

# PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: June 15, 2006

Resolution No. L-332

## **RESOLUTION**

**RESOLUTION AUTHORIZING DISCLOSURE OF CERTAIN COMMISSION CONSUMER SERVICES DIVISION (UTILITIES SAFETY BRANCH) GAS INCIDENT REPORTS, GAS INCIDENT INVESTIGATION RECORDS, QUARTERLY SUMMARY REPORTS, SAFETY CONDITION REPORTS, AND COMPLAINT RECORDS, PURSUANT TO PUBLIC RECORDS ACT REQUEST BY JENNIFER S. DOMINTZ, SENIOR MEDIA COUNSEL, NBC UNIVERSAL TELEVISION GROUP, ON BEHALF OF ITS SUBSIDIARY, KNBC-TV.**

## **BACKGROUND**

In December, 2005, NBC Universal Television Group Subsidiary KNBC-TV (KNBC) requested the following California Public Utilities Commission (Commission) records:

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."

Commission staff sent the requested complaint records, with personal information such as individual complainant names, telephone numbers, and utility account numbers redacted in the interest of customer privacy. Commission staff provided a number of records and electronic links responsive to the records request. In a subsequent letter, NBC Universal states:

"Your letter includes a link to the California Incidents Listing. While that link provides helpful general information, KNBC is seeking the specific underlying data for that

summary listing, including the actual files, logs, field notes, correspondence, telephonic reports, and documents relating to the cost of repairs, payouts, and fines. The station is most interested in the documents relating to the following entries on the summary listing:

2004: # 3 2004/05/20 Garden Grove  
# 4 2004/08/19 El Monte

2003: # 1 2003/03/17 Pasadena  
# 1 2003/01/07 Anaheim

2002: # 5 2002/08/13 Torrance.

Moreover, the California Incident listing does not include any 2005 information; thus, we would appreciate your promptly providing us separately responsive 2005 documents.

In addition, with respect to the Written Incident Reports, your letter – which states that ‘most Commission decisions [must] be circulated in draft form for public comment at least 30 days before the Commission takes formal action’ – is not clear whether a 30-day comment period is actually required by any law or regulation before these documents can be disclosed. Thus, please provide us with any relevant authority supporting your position on that point.

Further, I note that KNBC has also asked for Quarterly Summary Reports (Section 122.2 (d) of the General Order) and Safety-Related Condition Reports (Section 124 of the General Order). Neither of these categories of documents is deemed confidential by the General Order (unlike the Written Incident Reports); thus, we do not understand why they cannot be provided immediately (even with redactions that the PUC believes are appropriate).

Additionally, with respect to the consumer complaint document enclosed with your letter, KNBC strongly disagrees with the propriety of the redactions that have been made. Consumers made these complaints to a public agency; thus, the complainants’ names and telephone numbers clearly are not the kind of information, the disclosure of which would constitute an ‘unwarranted invasion of personal privacy.’

KNBC has been informed that the PUC has no documents relating to a gas leak and explosion on November 8, 2005 in Mira Loma. Given that the PUC requires gas companies to report on such matters (see Sections 121 and 122 of the General Order), please confirm that this is the case. The exact address is 5760 Lucretia Avenue, Mira Loma, CA 91752.

Finally, with this letter, KNBC: (1) supplements its prior requests by requesting Leakage Survey and Procedures (Section 143.1 of the General Order) for 2003 through 2005 for the greater Los Angeles area; and (2) requests an on-camera interview early next week with a PUC gas leak expert from the PUC's LA Public Safety Branch. With respect to the latter, please have the appropriate person respond directly to Ms. Garcia."

## **DISCUSSION**

The requested records are "public records" as defined by the California Public Records Act (PRA). (Government Code § 6250 et seq.) The California Constitution, PRA, and discovery law, favor disclosure of public records. The public has a constitutional right to access government information. (California Constitution, Article 1, § 3 (a).) 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. (California Constitution, Article 1, § 3 (b)(2).) 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. (Id.)

The PRA provides that an agency must base a decision to withhold a public record in response to a PRA request upon the specified exemptions listed in the Act, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.<sup>1</sup>

The Commission has exercised its discretion under Public Utilities Code § 583, and implemented its responsibility under Government 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

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<sup>1</sup> The fact that records may fall within a PRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records which may not be disclosed by law, PRA 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 Government Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App.3d 645, 656.

public, except “as otherwise excluded by this General Order, statute, or other order, decision, or rule.” General Order 66-C, § 2.2 precludes 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.” Section 2.2 (a) covers both records provided by utilities in the course of a Commission investigation and investigation records generated by Commission staff.

The gas incident records that Commission staff refrained from providing to KNBC in its initial response to KNBC’s records request fall within scope of records of investigations made by the Commission, and thus could not be disclosed to the public without formal Commission action. Public Utilities Code § 311 (g) requires that most Commission decisions be circulated for public comment at least 30 days before they are formally voted on by the Commission. (*See also*, Article 19 of the Commission’s Rules of Practice and Procedure.) As the requester notes, disclosure of such records, in the absence of Commission action, is also limited by General Order 112-E § 122.

