security guards to provide 24/7 coverage, increasing patrols from local law enforcement, and cutting back vegetation around the substation to eliminate potential hiding places. PG&E states that it intends significant investments over the next four years on substation security for the highest priority facilities, and that it has requested authorization for costs recovery from the Federal Energy Regulatory Commission (FERC). (PG&E Comments, at 3.)

PG&E further states that:

> Moreover, PG&E continues to work with the Federal Energy Regulatory Commission, NERC, as we'll as with federal and state law enforcement at all levels regarding the incident. The utility industry and stakeholders like the Edison Electric Institute are meeting worth policy makers, government officials and law enforcement to engage in constructive dialogue and share information and best practices on how we can work together to protect the grid across the country. (PG&E Comments, at 3.)

PG&E's comments conclude with a request that the Commission not disclose information that may be utilized to do harm to PG&E's electric system and to public and employee safety.

On March 10, 2013, reply comments were received from Dow Jones, which strongly supports disclosure of the Commission's substation incident records. Dow Jones: (1) commends the Commission for acknowledging in the draft resolution that "the public interest favors disclosure of the requested Commission's investigation records," (2) states that the release of the requested material will serve the public interest by shedding light on the safety, security, and

resiliency of California's energy infrastructure and on the Commission's efforts to oversee the utilities that it regulates; (3) asserts that the public interest in disclosure of information regarding the attack is particularly compelling for customers of PG&E, which is seeking to recover from its ratepayers the cost of security upgrades that the company believes to be necessary at critical facilities like the Metcalf Substation; (4) notes that the Commission's investigation of the incident at issue was closed nearly nine months ago, and that disclosure could not interfere with the Commission's effective or efficient completion of the investigation; (5) states that it is aware of no federal or state law barring the disclosure of the requested records and that, if anything, California's Constitution and the California Public Records Act compel their release ; and (6) claims that the compelling public interest served by releasing the records Ms. Smith seeks clearly outweigh any lesser interest served by their withholding. Dow Jones contends that PG&E's request that we withhold from Ms. Smith certain classes of information that the utility fears may be utilized to do harm to PG&E's electric system and to public and employee safety is inconsistent with California law and the Commission's policies, and should be rejected. Dow Jones states that:

> In the past, the Commission has rightly been skeptical of abstract assertions that public records should be withheld due to generalized fears that release of the requested materials could prove useful to wrongdoers. The Commission has observed that "[a]ssertions of the need to redact information alleged to raise security and privacy concerns in a particular context must be backed by evidence that disclosure would result in problems that are more than merely speculative." [Fn. 5; Resolution L-436, Feb. 13, 2013, at 8-9.] California's Supreme Court has reached the same conclusion, finding that "'a mere assertion of possible endangerment' is insufficient to justify nondisclosure." [Fn. 6; *Comm'n on Peace Officer Standards & Training v. Superior Court*, 42 Cal.4th 278, 302 (2007), *quoting CBS Inc. v. Block*, 42 Cal.3d 646, 652 (1986).]
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> In this case, PG&E's submission provided no evidence to support its claim that portions of the public records Ms. Smith seeks could be used to jeopardize the company's electrical system or the safety of its employees or the public at large. Moreover, PG&E [Fn. omitted.] and other utilities and regulators [Fn. omitted.] have already begun responding to the attack by increasing security at facilities and identifying protective measures that could thwart future similar attacks. As a result of this increased security, any information about last year's attack on the Metcalf Substation is likely to be of reduced utility to those who would do harm to the nation's energy infrastructure. (Dow Jones Comments, at 2.)

Dow Jones further comments that:

> Finally, PG&E asks that the Commission redact from any material released to Ms. Smith the names of PG&E inspectors. Redacting the names of other identifying information of PG&E employees or contractors, however, would be inconsistent with the Commission's past practice. The Commission has concluded that utility safety inspectors, like other utility employees with responsibility for safety management, do not have an objectively reasonable expectation in the privacy of their identity and job classification or specification. [Fn. 1: Res L-436, Feb. 13, 2013, at 11.] Accordingly, the Commission should decline to redact the names of such personnel from any material released to Ms. Smith. (Dow Jones, Comments, at 3.)

