PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California
Date: April 4, 2002
Resolution No. L-298

R E S O L U T I O N

RESOLUTION AUTHORIZING DISCLOSURE OF COMMISSION CONSUMER SERVICES DIVISION (UTILITIES SAFETY BRANCH) RECORDS PURSUANT TO PUBLIC RECORDS ACT REQUEST BY ROBERT D. PETERSON, ESQ., ON BEHALF OF POUK & STEINLE, INC., SEEKING DISCLOSURE OF COMMISSION STAFF INVESTIGATIVE RECORDS RELATING TO THE DEATH OF RON WILSON (INCIDENT REPORT NO. EIR20001204-01).

BACKGROUND

On October 5, 2001, Robert D. Peterson of the Robert D. Peterson Law Corporation wrote to the Commission requesting any report prepared by the Commission regarding the December 4, 2000 electrocution death of Ron Wilson, a foreman for Pouk & Steinle, Inc. Pouk & Steinle was a subcontractor of Southern California Edison Company ("SCE"), and Mr. Wilson was allegedly electrocuted while working on SCE energized overhead conductors. According to the letter, the incident occurred in the vicinity of Northfork Road and Highway 198 in Three Rivers, Tulare County, California. Mr. Peterson represents Pouk & Steinle and submitted a request pursuant to the California Public Records Act ("PRA").

On December 18, 2001, Commission staff counsel wrote to Mr. Peterson regarding this PRA Request, informing him that the records sought were exempt from the PRA, and that therefore staff could not release such records without a formal resolution from the full Commission.

On January 2, 2002, Mr. Peterson appealed the Commission's initial response to the full Commission, requesting a resolution pursuant to General Order 66-C, for the release of any report prepared by the Commission as a result of this incident. Mr. Peterson indicates in his letter that release of the records is warranted because the matter involving Pouk & Steinle is proceeding before the Occupational Safety and Health Appeals Board and does not involve an action for damages. Mr. Peterson also claims that any conclusions contained in a Commission report will

not be submitted as evidence in a legal proceeding. Rather, Mr. Peterson intends to use any Commission report to fully develop and determine the factual circumstances relevant to Mr. Wilson's death.

DISCUSSION

The legal test for state agency disclosure of public records is set forth in the PRA (Government Code § 6250 et seq.). The PRA is intended to provide "access to information concerning the conduct of the people's business," while being "mindful of the rights of individuals to privacy." (Government Code § 6250.) PRA exemptions of certain classes of records from public disclosure must be narrowly construed to ensure maximum disclosure of government operations. (*New York Times v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585.) The PRA requires that the public be given access to government records unless they are specifically exempt from disclosure, or the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.) The listing of a record among the specific exemptions in the PRA does not prohibit the release of the records. We have long recognized that PRA exemptions are permissive, not mandatory; "they permit nondisclosure but do not prohibit disclosure." (*Re San Diego Gas & Electric Company* (*SDG&E*) (1993) 49 Cal.P.U.C.2d 241, 242, citing *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 655.) The general policy of the PRA clearly favors disclosure. Unless the public interest in confidentiality clearly outweighs the public interest in disclosure, we will generally release records upon request.

Public Utilities Code Section 583 states:

> No information furnished to the commission by a public utility … except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

Public Utilities Code Section 583 "assures that staff will not disclose information received from regulated utilities unless that disclosure is in the context of a Commission proceeding or is otherwise ordered by the Commission." (*Re Southern California Edison Company* (*Edison*) [Decision (D.) 91-12-019] (1991) 42 Cal.P.U.C.2d 298, 300.) Section 583 neither creates a privilege of

nondisclosure for a utility, nor designates any specific types of documents as confidential. (Id., 42 Cal.P.U.C.2d at 301.) As we noted in *Edison, supra*:

> The Commission has broad discretion under Section 583 to disclose information. See, for instance, *Southern California Edison Company v. Westinghouse Electric Corporation*, 892 Fed. 2d 778 (1989), in which the United States Court of Appeals for the Ninth District stated (at p. 783):
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> > "On its face, Section 583 does not forbid the disclosure of any information furnished to the CPUC by utilities. Rather, the statute provides that such information will be open to the public if the commission so orders, and the commission's authority to issue such orders is unrestricted."

The Commission's General Order 66-C sets forth the agency's procedures for disclosing public records. G.O. 66-C § 1.1 states that:

> "Public records" of the Public Utilities Commission, includes all items encompassed in Section 6252 of the Government Code [footnote omitted], except as otherwise excluded by this General Order, statute, or other order, decision, or rule.

G.O. 66-C § 2 lists a number of classes of public records that are not initially open to public inspection. Section 2.2(a) specifically prohibits disclosure of "records of investigations … made by the Commission, except to the extent disclosed at a hearing or by formal Commission action." The fact that requested records fall within one or more of the Section 2 classes of records not open to public inspection acts as an initial bar to public access to the records, but does not limit the Commission's ability to order the release of the records in appropriate circumstances. G.O. 66-C § 3.4 states:

> A person wishing to review records, which are not open to public inspection, may write to the Secretary in San Francisco, indicating the records being withheld, and stating the reasons why these records should be disclosed to him. Sufficient time must be allowed for the full Commission to review this request and the applicable records.

Pursuant to the requirements of G.O. 66-C § 2.2 (a), staff routinely denies most initial requests for the release of staff records concerning investigations of

accidents involving entities subject to our safety jurisdiction. In response to subsequent requests to the Commission under G.O. 66-C § 3.4, however, we have routinely released such records unless there is a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure. (See, e.g., Resolution L-240 *Re Arrequin-Maldonado* (January 22, 1993) (rehearing denied in *SDG&E, supra*); and Resolution L-278 *Re Turner* (February 18, 1999).)