Because General Order 66-C § 2.2 (a) and General Order 112-E § 122 limit staff’s ability to disclose Commission gas incident investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, staff denies most initial requests for such records. Staff usually informs requesters of the option under General Order 66-C § 3.4 to appeal to the Commission for disclosure of the records. If an appeal is received, staff prepares a draft resolution for the Commission’s consideration. KNBC’s subsequent request includes what amounts to an appeal to the Commission for disclosure.

There is no statute forbidding disclosure of the Commission’s safety investigation records. During the past twelve years the Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.<sup>2</sup> Disclosure does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident/incident under investigation.<sup>3</sup> Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility incidents (accidents), 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/incident.

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<sup>2</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>3</sup> *See, e.g.* Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in D.90-05-020 (1993), 49 CPUC 2d 241; L-309 *Re Corona* (December 18, 2003); and L-320 *Re Knutson* (August 25, 2005).

The Commission has often stated that Public Utilities 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.

Portions of incident investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act (IPA) (Civil Code § 1798 et seq.). However, the IPA authorizes disclosure of personal information “Pursuant to the California Public Records Act.” (Civil Code § 1798.24 (g).) Incident records may include personal information concerning utility employees involved in, investigating, or reporting the incident, Commission employees investigating the incident, employees of other governmental agency investigating the incident, the injured individual, members of his or her family, if he or she is deceased, and any witnesses to the incident.

The Commission generally finds that the public interest favors disclosure of such information, where it is associated with a completed incident investigation, with the exception of personal information concerning the family of a deceased individual, or witnesses not associated with the utility, the Commission, or the injured or deceased individual’s employer. Personal information concerning such family members or other witnesses may be redacted in the interests of privacy. Disclosure of such information may constitute an unwarranted invasion of personal privacy. Thus, such information is exempt from mandatory disclosure in response to a PRA request, pursuant to Government Code § 6254 (c).

Whether disclosure of gas incident witness names, addresses, and telephone numbers to the public would constitute an unwarranted invasion of personal privacy is not always an easy determination. The California Constitution provides state residents with a number of inalienable rights, which include “pursuing and obtaining safety, happiness, and privacy.” (California Constitution, Article 1, § 1.) This right of privacy was not diminished by the recent amendments to Article 1, § 3, which strengthened the public’s right of access to government records. (California Constitution, Article 1, § 3 (b)(3).)

The Constitutional right of privacy is not absolute, and must yield to other public interests in appropriate circumstances. In some circumstances somewhat similar to those presented by the current records request, the Legislature has seen fit to provide limited, rather than universal, access to witness information. For example, Vehicle Code § 20012 provides that all required accident reports shall be for the confidential use of the Department of Motor Vehicles and the California Highway Patrol, but requires that such reports, including the names and addresses of persons involved or injured in, or witness

to, an accident, be made available to any person with a proper interest therein, including those involved in the incident and those who may incur civil liability.

Most of the records requests and subpoenas the Commission receives which seek accident/incident investigation records come from individuals or entities with either a strong emotional or financial interest in the investigation records. People injured in accident, and/or the families of those killed in such accidents, have an emotional (and sometimes financial) interest in the records. Entities involved in, or potentially involved in, litigation associated with such accidents have a strong financial interest in investigation records. On rarer occasion, members of the media seek investigation records.

One may reasonably assume that there is some lessening of the objectively reasonable expectations of privacy held by those identified as witnesses in Commission incident investigation records. After all, the individuals know they have been interviewed by Commission staff, employees of other governmental agencies, employees of the utility whose facilities were involved in the incident, and so on, and therefore probably anticipate they might be interviewed again by those with a direct interest in the incident.

It is not as reasonable to assume that the fact that an individual has been interviewed by those with direct interests in an incident means that the individual should be held to reasonably expect that his or her name, address, and telephone number will be made public in response to a records request from a member of the media or otherwise. The simple truth is that some witnesses may anticipate, or perhaps even welcome, interviews by members of the media, while others reasonably anticipate that the government employees or others who have already interviewed them in connection with the incident will respect their right to privacy – which has sometimes been described as including the basic right to be left alone. This is probably especially true for those who have been injured, or those with family members who have been injured or killed, in utility incidents.

The Commission's widespread distribution of personal information concerning incident victims and witnesses to the media 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. Members of the media are not universally noted for their sensitive treatment of those who have lost loved ones in utility incidents or similar events. Further, fears of identity theft are increasingly widespread.

We will authorize staff to disclose gas incident investigation records requested by KNBC, after redacting the names, addresses, and telephone numbers of family of a deceased individual, or party witnesses not associated with the utility, the Commission, or the injured or deceased individual's employer. At this time, KNBC has identified five

incidents it is especially interested in, and one additional incident it claims it was told we have no record of. Further review has located information regarding this sixth gas incident (Mira Loma, November 8, 2005), which will be included in the records staff will provide to KNBC.

Regarding the confidentiality of personal information in complaint files, we note that there are two basic classes of complaint files, formal complaint files, which have long been open for public inspection in the Commission's Central Files Office, and informal files, which are generally made available in summary electronic format, with personal information concerning complainants' redacted in the interest of privacy. The Commission recognizes that some informal complainants might be happy to have their names, addresses, account numbers, financial status, and similar information made available to any member of the public who requests it, while others might be more reluctant to share such details of their lives with the media, or other members of the public. 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. (*See, e.g., City of San Jose v. Superior Court* (1999) 74 Cal.App.4<sup>th</sup> 1008.)