In conclusion, Dow Jones urges the Commission to approve Draft Resolution L-459 in its current form and to release to Ms. Smith the public records that she seeks.

Response:

The Commission appreciates PG&E's understanding that the California Constitution, CPRA, and Commission policies generally favor disclosure of agency records, that Commission has on numerous occasions ordered disclosure of completed safety investigation records, and that most documents associated with the incident investigation at issue can be disclosed without harm to its facilities, employees, or the public.

At the same time, the Commission concurs with many of Dow Jones's comments regarding the disclosure of records of completed Commission safety investigations. As Dow Jones points out, the Commission's investigation of the April 16, 2013 incident is closed, and disclosure of investigation records would not interfere with our ability to complete our investigation effectively and efficiently. Our files do not include the investigation records of the FBI and other law enforcement agencies with ongoing investigations. As Dow Jones also notes, we generally do not redact utility inspector names from safety records before disclosing them to the public. We further agree that when we decide to withhold certain records or information from the public on the ground that disclosure might aid those intending to harm utility facilities, employees, and/or the public, such decisions should be based on more than mere speculation that information, if disclosed, may be of use to those intending to harm utility facilities, employees, and/or the public through attacks on utility infrastructure.

The Commission agrees with PG&E, however, that there are certain limited situations in which the public interest is best served by withholding sensitive security information, obtained in confidence by Commission employees, from the

public, where the usefulness of the information to potential terrorist or other criminals is beyond the level of mere speculation, and would contribute little to the public understanding of the investigation. While our disclosure of our completed safety investigation records is generally in the public interest, and routinely authorized, we always reserve our right to withhold records, or portions of records, designated as confidential and subject to a CPRA exemption, privilege, or other limitation on disclosure to the public.[12] In our opinion, our disclosure of records, or portions of records, that include information that, if disclosed, could jeopardize the safety of regulated entity facilities and operations, is not in the public interest, and we are entitled to withhold such records to the extent they are subject to a CPRA exemption, CPUC-held privilege, or other provision of law or regulation limiting disclosure.

We have reviewed the documents in our April 16, 2013 incident investigation file carefully, and concluded that several documents, or portions of documents, obtained in confidence from PG&E and maintained in confidence by staff, should be withheld from the public; and that these documents, or portions of documents, are subject to the official information privilege in Cal. Evid. Code § 1040, and are thus exempt from disclosure in response to Ms. Smith's records request, pursuant to Cal. Gov't. Code § 6254(k).

On the basis of the particular facts before us, we find that the need for confidentiality outweighs the necessity for disclosure in the interests of justice, and that the public interest served by not making records, or portions of records, public clearly outweighs the public interest that would be served by disclosure of the following records, or portions of records, obtained by Commission staff in confidence during its investigation of the Metcalf Substation incident, and not previously disclosed to the public.

1. Confidential PG&E Security protocol regarding access control alarms. The security protocol document is marked and maintained as confidential by PG&E. PG&E's Comments note that the utility has "a procedure for the response to alarms at its critical/NERC defined transmission substations that provide detailed information on how PG&E security and law enforcement would respond to these types of intrusion alarms. The procedures also provide specific information concerning the type of security PG&E has in place to protect those facilities and how security assesses the different types of alarm activation. As noted above, this type of information needs to remain confidential to ensure its security is not compromised by an intruder." (PG&E Comments, at 2.)

[12] In practice, we usually withhold few, if any, records, or portions of records.

We have reviewed the confidential security protocol documents, and can see how the information in the protocol could be of specific use to those intending to harm, PG&E's facilities, employees, or the public. With the information in this document, one could evaluate the utility's probable response to certain alerts, and plan one's attack accordingly. We conclude that the potential harm from disclosure rises beyond the level of mere vague speculation.

2. Limited portions of PG&E documents that describe a specific type of harm to the utility system that can result from attacks such as the attack on the Metcalf Substation. We have reviewed these documents and concluded that, if made available to the public, the limited portion of the documents that describe a potential event chain could inform a potential attacker as to which specific types of equipment would, if destroyed, create the most substantial harm to the operation of the substation. Although the language to be withheld is somewhat technical, we believe it is beyond simplistic speculation to conclude disclosure could provide a sophisticated attacker with valuable insight as to how to cause the most damage.