Faced with an ever-increasing number of requests for such records, we have begun to refine our approach to the release of accident records. For example, in Resolution L-272 *Re San Jose Mercury News and Los Angeles Times* (December 17, 1998), we stated that:

> [F]uture accident reports filed by utilities will be subject to public disclosure upon request unless it is shown that in the specific circumstances of a particular accident or related proceeding the public interest in nondisclosure clearly outweighs the public interest in disclosure. Such circumstances include situations in which an accident report contains confidential personal information concerning a victim, the redaction of which is permitted by law. (Resolution L-272 at 11-12.)

Resolution L-272 also addressed the disclosure of records of accident investigations by Commission staff. We found that:

> As a general rule, the public interest in the confidentiality of the records of accident investigations which have been completed by the Commission fails to clearly outweigh the public interest in disclosure, in that disclosure may assist in achieving settlement of any possible litigation resulting from the incident (*See Order Denying San Diego Gas & Electric Co. App. for Rehearing of Resolution L-240* (1993) 49 CPUC2d 241, 243), and may extend the public's knowledge of and ability to analyze and respond to accidents involving electric utility facilities. (Resolution L-272 at 20 (Finding of Fact 14).)

We also found that:

> Disclosure of accident investigation records to the public while an investigation is still underway could jeopardize the safety and effectiveness of the staff of

> the Commission or other governmental entity conducting the investigation. The public interest in the confidentiality of Commission records concerning accident investigations that have not been completed clearly outweighs the public interest in the disclosure of such records. (Id. (Finding of Fact 12).)

We concluded that:

> Investigative records maintained by Commission staff are exempt from disclosure pursuant to a specified exemption in the Public Records Act (Government Code Section 6254 (f)) when they are created when the prospect of an enforcement proceeding is concrete and definite. This exemption does not end when the investigation ends. However, once the investigation is complete, the disclosure of exempt investigative records will generally not compromise the investigation, or otherwise harm the public interest. Indeed, disclosure of exempt records concerning completed investigations may well serve important public interests such as increased public awareness of utility safety issues, the development of safer utility facilities and practices, and the resolution of litigation concerning utility accidents. (Id. at 21 (Conclusion of Law 9).)

We intend to streamline our procedures for the release of accident records, but will do so in a resolution addressing more than a single request for such records.

Regarding the current request for accident records, we find no compelling reasons to withhold the requested information from the public. We conclude that the public interest in non-disclosure of the requested accident records does not clearly outweigh the public interest in disclosure of such records. As we noted in *SDG&E*, *supra*, 49 Cal.P.U.C.2d at 243, disclosure of such records may assist in achieving settlement of litigation resulting from the accident at issue.

We note that Public Utilities Code Section 315 expressly prohibits the admission of orders or recommendations of the Commission, or any accident reports filed with the Commission, "as evidence in any action for damages based on or arising out of such loss of life," and therefore offers SCE sufficient protection from any prejudice arising from public release of the records.

In view of the above, the request of Mr. Peterson for records concerning the electrocution death of Mr. Ron Wilson that occurred on December 4, 2000, when

Mr. Wilson came into contact with energized overhead conductors in the vicinity of Northfork Road and Highway 198 in Three Rivers, Tulare County, California, is granted.

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on February 28, 2002, in accordance with Public Utilities Code Section 311(g). Comments were filed on _____, by _____.

FINDINGS OF FACT

1. The Public Records Act request by Robert D. Peterson, Esq., counsel for Pouk & Steinle, Inc., seeks disclosure of Consumer Services Division Utilities Safety Branch records regarding the Commission's investigation of the electrocution death of Ron Wilson that occurred on December 4, 2000 in the vicinity of Northfork Road and Highway 198 in Three Rivers, Tulare County, California.

2. The public interest in confidentiality of the Consumer Services Division Utilities Safety Branch records regarding the December 4, 2000 accident involving Ron Wilson fails to clearly outweigh the public interest in disclosure.

CONCLUSIONS OF LAW

1. The records at issue are "public records," as defined by Government Code Section 6252(d).

2. Public Utilities Code Section 583 and General Order 66-C prohibit disclosure of the accident records at issue in the absence of a Commission order, or disclosure in the course of a formal hearing or proceeding.

3. Neither Public Utilities Code Section 583 nor General Order 66-C creates a privilege against disclosure by the Commission.

4. The general policy of the California Public Records Act favors disclosure of public records.

5. Public records may be withheld only if they fall within a specified exemption in the Public Records Act, or if the Commission demonstrates that the public interest in confidentiality clearly outweighs the public interest in disclosure.

6. Public Utilities Code Section 315 bars the admission of the orders or recommendations of the Commission, or any accident report filed with the Commission, as evidence in any action for damages arising out of the incident for which the investigation was made.

7. The public interest served by withholding the records regarding the December 4, 2000 accident fails to clearly outweigh the public interest served by disclosure of the records.

ORDER

1. The request of Robert D. Peterson, Esq., counsel for Pouk & Steinle, Inc., for the disclosure of any Commission report concerning the electrocution death of Mr. Ron Wilson that occurred on December 4, 2000 in the vicinity of Northfork Road and Highway 198 in Three Rivers, Tulare County, California, is granted.

2. 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 April 4, 2002, and that the following Commissioners approved it:

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WESLEY M. FRANKLIN
Executive Director