Commission staff has, on rare occasions, agreed to act as a limited intermediary between those wishing to contact individuals who have filed informal complaints and the informal complainants themselves. If KNBC drafts a form letter explaining its interest in contacting complainants and inviting them to contact KNBC, and provides postage, Commission staff will forward the form letter to a limited number of complainants for which the Commission has adequate contact information so that those individuals may, if they wish, contact KNBC. This approach may help satisfy KNBC's desire for information while leaving it up to individual complainants, rather than KNBC, to decide whether their personal information should be made public. Because the task of locating complainant names and addresses, and addressing envelopes, is not within staff's normal duties, and does not especially further the Commission's implementation of its regulatory responsibilities, we will permit KNBC to select no more than 20 complainants it is interested in contacting. Staff has already provided summary complaint information that should allow KNBC to identify a group of potential interviewees. Staff will also provide this service with regard to any individuals whose personal information is redacted from the incident records that will be provided to KNBC in response to its follow-up information request.

KNBC correctly notes that neither Quarterly Summary Reports (General Order 112-E § 122.2 (d)) nor Safety-Related Condition Reports (General Order 112-E § 124) are deemed confidential by General Order 112-E. Several utilities, however, identify such reports as confidential. We find no public interest served by keeping such information from the public. We take this opportunity to remind utilities that General Orders which

require utilities to report to the Commission do not provide that such information will be confidential unless specific provisions of the General Orders identify specific information as confidential. The California Constitution, Article 1, § 3 (b)(2), requires that a “statute, court rule, or other authority, ... shall be broadly construed if furthers the people’s right of access, and narrowly construed if it limits the right of access.

As requested, staff will provide information regarding General Order 112-E § 143.1 leakage surveys and procedures.

The California Incident Listing to which KNBC’s follow-up request refers, for which KNBC seeks 2005 information, was a product of the United States Department of Transportation Office of Pipeline Safety, rather than this Commission. We are not in charge of that agency’s internet site, and thus cannot provide the requested 2005 data. We can, and did, provide summary gas leak information prepared by the Commission’s Consumer Affairs Branch

#### **COMMENTS ON DRAFT RESOLUTION:**

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on April 25, 2006, in accordance with Public Utilities Code § 311(g). Comments were filed by the Southern California Gas Company on June 5, 2006. These were the only comments received.

SoCalGas stated that it had no objection to the Commission permitting KNBC to provide a form letter so that 20 complainants can decide if they wish to be interviewed by KNBC. SoCalGas also stated that it does not object to the Commission providing Safety Related Condition Reports to KNBC. The utility does, however, strongly object to the Commission providing Gas Incident Reports or Utility Quarterly Reports to KNBC. We now review the utility’s comments on each class of records at issue.

#### **Safety-Related Condition Reports**

##### SoCalGas Comments

SoCalGas states that:

KNBC has not identified any legitimate reason why it needs Safety-Related Condition Reports. One can assume, however, that KNBC wishes to review these reports as part of its own “investigation” of natural gas utility safety in the Los Angeles area. SoCalGas is concerned that KNBC will mischaracterize such information in order to boost its

television ratings by suggesting that SoCalGas' natural gas service is somehow unsafe. As the Commission is aware, SoCalGas has provided safe and reliable natural gas service to its customers for many decades, meeting or exceeding all industry standards for safety.

SoCalGas recognizes, however, that Safety-Related Condition Reports are not classified as "confidential" under General Order (GO) 112-E even though SoCalGas submits them under Section 583 of the California Public Utilities Code (Code) and GO 66-C. These reports do not contain customer-specific information or pipeline information that, if made public, could compromise system security. Accordingly, SoCalGas does not object to the Commission providing these reports to KNBC. The Commission should, however, emphasize in its final Resolution that KNBC should utilize these records responsibly and should not attempt to create undue public alarm in an effort to boost its own ratings and revenues.

### Response

The Public Records Act generally does not permit an agency to disclose information selectively, depending on the identity or intentions of the requester. (Government Code Section 6254.5; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645). Although the media is entitled to no greater access than any other member of the public, it is also entitled to no lesser degree of access. (*California State University v. Superior Court* (2001) 90 Cal.App.4<sup>th</sup> 810, *rehearing denied.*) The intent of a requester to use public records for personal or corporate profit does not provide an agency with an additional basis for nondisclosure. (*Connell v. Superior Court* (1997) 56 Cal.App.4<sup>th</sup> 601, 616-617; *State Board of Equalization v. Superior Court* (1992) 10 Cal.App. 4<sup>th</sup> 1177, 1190-1191)

We understand SoCalGas's concerns about potential misrepresentation of issues by the media, and have in past disclosure resolutions admonished media requesters to be sensitive in their use of public records. Without evidence to the contrary, we will assume that KNBC will utilize any records we provide responsibly.

### Customer Complaints

#### SoCalGas Comments

With regard to customer complaint information, SoCalGas states that:

SoCalGas appreciates the recognition in DR L-332 that utility customers have a reasonable expectation of privacy, even when they file complaints with the Commission against a public utility. As the Commission stated, the mere act of filing a complaint with the Commission “does not in our view constitute an open invitation to the world to view the complainants’ personal information.”<sup>1/</sup> To its credit, the Commission has repeatedly and decisively protected utility customer-specific information from public disclosure.<sup>2/</sup> [All Comment footnotes are listed in footnote following the last quoted comment.]