3. The address of secondary PG&E security response facilities. The documents containing this information were provided in confidence to the Commission staff in response to the Commission's incident investigation, and were not made available to the public. Disclosing information about the specific location of a utility facility important for the security of PG&E's utility system in vicinity of the substation attacked last year would provide information regarding a potential future target without providing the public with significantly more insight into the safety-related activities of the utility and/or the Commission.

4. The identities, telephone numbers, and internal PG&E email addresses of PG&E employees responsible for specific security functions in the area of the Metcalfe Substation. We do not routinely withhold the names and contact information of utility employees responsible for reporting or investigating incidents involving utility facilities. However, in this particular circumstance, we believe there is a need for confidential treatment of the names of individual PG&E employees currently responsible for specific security-related activities, and their contact information.

   In our judgment, it is beyond mere speculation that such specific security employee information could be useful to an individual or group wished to plan future attacks on PG&E's facilities. Disclosing this information could subject these individuals to an increased risk of personal harm, as well as increasing the risk of harm to PG&E's facilities, other employees, and the public. While one can speculate that disclosure might in fact not lead to any actual harm to PG&E's employees, facilities or the public, this is a situation in which we prefer to err on the side of caution, given the fact that malicious individuals did

in fact attack a utility substation in an apparently well thought out manner that revealed a reasonable degree of planning and organization.

Further, the disclosure of the individuals' names and contact information would not substantially further the public's understanding of the Metcalf Substation incident or the utility's response to the incident, since the titles in the organization charts in the incident investigation file, and similar information in other documents, is not being withheld. When we determine whether to disclose, or refrain from disclosing, personal information in our safety-related records, a primary consideration is whether disclosure will shed light on a utility's performance of its safety responsibilities.

5. A very limited portion of several records which cover certain details regarding the physical and personnel protection at the Metcalf Substation. We intend to redact certain sentences that provide details regarding the physical barriers at the Metcalf Substation that could inform malicious individuals or groups as to what protections they would need to overcome. The same is true regarding sentences referencing the security staffing at the Metcalf Substation and other locations. While one can speculate that disclosure might in fact not lead to any actual harm to PG&E's employees, facilities or the public, this is a situation in which we prefer to err on the side of caution, given the fact that malicious individuals did in fact attack the Metcalfe Substation in an apparently well thought out manner that revealed a reasonable degree of planning and organization.
6. An aerial photograph with the specific locations from which rifles were fired at the Metcalfe Substation and lines drawn between the shooters' locations and the substation components that were hit. The aerial photograph showing the positions from which the attackers shot at the Metcalfe Substation could be useful to an individual or group wished to plan future attacks on the Substation. While one can speculate that disclosure might in fact not lead to any actual harm to PG&E's employees, facilities or the public, this is a situation in which we prefer to err on the side of caution, given the fact that malicious individuals did in fact successfully attack the Metcalfe Substation.
7. Portions of records that include information regarding the timing and impact of the cutting of AT&T fiber lines. This information regarding the timing and impact of the cutting of AT&T fiber lines could, if made available to the public, provide potential attackers with useful information concerning the impact of cutting fiber lines associated with PG&E substations and other facilities.

We emphasize that the majority of records, and portions of records, in the Metcalf Substation incident investigation file are being provided in response to the records request. We strove to keep the withholding of documents, and the redaction of documents, to the minimum we feel is necessary to protect the safety of PG&E's facilities, employees, and the public.

These records and the information they contain constitute "official information," as defined in Cal. Evid. Code 1040 (a). All of the information that we are not providing in response to the records request was maintained in confidence by PG&E and provided in confidence to Commission employees during the course of their work for the Commission. These records have not been previously made public, or been officially disclosed to the public, by Commission employees. These records are "official information" subject to the Commission's assertion of its official information privilege.

Cal. Evid. Code § 1040(b)(1) provides state agencies an absolute privilege to refuse to disclose official information, and to prevent another from disclosing official information, if disclosure is forbidden by an act of the Congress of the United States or a California statute.

We note that Cal. Gov't. Code § 6254(aa) exempts from disclosure, in response to records requests: "A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session." Similarly, Cal. Gov't. Code § 6254(ab) exempts: "Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency for use by that office, including the identity of the person who or entity that voluntarily submitted the information. …" Finally, Cal. Gov't. Code § 6254.23 provides that: "Nothing in this chapter or any other provision of law shall require the disclosure of a risk assessment or railroad infrastructure protection program filed with the Public Utilities Commission, the Director of Homeland Security, and the Office of Emergency Services pursuant to Article 7.3 (commencing with Section 7665) of Chapter 1 of Division 4 of the Public Utilities Code."

Although none of these provisions expressly prohibit the disclosure of the specific records, or portions of records, the Commission intends to refrain from providing in response to Ms. Smith's records request, and do not in themselves provide a basis for an assertion of the absolute official information privilege in Cal. Evid. Code § 1040(b)(1), they do express the Legislature's general intent to exempt from public disclosure records, or portions of records, that could, if disclosed, be of use in future to terrorist attacks or other criminal acts.

Cal. Evid. Code § 1040(b)(2) provides state agencies a conditional privilege to refuse to disclose official information, and to prevent another from disclosing official information, if disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. Records or portions of records that include information subject to the CPUC's Cal. Evid. Code § 1040(b) official information privileges are exempt from disclosure in response to records requests pursuant to Cal. Gov't. Code § 6254(k), which exempts from disclosure, in response to records requests: "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."

The Commission believes that, on the facts of this particular case, the public interest served by withholding the records identified in the text of this resolution and in Findings of Fact 8 through 14, clearly outweighs the public interest that would be served by disclosure; therefore, the records are exempt from disclosure pursuant to Cal. Gov't. Code § 6255.

The CPRA "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure." (Cal. Gov't. Code § 6257.5.) When we respond to records requests from representatives of the media, who may have laudable intentions regarding the provision of safety information to the public, we must remain aware that when we provide records to the media, we must generally be prepared to provide the same records to any other member of the public who requests them, regardless of the reason they seek the information. (Cal. Gov't. Code § 6254.5.)

Having reviewed the records in the investigation file at issue, we are also of the opinion that Dow Jones may mistakenly assume that the Commission's file regarding the Metcalf Substation incident includes a broader range of records regarding PG&E's efforts to increase its overall infrastructure security than it actually does. The focus of the Commission Safety Enforcement Division's investigation of the Metcalfe Substation incident was primarily to determine the cause of the incident and whether PG&E violated Commission safety regulations, and not on what future steps PG&E would take to make this facility and others more secure.

While there are some records addressing specific steps taken at this substation, this investigation file simply does not include a wealth of information regarding the broader, and extremely important and significant, question of how PG&E and other utilities are reducing the vulnerability of critical facilities to terrorists and other criminals with the intent to harm utility infrastructure, employees, and/or the public. The FERC recently initiated a proceeding designed to address utility infrastructure security at a national level, which we anticipate will provide utilities

with clear guidance as to future infrastructure security measures. (FERC Docket No. RD14-6-000, March 7, 2014.)

We are amending the Findings of Fact, Conclusions of Law, and Ordering Paragraphs to reflect the views expressed above.

FINDINGS OF FACT

1. The Commission received a request which seeks disclosure of the Commission's investigation records concerning an electrical incident that occurred on April 16, 2013 in San Jose, California.
2. Access to the records in the Commission's investigation file was denied in the absence of a Commission order authorizing disclosure.
3. The Commission investigation of the electrical incident was completed on June 24, 2013; therefore, the public interest favors disclosure of the requested Commission's investigation 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 public interest does not favor disclosure to the public of records, or portions of records, which include specific details regarding incidents involving utility facilities and operations that could be of substantial use to individuals or organizations planning future attacks on utility facilities and operations that could harm utility facilities, employees, and/or the public. The need for confidentiality of such records outweighs the necessity for disclosure of such records in the interest of justice.
5. The public interest does not favor disclosure to the public of records, or portions of records, which include specific details regarding past, present, and future security measures adopted or implemented by a utility to protect its facilities, employees, and the public, where information concerning such security measures could be of substantial use to individuals or organizations planning future attacks on utility facilities and operations that could harm utility facilities, employees, and/or the public. The need for confidentiality of such records outweighs the necessity for disclosure of such records in the interest of justice.
6. The April 16, 2013 incident involved weapons being fired at vital components of a utility substation and causing substantial damage to these components; it was the result of intentional actions, rather than accidental events. Public disclosure of records, or portions of records, that could encourage or assist in a repeat of such an incident, at the Metcalf Substation or elsewhere, is not in the public interest.

7. PG&E provided the Commission with certain confidential records which include information concerning the facility and security personnel at the Metcalf Substation on April 16, 2013, and afterward. These records were received in confidence by Commission employees during the course of their work and have not previously been disclosed by such employees to the public.
8. Disclosure of records that include confidential PG&E security control protocol documents that explain how PG&E responds to alarms at PG&E facilities and provide other insight regarding the utility's security measures could endanger PG&E facilities, employees, and the public.
9. Disclosure of records that include detailed information concerning the physical security measures, and security personnel staffing, at the Metcalf Substation, both on April 16, 2013, and afterward, could endanger PG&E facilities, employees, and the public.
10. Disclosure of records that include specific details regarding a chain of technical events that occurred when the Metcalf Substation was attacked and which, to those with technical knowledge, could provide detailed information regarding specific physical vulnerabilities at the Substation, could endanger PG&E facilities, employees, and the public.
11. Disclosure of records which include specific information regarding the location of PG&E security response facilities that could provide individuals with information regarding potential additional targets for malicious actions that could harm PG&E's facilities, employees, and the public.
12. Disclosure of records that include the identities and contact information concerning PG&E employees responsible for the security of the Metcalf Substation and other facilities could place these employees at increased risk of physical harm.
13. Disclosure of an aerial photograph with the specific locations from which rifles were fired at the Metcalfe Substation identified, and lines drawn between the shooters' locations and the substation components that were hit, could provide potential attackers with information concerning specific locations from which a previous successful attack on the Substation had been launched, and thus endorser PG&E facilities, employees, and the public.
14. Disclosure of records that include information regarding the timing and impact of the cutting of AT&T fiber lines could provide potential attackers with useful information concerning the impact of cutting fiber lines associated with PG&E substations and other facilities, and thus endanger PG&E facilities, employees, and the public.

CONCLUSIONS OF LAW

1. The documents in the requested Commission's investigation file and report 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 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."
10. 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.

11. We have reviewed the documents in our April 16, 2013 incident investigation file carefully, and concluded that several documents, or portions of documents, within the file should be withheld from the public; and that these documents, or portions of documents, identified of the text of this resolution and in Findings of Fact 8 through 14, are subject to the official information privilege in Cal. Evid. Code § 1040, and are thus exempt from disclosure in response to Ms. Smith's records request, pursuant to Cal. Gov't. Code § 6254(k). The records were obtained in confidence from PG&E, maintained in confidence by the Commission, and there is a need to maintain the confidentiality of these records that outweighs the necessity for disclosure in the interest of justice.
12. On the facts of this particular case, the public interest served by withholding the records identified in the text of this resolution and in Findings of Fact 8 through 14 clearly outweighs the public interest that would be served by disclosure; therefore, the records are exempt from disclosure pursuant to Cal. Gov't. Code § 6255.

ORDER

1. The request for disclosure of the Commission records concerning the investigation of the electrical incident that occurred on April 16, 2013 in San Jose, California, is granted, with the exception of: (1) records, or portions of records, identified in the text of this resolution and in Findings of Fact 8 through 14, that would, if disclosed be of use to individuals who wish to harm PG&E's facilities, employees, and/or the public; (2) personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy; and (3) information which is subject to the Commission's lawyer-client privilege, or another applicable privilege.
2. 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 on April 10, 2014 and that the following Commissioners approved it:

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PAUL CLANON
Executive Director