

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

07-19-12
04:59 PM

Order Instituting Investigation on the Commission's Own
Motion into the Operations and Practices of Pacific Gas
and Electric Company regarding Anti-Smart Meter
Consumer Groups

Investigation 12-04-010
(Filed April 19, 2012)

**PACIFIC GAS AND ELECTRIC COMPANY'S MOTION FOR LEAVE TO FILE
CONFIDENTIAL PERSONAL INFORMATION UNDER SEAL**

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**PACIFIC GAS AND ELECTRIC COMPANY'S MOTION FOR LEAVE TO FILE
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Pursuant to this Commission's Rules of Practice and Procedure 11.1 and 11.4, General Order 66-C, and California Public Utilities Code §583, and in accordance with the instructions of Administrative Law Judge ("ALJ") Vieth at the July 13, 2012 hearing in this matter, Pacific Gas and Electric Company ("PG&E") respectfully files this Motion for Leave to File Confidential Personal Information Under Seal ("Motion"). Concurrently with this Motion, PG&E has filed proposed confidential and public versions of the Declaration of David Bayless in Support of PG&E's Second Amended Motion for Protective Order ("Bayless Declaration" and "Second Amended Motion for Protective Order", respectively). PG&E moves the Commission for an order granting leave to file the confidential version of the Bayless Declaration under seal because it contains confidential personal information protected from disclosure by safety considerations and the fundamental right of privacy guaranteed by the California Constitution.

I. PROCEDURAL BACKGROUND

On May 21, 2012, PG&E filed a Motion for Protective Order requesting that the ALJ issue a protective order excluding previously undisclosed individual names and personnel records from the public version of the Consumer Protection and Safety Division's ("CPSD") Staff Report and related attachments filed in this proceeding ("CPSD Staff Report"). PG&E

included with its Motion for Protective Order a proposed public version of the CPSD Staff Report with redactions to individual names and other confidential personal information. At the June 25, 2012 Prehearing Conference in this matter, ALJ Vieth ordered PG&E to submit revised proposed redactions to the CPSD Staff Report. On July 2, 2012, PG&E filed an amended motion (“Amended Motion for Protective Order”) requesting more limited redactions than proposed in its initial Motion for Protective Order. At the July 13, 2012 hearing on PG&E’s Amended Motion for Protective Order, ALJ Vieth ordered PG&E to submit additional information regarding the job titles and professional responsibilities of those non-officer PG&E employees whose names PG&E proposed to redact from the public version of the CPSD Staff Report. The Bayless Declaration sets forth this personal information as specifically requested by the ALJ.

II. PROTECTION OF THE CONFIDENTIAL PERSONAL INFORMATION CONTAINED IN THE BAYLESS DECLARATION IS WARRANTED BY THE RIGHT OF PRIVACY AND SAFETY CONSIDERATIONS

Pursuant to ALJ Vieth’s July 13 order, the Bayless Declaration submitted herewith sets forth the job titles and professional responsibilities for numerous non-officer PG&E employees whose names and other personal information PG&E has requested to redact from the public version of the CPSD Staff Report. PG&E’s request for leave to file this confidential personal information under seal is based on the same principles underlying PG&E’s effort to protect these individuals’ names from public disclosure in the CPSD Staff Report – because failure to do so will violate these individuals’ constitutional right to privacy and create genuine risks to their personal safety.

A. Individual Privacy is a Constitutionally-Protected Right

As discussed in PG&E’s Second Amended Motion for Protective Order, the California Constitution guarantees an individual’s right of privacy. Cal. Const., Art. I, § 1; *see also Hill v.*

National Collegiate Athletic Assn., 7 Cal.4th 1, 15 (1994). “The constitutional right of privacy is ‘not absolute’; it may be abridged when, but only when, there is a ‘compelling’ and opposing state interest.” *Board of Trustees v. Superior Court*, 119 Cal.App.3d 516, 525 (1981) (citations omitted). The California Public Records Act (“CPRA”) permits a public agency to withhold records if it can show that based “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” CPRA §6255(a).

Here, no state or public interest outweighs the constitutional privacy rights of the numerous individuals referenced in the Bayless Declaration. Indeed, the previously undisclosed names, job titles and professional responsibilities contained therein are not directly relevant to the substance of this proceeding. PG&E is submitting the Bayless Declaration for the limited purpose of providing ALJ Vieth with the background information specifically requested to resolve PG&E’s Second Amended Motion for Protective Order. Accordingly, PG&E respectfully requests leave to file this information under seal to preserve the constitutionally-protected privacy rights of the referenced individuals.

B. Public Disclosure of the Bayless Declaration Would Jeopardize the Individuals’ Personal Safety

Failure to seal the Bayless Declaration would jeopardize the personal safety of individuals whose names, job titles, and professional responsibilities would be disclosed to the public. As previously articulated by PG&E, and as specifically addressed by the Declaration of Robert Puts (“Puts Declaration”) submitted in support of PG&E’s Second Amended Motion for Protective Order, anti-SmartMeter™ protestors have subjected PG&E employees, contractors and customers to escalating threats and actual acts of violence throughout the introduction of PG&E’s SmartMeter™ program. The information contained in the Bayless Declaration –

names, job titles, and professional responsibilities of numerous individuals – would allow hostile and potentially violent protestors to identify, locate, and target specific employees involved in the SmartMeter™ program. As discussed above, the CPRA exempts from disclosure certain information where the public interest served by not disclosing the information clearly outweighs the public interest served by its disclosure. Cal. Gov. Code § 6255(a). Based on the history of hostility surrounding the SmartMeter™ program and the related risk of personal harm, the public interest in the safety of PG&E employees outweighs any interest that would be served by disclosure of the confidential personal information contained in the Bayless Declaration.

III. CONCLUSION

For the foregoing reasons, PG&E respectfully moves the Commission for an order directing that the personal information appearing in the confidential version of the Bayless Declaration be placed under seal and not made accessible or disclosed to anyone other than Commission staff.

Respectfully submitted,

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**ADMINISTRATIVE LAW JUDGE'S [PROPOSED] RULING ON PACIFIC GAS AND
ELECTRIC COMPANY'S MOTION FOR LEAVE TO FILE CONFIDENTIAL
PERSONAL INFORMATION UNDER SEAL**

On July 19, 2012, Pacific Gas and Electric Company ("PG&E") filed a Motion for Leave to File Confidential Personal Information Under Seal ("Motion"), seeking an order granting leave to file the confidential version of the Declaration of David Bayless in Support of PG&E's Second Amended Motion for Protective Order ("Bayless Declaration") under seal. In accordance with the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Commission has considered and hereby grants PG&E's Motion.

Accordingly, it is ORDERED that:

1. PG&E's Motion is granted. For the limited purpose of this ruling on PG&E's Motion, the Commission finds that: (a) the confidential personal information contained in the Bayless Declaration is protected by General Order 66-C and California Public Utilities Code §583; and (b) no state or public interest in disclosure of the confidential personal information PG&E seeks to protect outweighs the constitutional privacy rights or safety concerns of the individuals referenced in the Bayless Declaration.

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2. The confidential version of the Bayless Declaration shall remain under seal and shall not be made accessible or disclosed to anyone other than Commission staff except pursuant to a protective order or on the further order or ruling of the Commission, the assigned Administrative Law Judge (“ALJ”), or the ALJ then-designated as Law and Motion Judge.

Dated _____, 2012, at San Francisco, California

Administrative Law Judge