SoCalGas recognizes, however, that some Complainants might wish to be interviewed by KNBC, in which case they should be permitted to do so. Accordingly, SoCalGas has no objection to the approach set forth in DR L-332 whereby the Commission would permit KNBC to draft a form letter to 20 Complainants to determine whether they would be interested in being interviewed by KNBC. The procedure proposed in DR L-332 strikes a reasonable balance between KNBC’s desire to interview Complainants and the reasonable expectation of privacy that such Complainants might have.”

### Response

We are pleased that SoCalGas approves of our proposal for providing KNBC with access to a limited number of complainants who may wish to speak with KNBC. We believe our approach properly balances potential customer privacy interests with the interest of the public – through KNBC – in speaking with those who file complaints with the Commission. Ideally, we will eventually adopt procedures through which individual complainants may express privacy preferences at the time they file their complaints, so that those who wish to have their names and addresses available to others who might wish to contact them regarding their complaints could be easily identified without the need for a cumbersome system in which staff becomes a necessary, but unenthusiastic, intermediary between the media and individual complainants of interest to the media.

### **Quarterly Summary Reports**

#### SoCalGas Comments

SoCalGas states that:

DR L-332 would authorize the release to KNBC of Utility Quarterly Reports. These reports are deemed “confidential” by SoCalGas and are provided to the Commission under Code Section 583 and GO 66-C. There is good reason why these reports are confidential – they include literally thousands of specific customer names, addresses, and telephone numbers per year because this report lists each and every time a SoCalGas facility is damaged, no matter how minor the damage might be. Granting KNBC’s request would provide KNBC with the names, addresses, and telephone numbers of more than 12,000 SoCalGas customers.

As noted above, the Commission has zealously guarded customer-specific information from public release in numerous decisions. The Commission has specifically recognized that “California courts have held that a customer has a constitutional right to privacy in his records. The test is whether a person has exhibited a reasonable expectation of privacy.”<sup>3/</sup> Each Utility Quarterly Report includes reference to thousands of gas facility damage incidents, the vast majority of which are extremely minor, involving no injury and little or no property damage. By far the most common incident reported in these reports is when a third party causes minor damage to utility distribution facilities while using various types of digging equipment. Utility customers do not expect that their name, address, and telephone number will be provided to the media in such circumstances. Indeed, even in those rare cases where the incident involves injury or more significant property damage, there is no reason to conclude that customers expect that their privacy would be compromised by providing their name, address, and telephone number to the media. Thus, under any reasonable balance of interests, the Commission should conclude that any public interest in providing Utility Quarterly Reports to KNBC is outweighed by customer privacy protection.

Providing Utility Quarterly Reports to KNBC or other media would be tantamount to providing them with a partial customer list since these reports include the names, addresses, and telephone numbers of over 12,000 customers. As noted above, the Commission has made great efforts to ensure that the utilities do not provide customer lists to third parties.<sup>4/</sup>

Once such lists are provided to the media, the Commission loses all ability to ensure that the customer-specific information is not used improperly, such as by publication of these lists or even the sale of these lists to marketers of energy products and services. The Commission should not provide literally thousands of customer names, addresses, and telephone numbers to the media when this information is associated with only minor damage to utility facilities.

The Quarterly Reports are much different than the Gas Incident Reports discussed below. Gas Incident Reports involve only those incidents where there is significant damage to property and/or persons, or where there is major media coverage. The public desire to know about these major incidents, and the need for media to be able to interview witnesses and victims, is therefore greater than with the extremely minor incidents reported in the Utility Quarterly Reports. Thus, even if the Commission should provide Gas Incident Reports to KNBC, it should not provide Utility Quarterly Reports.

Redaction of customer names, addresses, and telephone numbers by the Commission Staff would likely be burdensome. As noted above, these reports include over 12,000 separate entries, which is not surprising for a large utility with millions of separate customers. However, if the Commission is willing to redact customer names, addresses, and telephone numbers, SoCalGas has no objection to the Commission providing these reports to KNBC.

### Response

We believe that individual expectations of privacy in the context of a broad program involving individual interactions with government agencies vary, and cannot be easily and correctly characterized through any generalized assumption that all such individuals do, or do not, expect that all information regarding such interactions may kept from the public. Similarly, we do not believe the Commission can blithely accept SoCalGas's presumption that KNBC, or any other member of the public, has an inherently greater interest in major gas incidents than in minor one reflected in Quarterly Summary Reports.

From a PRA standpoint, it does not generally matter why someone wants to view particular public records. (*See, e.g., Orange County Employees Association, Inc. v. Superior Court* (2004) 120 Cal.App.4<sup>th</sup> 287, 295.) In some situations, the balancing of

interests for and against disclosure may shift depending on a comparison of the sensitivity of the information and the inherent or obvious worthiness of the purpose for which the information is requested. (*Citizens for a Better Environment v. Dept. of Food and Agriculture* (1995) 171 Cal.App.3<sup>rd</sup> 704, 715.) Thus, for example, while the Government Code § 6254 (c) exemption from mandatory disclosure for personnel, medical, and similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy, justifies non-disclosure of vast numbers of names and addresses in response to a broad, generic, and potentially invasive inquiry, there are times when privacy interests must give way to the public's to know. (*See, e.g., Bakersfield School District v. Superior Court* (2004) 118 Cal.App.4<sup>th</sup> 1041.)

But even where some information in the requested records may be highly sensitive and exempt from disclosure, the agency may not deny a records request on this basis without first exploring whether the sensitive and exempt may be segregated from other nonexempt information in those records. (Government Code § 6253 (a).) This is clearly the case with regard to Quarterly Summary Reports. In some situations, exempt and nonexempt information may be so inextricably entwined that it is not realistic, or too burdensome, for an agency to segregate the exempt information from the nonexempt information in the records being requested. In these situations, the burden may be so substantial as to provide a basis for refraining to disclose anything. (*See, e.g., American Civil Liberties Union of Northern California, Inc. v. Deukmejian* (1982) 32 Cal.3d 440.) In most situations, however, redaction or segregation of exempt from nonexempt information may be practical, even if the redaction process is burdensome and time consuming.

In this age of electronic recordkeeping, it is sometimes possible to craft a computer program that permits redaction of sensitive personal information from electronic files that may otherwise be made available to the public. Our use of this approach in the context of complaint files in the Commission's electronic complaint database has served us well, enabling us to provide large quantities of information regarding the number and types of complaints filed against particular utilities, or classes of utilities, without jeopardizing the confidentiality of complainant names, addresses, telephone numbers, account numbers, and similar personal information. This is not a perfect solution, since some electronic data fields include both personal and impersonal information, and must be redacted from most responses since it is impossible to electronically segregate elements of this particular data field.

To the extent that Quarterly Summary Reports are made available in electronic format, it may be possible to craft a similar program that would allow the easy redaction of the names, addresses, and telephone numbers of those reporting minor gas incidents to the utilities. We have reviewed a number of these reports and note that there is one field of information that has some elements in common with the details data field we redact from

electronic complaint data because it includes both exempt and nonexempt information: the field for the addresses at which an incident occurred. In some cases, this address is the same as the address of the person filing the report. At other times, the address may be a business address, or an address not associated with the filer. Where the address is that of a business, personal privacy issues are not involved. Where the address is that of a residence, however, the issue becomes more complex. While we would not wish to make public all personal information concerning those filing minor leak reports with utilities, we can see the public interest in having some information about the location of even minor gas incidents, since this might enable a media entity or other member of the public to see whether there are any patterns to such incidents, and so on. We will not redact such information at this time.

We will disclose to KNBC the requested Quarterly Summary Reports, after redacting the names, telephone numbers, and addresses of individuals who submitted gas leak information to the utilities subject to KNBC's information request. This process will be burdensome. If we receive similar requests in the future, we may explore redaction options with utilities which provide reports in an electronic format.

We may authorize utilities filing Quarterly Summary Reports pursuant to General Order 112-E to follow an approach similar to that we adopted for General Order 77-L; where we required utilities to file a complete unredacted report for the Commission's use, and for use in any Commission proceeding in which such reports might be relevant, but authorized them to also provide a redacted report – without the names of highly paid employees and officers - for public disclosure purposes. Quarterly Summary Reports could be filed in both unredacted, and redacted, versions, with the redacted information consisting only of the names, telephone numbers, and residence addresses of individuals who notified the utility regarding suspected or real gas leaks. Since Quarterly Summary Reports have not been a popular subject of PRA requests, we will not order implementation of such an approach at this time.

### **Gas Incident Reports**

#### SoCalGas Comments

With regard to Gas Incident Reports, SoCalGas comments that:

DR L-332 would grant the request of KNBC “for disclosure of the Commission’s records concerning the investigation of certain gas incidents in the greater Los Angeles area ... with minor limitations to protect the privacy of certain individuals.”<sup>5/</sup> Such information would be provided to KNBC “after redacting the names, addresses, and telephone

numbers of family of a deceased individual, or witnesses not associated with the utility, the Commission, or the injured or deceased individual's employer.”<sup>6/</sup> The Commission should not release Gas Incident Reports to KNBC at all because to do so could have an adverse effect on civil litigation should KNBC decide to publicize the incidents addressed in these materials. If the Commission nevertheless decides to provide Gas Incident Reports to KNBC, it must ensure that KNBC receives only the reports themselves that are provided to the Commission by SoCalGas and not provide KNBC with associated photos, notes, drafts, or other such materials. If SoCalGas Gas Incident Reports are provided to KNBC, the Commission also should redact the names, addresses, and telephone numbers of all persons identified in the reports to ensure that their privacy is not compromised. The Commission should also provide to SoCalGas any material provided to KNBC.

As recognized in DR L-332, Gas Incident Reports provided to the Commission by SoCalGas are considered “confidential” within the meaning of Section 2.2(a) of GO 66-C.7/ While the Commission clearly has the discretion to make such records public, it should do so only when the public interest is served by such disclosure. As DR L-332 notes, the Commission has disclosed such reports when doing so “does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident under investigation.” <sup>8/</sup> The Commission has responded to concerns of utilities regarding the release of such information by relying on Code Section 315, which expressly prohibits the introduction of incident reports filed with the Commission, or orders and recommendations issued by the Commission, as evidence in actions for damages based on or arising out of injury or loss of life associated with such reports.<sup>9/</sup>

Disclosure of such reports to the media is potentially much more prejudicial to utilities (and their ratepayers) than disclosure of these reports to plaintiffs' attorneys in the context of civil litigation. As noted above, Code Section 315 prohibits such reports from being introduced into evidence in such litigation, thereby protecting utilities from the prejudice that would result if those reports were admitted in evidence.

Disclosure of such information to the media, however, runs the risk that sensational publicity regarding such incidents will jeopardize the ability of the utility to obtain a fair trial since prospective jurors are often influenced by media coverage. The Code provides utilities with no protection against media companies airing or publishing misleading or otherwise inflammatory stories that potentially taint the jury pool in civil litigation. Thus, the protection afforded by Code Section 315 will be completely lost if the media are allowed to obtain and publish such information. The result of such publicity would be increased utility costs, due to greater litigation costs, larger damage awards, or the necessity to settle such cases for greater amounts in light of media-generated publicity. To the extent that utilities pay out more money as a consequence of Commission release of such information to the media, utility ratepayers are harmed as such costs become reflected in utility rates. The Commission therefore should not release SoCalGas' Gas Incident Reports to the news media at all, particularly in the absence of any demonstration that such release would serve the public interest rather than just boost media profits. The rationale previously adopted by the Commission for release of Gas Incident Reports – that the litigation process could be facilitated by such disclosure – is absent here since media-generated publicity can only impede the legal process.

SoCalGas is aware that the Commission provided electric utility incident reports to two newspapers as a result of issuing Resolution L-272, with only minor redactions similar to those proposed in DR L-332. SoCalGas therefore requests that the Commission reconsider any policy established by Resolution L-272 and that the Commission conclude that SoCalGas' Gas Incident Reports should not be provided to KNBC.

If the Commission nevertheless decides to provide the requested SoCalGas Gas Incident Reports to KNBC, it should provide only the reports themselves, not associated photos, notes, drafts, or other materials. Photographs, for example, can be particularly inflammatory if publicized by the media and can jeopardize the ability of the utility to obtain an impartial jury to hear the evidence in civil litigation. In addition, internal Commission communications represent

protected information. The Commission recognized in Resolution L-272 that such records might well “fall within the Section 6254(f) exemption [in the Public Records Act] for [the Commission’s] investigative records” that would not be appropriate to provide to the media.<sup>10/</sup> This exemption reflects the public interest in encouraging Commission Staff to review and/or investigate a matter fully, without limiting the ability of Commission Staff to record their thoughts or observations. Since Gas Incident Reports themselves provide all of the specifics of an investigation necessary for any media review, only the Gas Incident Reports themselves should be provided to KNBC if the Commission decides not to reconsider altogether the approach taken in Resolution L-272.

In addition, if the Commission should decide to provide SoCalGas’ Gas Incident Reports to KNBC, it should redact more information than proposed by DR L-332. As the Commission found in Resolution L-272, it should not provide “confidential personal information concerning an accident victim”<sup>11/</sup> and therefore in its final Resolution in this matter it should specifically state the Commission’s intention to redact confidential personal information concerning accident victims.

DR L-332 would redact only the names, addresses, and telephone numbers of family of a deceased individual, or witnesses not associated with the utilities, the Commission, or the injured or deceased individual’s employer. The Commission should expand these redactions to include all persons identified in SoCalGas’ Gas Incident Reports. This would reflect the fact that many persons involved in these incidents wish to retain their privacy. If their names, addresses, and telephone numbers are made public, future witnesses to gas incidents might be reluctant to come forward to assist the investigation. In Resolution L-272 the Commission stated that: “[t]he heart of our privacy concerns is not a desire to shield utilities from appropriate public scrutiny, but rather a desire to **insulate accident victims from involuntary exposure to a potentially unwelcome public spotlight.**”<sup>12/</sup> The Commission should give force to this desire by redacting all victim identification information from any SoCalGas Gas Incident Reports provided to KNBC,

as well as the identification of any other persons contained in these reports.

If the Commission should decide to provide KNBC the requested SoCalGas Gas Incident Reports, it should state the same cautionary language it included in Resolution L-272:

At the same time, we request that these entities act with sensitivity and respect to the maximum extent possible. The privacy of those who expect and desire not to be contacted by the media or placed in the public spotlight for any one or more of the reasons discussed in Resolution L-265 or in this current resolution. We further appeal to other members of the media and to others who may have access to ... accident reports to be sensitive to the emotional well being of those who have been involved in or witnesses ... accidents, or who suffered the loss of loved ones in such accidents.”<sup>13/</sup>

The Commission should also actively review any stories aired by KNBC that utilize any SoCalGas Gas Incident Reports the Commission provides to KNBC. While any irresponsible use of this information would be too late to correct, it would advise the Commission should KNBC request Gas Incident Reports in the future. The Commission should place KNBC squarely on notice that any misuse of this information will be considered should KNBC make such a request again.<sup>4</sup>

### Response

As SoCalGas correctly notes, we have on numerous occasions authorized disclosure of accident records to individuals and entities involved in gas incidents or in litigation related to such incidents, and have on several occasions disclosed such information to newspapers. We have generally delayed disclosure until our accident investigations have

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<sup>4</sup> SoCalGas Footnotes: 1/ DR L-332, *citing City of San Jose v. Superior Court* (1999), 74 Cal.App.4th 1008.; 2/ *See, e.g.*: D.97-12-088, 1997 Cal. PUC LEXIS 1139 at \*196 (“A utility shall provide customer information to ... unaffiliated entities ... only with prior affirmative customer written consent”); D.99-09-002, 1999 Cal. PUC LEXIS 579 at \*16-17 (“[W]e wish to protect the utility’s release of customer-specific information, except where the customer has consented in writing to the specific disclosure”); D.01-07-032, 2001 Cal. PUC LEXIS 540 (denying request of California Narcotic Officers’ Association that utilities release customer information to law enforcement officers in the absence of legal process such as a warrant or subpoena duces tecum approved by a judge). *See, also*, Customer List OII, D.90-12-121, 39 CPUC 2d 173 (1990).; 3/ D.99-04-047, 1999 Cal. PUC LEXIS 194 at \*12-13, *citing Burrows v. Superior Court* (1974), 13 Cal. 3d 238, *People v. Chapman* (1984), 36 Cal. 3d 98.; 4/ *See, supra*, note 2.; 5/ DR L-332, *mimeo*, p. 10, Ordering Paragraph 1.; 6/ *Id.*; 7/ *Id.* at p. 4.; 8/ *Id.*; 9/ *Id.* at p. 5.; 10/ Resolution L-272, *mimeo*, p. 12.; 11/ *Id.*; 12/ *Id.* at p. 10 (emphasis added); 13/*Id.* at p. 12.).

been completed, finding that the public interest in preserving our ability to complete our investigations effectively and efficiently outweighed any public interest in disclosure, but that the balancing of interests shifted in favor of disclosure once the investigations were completed, since the disclosure of investigation records then could not interfere with our completion of the investigation.

We have long recognized that accident investigation records contain personal information, the disclosure of which may in some situations result in an unwarranted invasion of personal privacy. In limited circumstances, we have redacted such information from records we have provided, on the ground that it is exempt from disclosure pursuant to Government Code § 6254 (c), and/or is subject to the conditional official information privilege set forth in Evidence Code § 1040 (b)(2). As a general rule, we have limited such redactions to personal information concerning accident victims or their families, and have disclosed the names and contact information of utility employees involved in reporting or investigation the accident, individuals associated with any non-utility entity employing any individuals involved in the accident, any other governmental employees involved in activities associated with the accident, and so on. We felt that disclosure of the identities of individuals dealing with the accident in a professional capacity did not constitute an unwarranted invasion of their personal privacy, whether or not they may prefer to remain wholly anonymous. In our view, such individuals have no reasonable expectation in the privacy of such information, given their professional relationship to the accident. The personnel, medical, and similar files exemption in Government Code § 6254 (c) was developed to protect intimate details of personal and family life, not business relationships. (*Bakersfield School District v. Superior Court*, *supra*, 118 Cal.App.4<sup>th</sup> 1041, citing *Braun v. City of Taft* (1988) 154 Cal.App.3<sup>rd</sup> 332, 343-344.)

Given that many requests and subpoenas for accident records come from accident victims, their families, or their legal representatives, and that the purpose of such requests and subpoenas is often primarily to obtain information that may be useful in litigation relating to the accident, we have not always found that the disclosure of some personal information concerning victims or their families constituted an unwarranted invasion of personal privacy. When one becomes involved as a plaintiff in litigation regarding an accident, one of necessity diminishes one's realistic expectation of privacy regarding personal information relevant to such litigation. (*See, e.g., Poway Unified School District v. Superior Court* (1998) 62 Cal.App.4<sup>th</sup> 1496, *rehearing denied*; *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3<sup>rd</sup> 893, 902.) Even in such cases, however, we have sometimes redacted from records disclosed to the public personal information such as social security numbers, and the like.

We are not persuaded to change our practices regarding disclosure of personal information in incident reports at this time. As we have done when responding to other

Public Records Act requests, we will reserve our right to redact a limited amount of personal information concerning incident victims, their families, or others, where we find that disclosure would constitute an unwarranted invasion of personal privacy, but will disclose such information regarding those associated with the incident in a professional capacity.

SoCalGas also comments that if we must disclose gas incident reports, we should refrain from disclosing anything beyond the reports filed by the utilities. SoCalGas does not want us to provide other substantive information that may be found in our incident investigation files.

We are not persuaded to limit disclosure in this manner. As noted earlier, the California constitution requires that laws and other authority limiting public agency disclosure of records must be narrowly construed, and that laws and other authority favoring disclosure be construed broadly. While we reserve our right to refrain from disclosing other information in incident investigation files in response to PRA requests to the extent it is subject to a Commission-held privilege against disclosure, and is thus exempt from mandatory public disclosure pursuant to Government Code § 6254 (k). Our assertion of this exemption will be the exception, not the rule, since we have found that our investigation files generally include little information for which we are inclined to assert this exemption once our investigation is complete. As noted earlier, at this time our balancing of interests then usually shifts in favor of disclosure.

SoCalGas praises our consistent references to the fact that Public Utilities Code § 315 precludes the use of accident reports filed with or developed by the Commission as evidence in actions for personal injuries associated with such accidents, and acknowledges our belief that disclosure of completed accident investigation records may assist in the resolution of litigation. Although SoCalGas is aware of our past disclosure of accident records to certain newspapers, it expresses the fear that a current decision to disclose certain incident records to KNBC could, if KNC acts irresponsibly, result in media activity that may somehow poison the pool of prospective jurors in its territory and prevent it from getting a fair trial in any incident related litigation.

We understand the utility's concerns that our disclosure of incident reports in response to KNBC's request might result in media activity that might poison the minds of potential jurors, but are not convinced that this fear is realistic. We have yet to encounter such a problem, despite our long history of disclosing incident records in response to PRA requests and subpoenas. If, in the future, such a problem arises, we may review our balancing of the interests for and against disclosure of incident records.

We have, when disclosing such records to newspapers, generally admonished the newspapers to act responsibly, and with consideration for accident victims or families of

accident victims. We have yet to receive any indication that our disclosures have had adverse impacts on accident victims or the families thereof.

As SoCalGas requests, we repeat the cautionary language set forth in Resolution L-272:

At the same time, we request that these entities act with sensitivity and respect to the maximum extent possible. The privacy of those who expect and desire not to be contacted by the media or placed in the public spotlight for any one or more of the reasons discussed in Resolution L-265 or in this current resolution. We further appeal to other members of the media and to others who may have access to ... accident reports to be sensitive to the emotional well being of those who have been involved in or witnesses ... accidents, or who suffered the loss of loved ones in such accidents. (Resolution L-272, at p. 12.)

### **FINDINGS OF FACT**

1. KNBC is seeking investigation records concerning a number of gas incidents in the greater Los Angeles area during 2003, 2004 and 2005. KNBC has specified 6 specific incidents it is particularly interested in.
2. KNBC has also asked for Quarterly Summary Reports required by General Order 112-E §122.2 (d) and Safety-Related Condition Reports required by General Order 112-E § 124. Neither of these categories of documents is deemed confidential by the General Order (unlike the Written Incident Reports).
3. Commission staff has, on rare occasions, agreed to act as a limited intermediary between those wishing to contact individuals who have filed informal complaints and the informal complainants themselves. If KNBC drafts a form letter explaining its interest in contacting complainants and inviting them to contact KNBC, and provides postage, Commission staff could forward the form letter to a limited number of complainants for which the Commission has adequate contact information so that those individuals may, if they wish, contact KNBC. This approach may help satisfy KNBC's desire for information while leaving it up to individual complainants, rather than KNBC, to decide whether their personal information should be made public.
4. The task of locating complainant names and addresses, and addressing envelopes, is not within staff's normal duties, and does not especially further the Commission's implementation of its regulatory responsibilities; therefore, it is reasonable to permit KNBC to select no more than 20 complainants it is interested in contacting. Staff has already provided summary complaint information that should allow KNBC to identify a group of potential interviewees.

5. To the extent that the Commission's investigations of the gas incidents KNBC is interested in have been completed, the disclosure of the investigation records would not compromise the investigations.
6. The public interest favors disclosure of the requested investigation records, with the exception of the names, addresses, and telephone numbers of family of a deceased individual, or witnesses not associated with the utility, the Commission, or the injured or deceased individual's employer.

### **CONCLUSIONS OF LAW**

1. The documents in the requested investigation file and report are public records as defined by Government 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. California Constitution, Article 1, § 3 (b) (1) and (2).
3. The general policy of the Public Records Act favors disclosure of records.
4. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the Public Records Act or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.)
5. The Commission has exercised its discretion under Public Utilities Code § 583 to limit 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).)
6. Public Utilities Code § 583 does not limit the Commission's ability to order disclosure of records.
7. Public Utilities 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.”

8. Public Utilities Code § 311 (g) requires that most Commission decisions be circulated for public comment at least 30 days before they are formally acted on by the Commission.
9. Public disclosure of the portion of gas incident records that include names, addresses, and telephone numbers of family of a deceased individual, or third party witnesses not associated with the utility, the Commission, or the injured or deceased individual’s employer, would constitute an unwarranted invasion of personal privacy. Such information is, therefore, exempt from mandatory disclosure in response to Public Records Act requests, pursuant to government Code § 6254 (c).

### **ORDER**

1. KNBC’s request for disclosure of the Commission’s records concerning the investigations of certain gas incidents in the greater Los Angeles area is granted, with minor limitations to protect the privacy of certain individuals. Staff will disclose gas incident investigation records requested by KNBC, after redacting the names, addresses, and telephone numbers of the family of a deceased individual, or witnesses not associated with the utility, the Commission, or the injured or deceased individual’s employer.
2. If KNBC drafts a form letter explaining its interest in contacting complainants and inviting them to contact KNBC, and provides postage, Commission staff will forward the form letter to a limited number of complainants for which the Commission has adequate contact information so that those individuals may, if they wish, contact KNBC. Staff will extend the same service with regard to individuals whose personal information has been redacted from incident investigation records.
3. Staff will provide KNBC with copies of available Quarterly Summary Reports required by General Order 112-E §122.2 (d) and Safety-Related Condition Reports required by General Order 112-E § 124. Staff will redact the names, addresses, and telephone numbers of individuals who reported gas leaks listed in Quarterly Summary Reports.

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4. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of June 15, 2006 and that the following Commissioners approved it:

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STEPHEN LARSON  
Executive Director

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners