PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California
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Resolution No.: L-436

R E S O L U T I O N

RESOLUTION ADOPTING NEW REGULATIONS REGARDING PUBLIC ACCESS TO RECORDS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND REQUESTS FOR CONFIDENTIAL TREATMENT OF RECORDS

BACKGROUND

The California Public Utilities Commission (CPUC) is improving public access to records subject to disclosure under the California Public Records Act (CPRA) (Cal. Gov't. Code § 6250 *et seq*.). The CPUC's regulations for public access to CPUC records, set forth in General Order 66-C, are outdated and cumbersome, and often delay rather than facilitate access to records.

The absence of clear and consistent rules for processing records requests, and requests for confidential treatment of records, results in confusion regarding the status of records and information.

By taking a fresh look at policies that currently impede the CPUC's ability to share documents with the public it serves, the CPUC will provide the public with more immediate access to accident reports and records of our investigations. In addition, by updating the CPUC's regulations governing public access to CPUC records, establishing procedures for more uniform processing of records requests and requests for confidential treatment of documents provided to the CPUC, and improving access to records on the CPUC's website, we can substantially streamline public access to records and information.

Improvements to the public records process include:

(1) Instead of permitting a company to identify documents filed with the Commission as confidential, in a manner that requires the CPUC to take explicit action to release the documents, the CPUC will treat documents as public

unless the company can show why the documents are subject to a CPRA exemption or other provision of law prohibiting or limiting disclosure. The CPUC will require parties seeking confidential treatment to submit sufficient information to enable the CPUC to determine whether confidential treatment is permitted and in the public's interest. If the CPUC determines that a document is confidential, the CPUC must be able to demonstrate that the public's interests are served by maintaining the confidentiality of the document.

(2) The CPUC will disclose records of completed safety-related investigations on a routine basis, as opposed to requiring a vote of the Commission or an Administrative Law Judge Ruling, so that the CPUC can speed up its responses to records requests and discovery. The CPUC will create a list of safety-related reports that will automatically be disclosed to the public and posted on the CPUC's internet site, after appropriate redactions, upon the conclusion of the CPUC's investigation of the safety-related incident.

(3) A comprehensive online index will be created that describes the records maintained by the CPUC, and explains whether, and how, they may be located.

(4) An online database will be created that includes requests received by the CPUC to treat documents as confidential and the CPUC's decision on the requests.

(5) The CPUC will create an online safety portal that will augment and house the safety-related records and information the CPUC provides. The portal will describe the CPUC's safety jurisdiction and inspection, investigation, and enforcement activities; and provide access to a wide range of safety-related records received or generated by the CPUC.

By making the changes outlined in this Resolution, we hope to improve the public's access to records that are not exempt under the CPRA, and the CPUC's ability to process records requests and requests for confidential treatment in an efficient, well-reasoned, and consistent manner. The CPUC is a public agency and the public should have the widest possible access to information we possess, consistent with well-established exceptions for information relating to personal

privacy of individual residents, short-term market sensitivity, and critical infrastructure.

The planned index of CPUC records and related confidentiality determination database will take time to develop and refine. We will, therefore, make a number of the provisions of our new regulations effective only after certain resources are available, request staff to proceed as promptly as practical, and anticipate that staff may recommend modifications of these regulations as experience dictates.

DISCUSSION

Access to CPUC Records

The California Constitution, the CPRA, and discovery law, require that most government records be available to the public. The CPUC's records access practices must be consistent with these requirements.

The public has a constitutional right to access most government information.[1] 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.[2]

While mindful of the rights of individuals to privacy, the Legislature has declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."[3] 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.[4] The CPRA favors disclosure, and CPRA exemptions must be narrowly construed.[5] The fact that a record may fall within a CPRA exemption does not preclude the CPUC from disclosing the record if the CPUC believes disclosure is in the public interest. Unless a record is subject to a law prohibiting

[1] Cal. Const. Article I, § 3(b)(1): "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

[2] Cal. Const. Article I, § 3(b)(2).

[3] Cal. Gov't. Code § 6250: "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

[4] Cal. Gov't. Code § 6255(a): "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that 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."

[5] *See, e.g., American Civil Liberties Union of Northern California v. Superior Court* (ACLU) (2011) 202 Cal. App. 4th 55, 67; and *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.

disclosure, CPRA exemptions are permissive, not mandatory; they allow nondisclosure but do not prohibit disclosure.[6]

The CPRA authorizes the CPUC to adopt regulations, and requires the CPUC to adopt written guidelines for access to CPUC records and requires that such regulations and guidelines be consistent with the CPRA and "reflect the intention of the Legislature to make agency records accessible to the public."[7] "In compliance with the legislative mandate and policy expressed in" the CPRA, CPUC Resolution L-151 adopted the CPUC's regulations and guidelines for access to CPUC records, in General Order 66-C.

General Order 66-C was intended to improve public access to CPUC records by replacing a regulation that identified roughly 20 broad classes of CPUC records as public, and provided that the remainder were confidential unless the CPUC specifically ordered disclosure, with a regulation that identified all CPUC records as public unless they fell within a short list of exemptions. Adopted in 1974, General Order 66-C is outdated and requires revision. The General Order references provisions of law that have been amended or repealed[8] and CPUC positions that have been renamed,[9] and includes exemptions that are obsolete and/or do not match those in the CPRA.[10] Further, although intended to increase public access to CPUC records, General Order 66-C has instead acted as an impediment to prompt disclosure of CPUC records.

The law makes it easy for utilities to claim confidentiality and often requires the CPUC to take explicit action to release information. Cal. Pub. Util. Code § 583 provides that information furnished to the CPUC by a public utility shall not be made public unless the Code specifically requires the information to be open to public inspection, or the information is made public "by an order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding," and that "Any officer or employee of the commission who divulges any such information is guilty of a misdemeanor."[11 12] Staff concerns that they

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[6] *See, e.g., ACLU, supra*, 202 Cal. App. 4th at 86, fn. 17; Cal. Gov't. Code § 6253(e); *Black Panthers v. Kehoe* (1974) 42 Cal. App. 3d 645, 656; *Re San Diego Gas & Electric Company* (*SDG&E*) (1993) 49 Cal.P.U.C.2d 241, 242.

[7] Cal. Gov't. Code § 6253.4.

[8] Cal. Pub. Util. Code §§ 1903, 3709.

[9] General Order 66-C §§ 4. and 4.2 refer to the "Secretary" of the Commission, rather than to the "Executive Director," and § 3.3 refer to "Examiners," rather than to "Administrative Law Judges."

[10] Compare General Order 66-C §§ 2.2 – 2.8 to Cal. Gov't. Code §§ 6254(a), (c), (g), (k) and (l).

[11] Cal. Pub. Util. Code § 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

may be charged with a misdemeanor, pursuant to § 583, if they disclose records furnished by a utility in the absence of a CPUC order specifically authorizing such disclosure, have a definite chilling effect on the public disclosure of CPUC records.

Cal. Pub. Util. Code § 583 neither creates a privilege of nondisclosure for a utility, nor designates any specific types of documents as confidential." (*Re Southern California Edison Company* (*Edison*) [Decision (D.) 91-12-019] (1991) 42 Cal.P.U.C.2d 298, 301.) As we noted in *Edison*, *supra*:

> The Commission has broad discretion under Section 583 to disclose information. *See*, *e.g.*, *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.

Although Cal. Pub. Util. Code § 583 does not limit our ability to disclose records or information, it does assure "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." (*Edison*, *supra*, 42 Cal.P.U.C.2d at 300.) By including § 583 as an example of records of a confidential nature, even though it does not actually limit our disclosure of records, General Order 66-C places staff in the position of having to initially deny access to records where it is not clear whether we have required or authorized disclosure. The General Order's use of a short but confusing list of exemptions as a replacement for its predecessor's explicit CPUC order that a long list of broad classes of records be available to the public, coupled with its reference to § 583, has resulted in a substantial decrease in prompt public access to our records.

While General Order 66-C § 3.4 provides that those seeking access to records exempt from disclosure under the General Order can appeal to the full Commission for access to such information, this option is unwieldy and time

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officer or employee of the commission who divulges any such information is guilty of a misdemeanor."

[12] Cal. Pub. Util. Code § 5228 similarly makes it a misdemeanor for Commission employees to divulge: "any fact or information which comes to his knowledge during the course of the examination of the accounts, records, or memoranda of household goods carriers, except as he is authorized or directed by the commission or a court of competent jurisdiction or judge thereof."

consuming. Staff must prepare a draft decision or resolution authorizing or denying disclosure, and, in accord with Cal. Pub. Util. Code § 311(g), circulate the draft decision or resolution for public comment at least 30 days before we take action.

By affirming our intent to disclose records unless they are subject to a CPRA exemption or other provisions of law prohibiting or limiting disclosure, and making clear that Cal. Pub. Util. Code § 583 does not limit the CPUC's authority to disclose information obtained from public utilities and should not be the substantive basis for a utility assertion of confidentiality or request for confidential treatment, we can eliminate the uncertainties associated with the current language of General Order 66-C § 2.2.

Moving on to other issues, we briefly address problems with two of the specific § 2.2 exemptions. First, General Order 66-C § 2.2(a), which indentifies as confidential: "records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action," often unnecessarily delays disclosure of records of completed safety investigations. There are times when records of our investigations and audits can and should remain confidential, such as where disclosure would interfere with our ability to carry out our regulatory and law enforcement responsibilities in an effective and efficient manner. In most cases, however, the disclosure of records of completed investigations will have no adverse effect on our ability to carry out our responsibilities, and we have, accordingly, issued dozens of resolutions authorizing the release of safety related investigation records, with appropriate redaction of privileged and personal information.

By authorizing the disclosure of records of completed safety related investigations on a routine basis, with appropriate redactions, we can speed up our responses to records requests and discovery.[13] PRA exemptions and other legal authority will still permit us to preserve the confidentiality of investigation and audit records where our investigation or audit is not yet complete, and in other circumstances where the need for confidentiality clearly outweighs the public interest that would be served by disclosure.

Second, General Order 66-C § 2.2(b), which exempts: "reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at a business disadvantage," does not match any specific CPRA exemption. In addition, § 2.2(b) focuses on the perceived impact of disclosure on a regulated company, rather than on how disclosure might benefit or harm the public, and thus creates a potential conflict with CPRA exemptions

[13] Disclosure of the records of many other types of completed CPUC investigations would also be unlikely to interfere with our regulatory responsibilities, but we are not yet prepared to provide further guidance as to which other classes of investigation records should be routinely made public upon completion.

that require us to balance the *public's* interest in having access to information, against the *public's* interest in not having access to the information.

To the extent a regulated entity's confidentiality assertion based on §2.2(b) seeks confidential treatment for information that falls within the scope of one or more specific CPRA exemptions and/or Commission privilege against disclosure, we can base our confidentiality determination on the provisions of the CPRA or the applicable privilege without the need for a potentially conflicting CPUC-created exemption. When a CPRA exemption or Commission privilege involves a balancing of interests for and against disclosure, the potential for disclosure to result in increased utility costs that will be borne by ratepayers is a valid consideration.

Modification of General Order 66-C on a section-by-section basis is impractical, given its many provisions that are outdated, legally erroneous, and/or inconsistent with the CPRA. Therefore, this Resolution repeals General Order 66-C and adopts new regulations designed to permit more efficient access to CPUC records and to preserve fully our ability to maintain the confidentiality of records and information that must or should not be disclosed to the public.

Requests for Confidential Treatment

The absence of clear and consistent rules for processing records requests and requests for confidential treatment outside formal CPUC proceedings results in confusion regarding the public or confidential status of records and information. Our Rules of Practice and Procedure provide guidance to those filing motions for leave to file records under seal, General Order 96-B provides guidance to those filing advice letters, and General Order 167 provides guidance to Generating Asset Owners. However, we have not provided clear guidance with regard to assertions of confidentiality or requests for confidential treatment made in other contexts.

We believe it will be helpful for us to adopt a procedure through which our staff can efficiently respond to requests for confidential treatment received by the CPUC in contexts not already addressed in our Rules of Practice and Procedure, General Orders, and similar authority. Consistent with the confidentiality provisions of General Order 96-B, General Order 167, and our practice in formal CPUC proceedings, we will highlight the fact that the party requesting confidential treatment bears the burden of demonstrating that such treatment is both authorized and appropriate. We will require parties seeking confidential treatment to submit sufficient information to enable us to determine whether confidential treatment is permitted and in the public's interest.

The CPRA prohibits us from allowing others to make confidentiality determinations regarding records otherwise subject to disclosure under the Act. (Cal. Gov't. Code § 6253.3.) We must make our own independent assessment as to whether records are subject to an exemption in the PRA. If we assert an

exemption that requires a balancing of the public's interests for and against disclosure, we must be able to demonstrate that the *public's* interests are served by maintaining the confidentiality of such records.

Unless the Cal. Pub. Util. Code itself specifically directed that information be available to the public, or we have issued a decision, order, or ruling addressing the issue, the primary format for authorizing disclosure of records furnished by utilities has generally been a ruling by the CPUC, an ALJ, or an Assigned Commissioner, during the course of a CPUC hearing or proceeding. This is useful when the disclosure question falls within the scope of a currently open proceeding, but not in other situations.

The other common format for CPUC orders regarding disclosure has been a resolution addressing a specific disclosure matter raised in a records request or subpoena for CPUC records. This resolution process may be cumbersome and time-consuming, but does offer a well-established procedure for the CPUC to respond to requests for review of initial denials of access to CPUC records.

We encourage staff to develop other tools for improving the ease of public access to records that are not subject to CPRA exemptions or other limitations on access, and to bring to our attention disclosure matters that could be effectively and appropriately resolved in a broad CPUC decision, order, or ruling. Such broad determinations can eliminate or reduce the need for repetitive and routine disclosure resolutions.

Information Indexes or Databases

The absence of a central index or database of requests for confidential treatment, and our responses to such requests, contributes to disclosure status uncertainty. There is no simple way for the public, regulated entities, other governmental entities, and the CPUC and its staff, to determine whether we have already resolved an issue in a response to a motion in a formal CPUC proceeding, or in response to an advice letter filing. People cannot easily determine whether we have previously decided that a class of records, or specific records, is available to the public, or that confidential treatment is warranted. If we have authorized confidential treatment for a limited period of time, information regarding the date such treatment expires is often not readily available. Finally, people may not know what types of records have been requested or subpoenaed from the CPUC, and how we have responded. The result may be inconsistent or overlapping confidentiality determinations, and the expenditure of unnecessary time revisiting matters that have already been resolved.

The creation of an index or database that describes the types of records the CPUC maintains and explains where such records are available to the public, or why they are not available, should increase our ability to operate efficiently. A database of information regarding the status of requests for confidential treatment should

similarly increase our ability to operate efficiently. The public, CPUC staff, regulated entities, and others would be able to locate accessible records more easily, and to address confidentiality issues in a more consistent manner.

We will direct staff to begin developing such indexes or databases. We may require those seeking confidential treatment to accompany any request for confidential treatment with a declaration attesting that they have reviewed any such indexes or databases and determined either that the records for which they seek confidential treatment fall within a class of records determined to be confidential, or that their request presents issues not already addressed by the CPUC.

The development of these indexes or databases will take time, and will require the thoughtful exploration of many legal, policy, and data processing issues. For these reasons, we will not specify every detail we expect to see in such indexes or databases. We will instead instruct staff to work on these issues and establish such indexes or databases as soon as practical.

Safety Information Portal

Most records requests and subpoenas for records received by the CPUC have involved some aspect of our safety jurisdiction. The vast majority of our resolutions authorizing disclosure of records are issued in response to those seeking records relating to our investigations of incidents (accidents) involving the facilities and/or operations of electric or gas utilities, railroads, or transit districts.

Most of our resolutions authorizing disclosure are routine. If our investigation has been completed, the resolutions authorize disclosure of the records, after redaction of information subject to a CPUC held privilege against disclosure, and or of information, the disclosure of which would constitute an unwarranted invasion of personal privacy. If our investigation has not been completed, our resolutions generally state that disclosure, with appropriate redactions, is authorized once the investigation has been completed.

We see no reason for us to continue with our current practice of addressing such routine requests through resolutions regarding the disclosure of records of our investigations of a specific safety-related incident, and of our routine safety-related inspections or audits. We will, therefore, authorize disclosure of records of routine safety-related incident investigations, inspections, and audits, once those investigations, inspections, or audits, are completed, subject to appropriate redactions. Such redactions may include information subject to a statutory prohibition or CPUC-held privilege against disclosure; personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy; and information subject to other CPRA exemptions the CPUC finds are applicable and in the public's interest to assert.

Information we will generally refrain from making available to the public includes: maps and schematic diagrams showing the location of specific utility regulator stations, valves, and similar facilities; the numerical element of street addresses included in workpapers and other documents associated with the CPUC's investigation and a utility's internal audits; and certain employee-specific training and certification records that may be considered employee personnel records, where disclosure of such employee information is not necessary to clarify the role such training, or absence of training, may have played in the incident, or to assist in the identification of trends related to training. Disclosure of specific schematic diagrams, location information, and employee information may create a risk of harm to utility facilities, utility employees, and the public, or constitute an unwarranted invasion of personal privacy, without providing significant additional insight into the operations of the utility and the CPUC. (*See*, *e.g.*, Resolution L-430 (February 16, 2012.) Such records, or portions of records, are exempt from disclosure in response to CPRA requests, pursuant to Cal. Gov't. Code §§ 6264(c), 6254(k), or other CPRA exemptions.

There are, of course, situations in which an investigation is by no means routine, and/or where there is a concrete and definite prospect of enforcement activity. In such situations, a more individualized resolution of disclosure issues will be necessary. For example, where our staff participates in an National Transportation Safety Board (NTSB) investigation of an accident involving utility facilities or is working with law enforcement agencies or other governmental entities, public disclosure of our incident investigation records, and/or of incident 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 would, in some cases, be unlawful.

Various provisions of law, including Cal. Gov't. Code § 6254.5(e), permit us to share information in confidence with other governmental entities, without waiving our ability to assert CPRA exemptions as a basis for not providing such information in response to records request, where the information is shared pursuant to confidentiality agreements or understandings. Our public disclosure of records subject to such prohibitions and/or confidentiality agreements and understandings, would clearly be against the public's interest because such disclosures may violate the law, and would undermine relationships of trust with other governmental entities, and adversely effect, or eliminate, our ability to work cooperatively and effectively with such agencies. For the above reasons, we will stop short of mandating the disclosure of records associated with all CPUC safety-related investigations.

Regulated entities subject to our safety jurisdiction are often also subject to the jurisdiction of other state or federal agencies. Utilities and other regulated entities may be required to file with such agencies various reports concerning incidents relevant to the jurisdiction of such agencies. In many cases, the utility may be

required by law or regulations to provide the CPUC with a copy of such reports or other documents, or may be directed by the CPUC to do so. Often, such documents are considered to be public records, and are available either on the internet site of the other agencies, or in response to Freedom of Information Act requests.

The CPUC is not required to track down records maintained by other agencies or entities in order to provide such records to those who request such records from our agency. Nonetheless, we may choose to make some such information available on our internet site, and/or inform members of the public where they may seek such records.

For example, we receive a number of gas pipeline related reports than gas utilities are required to submit to the Federal Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) that are not considered by that agency to be confidential. Many such reports, or information from such reports, may be available directly from PHMSA. In some cases, however, the California utility information is included in a somewhat difficult to access database providing similar information from the several hundred other pipeline operators subject to PHMSA's safety jurisdiction. By posting copies of most such reports on our internet site, we can improve the public's understanding of California-specific gas safety issues, and limit the need for individual CPUC responses to requests seeking such records.

Our General Order 112-E requires gas utilities to provide us with copies of reports filed with PHMSA, and with additional reports similar but not identical to those required by PHMSA. With minor redactions, such reports could also be provided to the public on our internet site.

The safety-related reports we intend to have CPSD disclose to the public and post on our internet site, after appropriate redactions, include, but are not limited to, the following:

1. Reports of gas incidents required by 49 CFR Part 191 General Order 122.1. Such reports include written incident reports submitted on DOT Form PHMSA F7100.1 and PHMSA F7100.2 in compliance with General Order 112-E § 122.2 (c).

2. Quarterly summary reports summarizing all CPUC reportable and non-reportable gas leak related incidents submitted to the Commission in compliance with General Order 112-E § 122.2(d), subject to the following redactions: the name, telephone number, e-mail address, if any, and the numerical portion of any street address, associated with individuals identified by the submitting gas operator as the "damaging party" associated with an incident. Posting such personal information

adds little to the public's understanding of the incident. Such information is exempt from mandatory disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(c).

3. Annual reports required by 49 CFR Part 191 [see §§ 191.11 and 191.17] and General Order 112-E § 123.1.

4. Safety-related condition reports required by 49 CFR Part 191 [§§ 191.1, 191.7, 191.23 and 191.25] and General Order 112-E § 124.1

5. Proposed installation reports required by 49 CFR Part 191 [§191.11] and/or General Order 112-E § 125.1, after redaction of detailed facility location information, including numerical portions of street addresses, maps, drawings, or schematic diagrams.

6. Strength testing failure reports required by 49 CFR Part 191, and General Order 112-E § 125.2.

7. Change in maximum allowable operating pressure reports required by General Order 112-E.

8. Reports of gas leaks or interruptions submitted on standard reporting form, "Report of Gas Leak or Interruption," CPUC File. No. 420 (General Order 112-E Appendix B), with the redaction of the same types of personal information redacted with respect to quarterly summary reports, and the detailed facility information redacted with respect to proposed installation reports.

9. General Order 88 applications submitted to the CPUC by railroads proposing changes to rail crossings, and related records, subject to appropriate redaction of data compiled or collected to identify and evaluate rail-highway crossing safety hazards and develop plans for federally funded safety improvements, pursuant to 23 U.S.C. § 130 (a federal program for funding the elimination of hazards and the installation of protective devices at railway-highway crossings). 23 U.S.C. § 409 provides that such information is not subject to discovery, and may not be used as evidence or for other purposes in crossing accident litigation. Such information is also exempt from disclosure pursuant to Cal. Gov't. Code § 6254(k).

10. Gas incident reports required by General Order 112-E § 122.2.

11. Mobile home park annual reports, inspection reports, and citation records, related to the CPUC's enforcement of federal pipeline safety standards for mobile home park operators, pursuant to Cal. Pub. Util. Code § 4352 *et seq*.

12. Propane operator annual reports, inspection reports, and citation records related to the CPUC's enforcement of federal pipeline safety standards for propane operators, pursuant to Cal. Pub. Util. Code § 4451 *et seq*.

We will direct our Staff to develop a plan for creating an informative safety information portal on our internet site, where information regarding our safety jurisdiction, and our implementation of our safety responsibilities, will be readily accessible to the public.

We consider the changes outlined in this Resolution, and in our Draft General Order 66-D, to reflect a work in progress, rather than a final product. We anticipate that these changes will, when fully implemented, greatly improve our ability to provide prompt public access to CPUC records that are not subject to CPRA exemptions or privileges that limit mandatory disclosure of CPUC records, or are where we determine that nondisclosure is both legally justified and in the public's interest.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution of the Commission's Legal Division in this matter was mailed to the parties in interest on March 20, 2012, in accordance with Cal. Pub. Util. Code § 311(g). Comments were filed on _____. Reply comments were filed on _____.

FINDINGS OF FACT

1. The CPUC's guidelines for access to public records, set forth in General Order 66-C, include many provisions that are inconsistent with the provisions of the California Public Records Act (CPRA) (Cal. Gov't. Code § 6250 *et seq*.) and other laws governing the disclosure of records and information, and the appearance of CPUC staff in response to subpoenas.

2. The public interest would be served by the CPUC's adoption of regulations regarding the disclosure of CPUC records that were consistent with current law and with the public records disclosure policies set forth in Article 1, § 3 of the California Constitution, and the CPRA.

3. The creation of a publicly accessible index or database of CPUC records that identifies the classes of records maintained by the CPUC, and the status of their accessibility to the public, or a subset of the public, would be in the public interest.

4. The development of a publicly accessible database of requests for confidential treatment of records or information provided to the CPUC, and the CPUC's responses to such requests, would be in the public interest. Such requests are received in motions for leave to file records under seal, responses to data requests, advice letter filings applications that request that portions of the application filing be kept confidential, and other contexts. Such a database would permit CPUC staff, regulated entities, other governmental entities, and members of the public, to more readily determine whether records or information was available to the public, or was subject to a CPRA exemption, a privilege, or any other legal authority prohibiting or restricting disclosure.

5. The CPUC's 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, to the extent such records or information is subject to a CPRA exemption, CPUC-held privilege, or other provision of law limiting disclosure.

6. While CPUC investigations of safety-related incidents remain open, the public disclosure of the CPUC's investigation records could compromise the CPUC's investigation.

7. Given the CPUC's need to conduct its investigation effectively and efficiently, the public interest in non-disclosure of the complete files of active investigation records clearly outweighs the necessity for public disclosure.

8. In many circumstances, routine CPUC inspection and audit records, records of the physical layout and crossing protection installed at a rail crossing, and similar records that may be obtained and analyzed in a safety incident investigation, but not be generated as a part of the investigation, could be disclosed while the investigation remained open without compromising the ability of the CPUC or other governmental entities to complete the investigation effectively and efficiently.

9. Records requests, and subpoenas seeking open investigation records and/or the appearance of Commission safety staff, received during an open safety-related investigation may seriously interfere with the CPUC's ability to complete the investigation effectively and efficiently.

10. Once a CPUC investigation of a safety-related incident is complete, the investigation is complete, the public interest will generally favor disclosure with the exception of: information subject to a statute prohibiting disclosure; personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy; and information subject to a Commission-held privilege or limitation on disclosure.

11. While a CPUC safety inspection or audit of the facilities and/or operations of a regulated entity is open, the public disclosure of the CPUC's entire inspection or audit records could compromise the Commission's ability to complete the inspection or audit effectively and efficiently.

12. Once the CPUC has completed a safety inspection or audit of the facilities or operations of a regulated entity, the public interest will generally favor disclosure of the completed inspection or audit records, with the exception of: information subject to a statute prohibiting disclosure; personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy; and information subject to a Commission-held privilege or limitation on disclosure, and detailed information regarding utility facilities and operations which, if disclosed, could create a risk of harm to utility facilities, utility employees, and the public, to the extent such information is subject to one or more CPRA exemptions.

13. While CPUC investigations of matters involving a concrete and definite prospect of law enforcement action, by the CPUC or another governmental entity, remain open, the public disclosure of the CPUC's investigation records could compromise the CPUC's investigation.

14. Once a CPUC investigation of matters involving a concrete and definite prospect of law enforcement action, by the CPUC or another governmental entity, is completed, the necessity for confidentiality may be reduced. If the investigation results in law enforcement action, by the CPUC or another governmental entity, disclosure of the CPUC's investigation records, or portions of such records, may be necessary for the resolution of the law enforcement action. However, there may be a necessity for confidential treatment of such completed law enforcement related investigations, or portions of records, even after the investigation is completed. Disclosure may compromise the effectiveness or integrity of the investigation or a related investigation, may compromise confidential sources of information, or raise other concerns. A uniform decision regarding the disclosure of such investigations records once the investigation is closed would be inappropriate.

15. The public interest will generally favor the disclosure of safety related reports filed in compliance with federal laws and regulations, to the extent such records are not designated as confidential and subject to a federal restriction on disclosure to the public.

16. The public interest will generally favor the disclosure of safety related reports filed in compliance with state laws and regulations, to the extent such records, or portions of such records, are not designated as confidential and subject to a CPRA exemption, privilege, or other limitation on disclosure to the public

CONCLUSIONS OF LAW

1. 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. 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).

2. The general policy of the CPRA, Cal. Gov't. Code § 6250, *et seq*., favors disclosure of records: "In enacting this chapter, the Legislature, mindful of the rights of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Cal. Gov't. Code § 6250.

3. The CPUC is a "state agency" as defined in Cal. Gov't. Code § 6252(f), and is therefore subject to the CPRA.

4. The CPUC cannot allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to the CPRA. Cal. Gov't. Code § 6253.3.

5. 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

6. 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.

7. Cal. Gov't. Code § 6254(a) exempts from disclosure, in response to records requests, "Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding the records clearly outweighs the public interest in disclosure."

8. Cal. Gov't. Code § 6254(b) exempts from disclosure, in response to records requests, "Records pertaining to pending litigation to which the public agency is a party, or claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled."

9. Cal. Gov't. Code § 6254(c) exempts from disclosure, in response to records requests, "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.'

10. Cal. Gov't. Code § 6254(e) exempts from mandatory disclosure, in response to records requests, "Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person."

11. Cal. Gov't. Code § 6254(f) exempts from mandatory disclosure, in response to records requests, "Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes." If the records concern an incident involving personal injury or property damage or loss as result of an incident caused by arson, fire, explosion, larceny, or vandalism, or other specified events, state and local law enforcement agencies are, in most cases, required to disclose a substantial amount of information from the incident files to victims of the incident and other specified individuals and entities.

12. The Cal. Gov't. Code § 6254(f) exemption for record of complaints to, or investigations conducted by, any state or local agency for licensing purposes does not apply when a request for inspection of such records is made by a district attorney. Cal. Gov't. Code § 6262.

13. There is no statute forbidding disclosure of the records of safety investigations initiated by the CPUC, although portions of such records are subject to one or more CPRA exemptions from mandatory disclosure in response to records requests, and to other provisions of law limiting access to such records.

14. Cal. Gov't. Code § 6254(g) exempts from mandatory disclosure, in response to records requests, "Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination."

15. Cal. Gov't. Code § 6254(k) 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."

16. Cal. Gov't. Code § 6254(l) exempts from disclosure, in response to records requests, "Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary."

17. Cal. Gov't. Code § 6254(n) exempts from disclosure, in response to records requests, "Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for."

18. Cal. Gov't. Code § 6254(r) exempts from disclosure, in response to records requests, "Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency."

19. Cal. Gov't. Code § 6254(aa) exempts from disclosure documents prepared by or for a state 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.

20. Cal. Gov't. Code § 6254(ab) exempts from disclosure "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."

21. Cal. Gov't. Code § 6254.5 provides that a state or local agency's disclosure of public records subject to a CPRA exemption does not result in a waiver of the agency's right to assert CPRA exemptions in response to records requests where the disclosure is: (a) Made pursuant to the Information Practices Act (Cal. Civ. Code § 1798 *et seq*.; (b) Made through legal proceedings or as otherwise required by law; (c) within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes; or (e) "Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law."

22. Cal. Gov't. Code § 6254.9(a) provides that computer software developed by a state or local agency is not itself a public record under the CPRA.

23. Cal. Gov't. Code § 6254.23 provides that nothing in the CPRA or any other provision of law "shall require the disclosure of a risk assessment or railroad infrastructure protection program filed with 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."

24. Cal. Gov't. Code § 6260 provides that the provisions of the CPRA shall not be deemed in any manner to affect the rights of litigants, including parties to administrative proceedings, under the California laws of discovery, nor to limit or impair any rights of discovery in a criminal case. Thus, CPUC responses to discovery may not base objections to disclosure on the existence of one or more applicable CPRA exemptions.

25. The CPUC must allow the inspection or copying of any public record or class of public records not exempted by the CPRA, when requested by a district attorney. Cal. Gov't. Code § 6263.

26. If a district attorney petitions a court of competent jurisdiction to require the CPUC to allow him or her to inspect or receive a copy of a public records or class of records not exempted under the CPRA, after the agency fails or refuses to allow inspect or make copies in a timely manner, the court may order the CPUC to permit inspection or copying unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure. Cal. Gov't. Code § 6264.

27. Disclosure of records to a district attorney under the provisions of the CPRA does not change the status of the records under any other provision of law. Cal. Gov't. Code § 6265.

28. Cal. Gov't. Code § 11125.1(a) provides that, notwithstanding Cal. Gov't. Code § 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body such as the Commission in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the CPRA, and shall be made available upon request without delay. This section does not include any writing exempt from public disclosure under Cal. Gov't. Code §§ 6253.5, 6254, or 6254.7, Cal. Pub. Util. Code § 583.

29. Confidential communications between Commissioners or CPUC staff, and CPUC lawyers, that are subject to the lawyer-client privilege set forth in Cal. Evid. Code § 950 *et seq*., are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k).

30. Information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed to the public, may be subject to the official information privilege set forth in Cal. Evid. Code § 1040. Records, or portions of records, that include information subject to the CPUC's official information privilege are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k).

31. 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. Records, or portions of records, that include information subject to the Commission's Cal. Evid. Code § 1040(b)(1) official information privilege are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k).

32. Cal. Evid. Code § 1040(b)(2) provides state agencies a 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. In determining whether disclosure is against the public interest, the interest of the CPUC as a party in the outcome of the proceeding may not be considered. Records, or portions of records, that include information subject to the CPUC's Cal. Evid. Code § 1040(b)(2) official information privilege

are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k).

33. Cal. Evid. Code § 1041 provides that a public entity such as the CPUC has a privilege to refuse to disclose the identity of a person who has furnished information in confidence to a law enforcement officer, a representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated, purporting to disclose a violation of a law of the United States or of this state or of a public entity in this state, and to prevent another [other than the informant], if: 1) disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or 2) disclosure of the identity of the informer is against the public interest because there is a necessity for preserving the confidentiality of his or her identity that outweighs the necessity for disclosure in the interest of justice. In determining whether disclosure is against the public interest, the interest of the CPUC as a party in the outcome of the proceeding may not be considered. Records, or portions of records, identifying such informers, are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k).

34. Cal. Evid. Code §§ 1060 and 1061(a)(1) provide that the owner of a trade secret, as defined in Cal. Civil Code § 3426.1(d) or Penal Code § 499c, may assert a privilege to refuse to disclose the trade secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. Cal. Civil. Code § 3426.1(d) defines "trade secret" as "information, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Records, or portions of records, that include information subject to the trade secret privilege are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k).

35. Cal. Evid. Code §§ 1115 et seq. provide that communications, negotiations, or settlement discussions by and between participants in the course of a mediation or mediation consultation are confidential, and writings prepared for, or in the course of or pursuant to , a mediation, or mediation consultation, and evidence of things said, or admissions made, for the purpose of, in the course of, or pursuant to, a mediation or mediation consultation are not admissible or discoverable, except as otherwise provided in Cal. Evid. Code Chapter 5. Records and information subject to the Cal.

Evid. Code limitations on the admissibility and discovery of mediation records and information are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k). See also, Rule 12.6 of the CPUC's Rules of Practice and Procedure.

36. Writings that reflect an attorney's impressions, conclusions, opinions, or legal research or theories are not discoverable under any circumstances. Cal. Code Civ. Pro. § 2018.030(a) Such writings are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k).

37. The work product of an attorney, other than a writing described in Cal. Code Civ. Pro. § 2018.030(a), is not discoverable unless a court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense, or will result in an injustice. Such work product is exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k).

38. Cal. Pub. Contracts Code § 10304 provides that bids for public contracts are confidential until the public opening and reading of the bids takes place.

39. Cal. Pub. Contracts Code § 10305 provides that after bids for public contracts are opened, they are available for public inspection.

40. Cal. Pub. Util. Code § 583 does not limit the CPUC's ability to order disclosure of records.

41. Cal. Pub. Util. Code § 583 authorizes the CPUC to make broad, as well as narrow, decisions regarding disclosure of records.

42. Cal. Pub. Util. Code § 583 notes that the Cal. Pub. Util. Code specifically requires certain matters to be open to public inspection. Section 583 provides that information furnished by a public utility, subsidiary or affiliate of a public utility, or corporation which holds a controlling interest in a public utility, concerning such matters, may be open to the public or made public without a CPUC order, or action by the CPUC or a Commissioner in the course of a hearing or proceeding.

43. Cal. Pub. Util. Code § 315 does not limit the CPUC's disclosure of accident reports filed with the CPUC, or orders and recommendations issued by the CPUC.

44. 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."

45. Cal. Pub. Util. Code § 324 authorizes the Executive Director to release to the Director of the California Department of Industrial Relations any information concerning an person, corporation, or other entity under the CPUC's jurisdiction and control, relevant to the enforcement of California workers' compensation laws.

46. Cal. Pub. Util. Code § 353.15(a) requires that customers that install distributed energy resources with a capacity greater that 10 kilowatts must report to the CPUC, on an annual basis, as recorded on a monthly basis: the heat rate for the resource; 2) the total kilowatt hours produced in the peak and off-peak periods as established by the ISO, and 3) emissions data for the resources, as required by the California Air Resources Board or the appropriate air quality management district; and § 353.15(b) requires the CPUC to release that information in a manner that does not identify the user of the distributed energy resource.

47. Cal. Pub. Util. Code § 392.1(a) requires the CPUC to compile and regularly update the following information regarding energy service providers (ESPS): names and contact numbers of registered providers, information to assist consumers in making service choices, and the number of customer complaints against specific providers in relation to the number of customers served by those providers and the disposition of those complaints. Registered entities must file with the CPUC information describing the terms and conditions of any standard service plan made available to residential and small commercial customers. The CPUC is required to maintain and make generally available a list of entities offering electrical services operating in California. This list must include all registered providers and those providers not required to be registered who request to be included in the list. The CPUC is required to make this information available at no charge, upon request.

48. The CPUC has authority under Cal. Pub. Util. Code §§ 583 and 701 to adopt broadly applicable regulations regarding disclosure of records or information in the custody of the Commission that provide that the CPUC's records are public, with limited exceptions for disclosure is prohibited by law or the records are otherwise subject to specified exemptions from mandatory disclosure.

49. The CPUC has authority under Cal. Pub. Util. Code §§ 583 and 701 to issue case specific decisions, orders, or rulings regarding the disclosure of records or information in the custody of the CPUC.

50. Cal. Pub. Util. Code § 5228 provides that any CPUC employee who divulges any fact or information which comes to his or her knowledge during the course on the examination of the accounts, records, and memoranda of household goods carriers, except as ordered or directed by the Commission or by a court of competent jurisdiction is guilty of a misdemeanor. Cal. Pub. Util. Code § 5228 does not limit the CPUC's authority to order disclosure of household goods carrier records, and there is no CPRA exemption specific to agency records regarding household goods carriers. The CPRA does include a number of exemptions for portions of the CPUC's records regarding household goods carriers that include confidential personal information and other information subject to legal prohibitions or limitation. The CPUC could order its employees to provide access to its records regarding household goods carriers, with the exception of portions of those records subject to an appropriate CPRA exemption, without compromising its ability to maintain the confidentiality of portions of its records than can and should remain confidential.

51. Cal. Pub. Util. Code § 7912(a) requires public utilities employing more than 750 total employees to annually report: 1) the number of customers the utility serves in California; 2) the percentage of the utility's total domestic customer base that resides in California; 3) the number of California residents employed by the utility, 4) the percentage of he utility's total domestic workforce that resides in California, 5) the capital investment in the utility's tangible and intangible plant with a service life of more than one year, in California during the yearly reporting period, and 6) the number of California residents employed by independent contractors and consultants hired by the utility, when the utility obtained such information from the consultant or contractors, is not contractually prohibited from disclosing the information to the public. Cal. Pub. Util. Code § 7912(b) requires the CPUC to report this information to specified legislative committees, and to make the information available to the public on its internet site.

52. Cal. Gov't. Code § 6260 states that the provisions of the CPRA shall not be deemed in any manner to affect the rights of litigants, including parties to administrative proceedings, under the laws of this state, nor to limit or impair any rights of discovery in criminal cases. Therefore, CPUC responses to discovery must be based on legal authority other than the CPRA.

53. The existence of an applicable CPRA exemption is not in itself a basis for a CPUC objection to discovery; objections must be based on the Commission's assertion of an applicable Commission-held privilege, or other legal authority relevant to discovery. Cal. Gov't. Code § 6260.

54. A number of CPRA exemptions apply to records and information that are subject to privileges or other legal authority relevant to discovery. E.g., Cal. Gov't. Code §§ 6254(k); 6254.23. Thus, records or information subject to CPRA exemptions may also be subject to privileges or other legal authority that may be asserted in response to discovery.

55. 23 United States Code (U.S.C.) § 409 states that, notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of railway-highway crossings, pursuant to 23 U.S.C. § 130 or for the purpose of developing and highway safety construction improvement project which may be implemented using federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data. CPUC records, or portions of records, that reference safety enhancement of railway-highway crossings pursuant to 23 U.S.C. § 130 [commonly, "Section 130"], are subject to a federal statutory limitation on discovery, and thus are exempt from disclosure in response to records requests, pursuant to Cal. Gov't. Code § 6254(k), and nondiscoverable, pursuant to Cal. Evid. Code §§ 911 and 1040(b)(1).

ORDER

1. General Order 66-C is repealed. General Order 66-D, set forth in Attachment 1 to this Resolution, is adopted to provide guidance regarding access to Commission records and regarding the processing of requests for confidential treatment of information submitted to the CPUC.

2. CPUC staff shall prepare and periodically update Guidelines for Access to Commission Records that provide the public with information regarding the inspection and copying of CPUC records, including information regarding fees that may be imposed for copies of CPUC records. These guidelines shall be posted on the CPUC's internet site, and in public locations at CPUC offices open to the public, and shall be made available, without charge, to anyone upon request. These guidelines shall include reference to, and, when provided in an electronic format, links to, General Order 66-D, which will also be posted on the CPUC's internet site, and in public locations at CPUC offices open to the public, and made available to anyone, without charge, upon request.

   An initial set of guidelines is set forth in Attachment 2 to this Resolution. An initial Fact Sheet describing these regulations and guidelines is set forth in Attachment 3 to this Resolution.

3. CPUC Staff shall develop a publicly accessible index of information regarding the broad classes of records maintained by the CPUC that includes, at a minimum, the following information: 1) a description of the records; 2) information regarding the public accessibility of each class of records, with an explanation of where and how the records may be accessed; 3) if a class of records is not available to the public, the index or database shall explain the legal basis for withholding the records from the public [*e.g.*, CPRA exemption, CPUC held privilege, *etc*.]; and 4) if a class of records is conditionally available to a subset of the public, a description of any conditions that must be met before the records may be accessed. The internet site of the California Energy Commission provides a useful example of such an index.

4. CPUC staff shall develop a publicly accessible index or database of information regarding requests for confidential treatment of records or information provided to the CPUC, whether the request for confidentiality is in the form of a motion to file under seal, or in any other format, as soon as practical. The index or database shall, at a minimum, include the following information:

5. CPUC Staff shall report on its practical experience in implementing the provisions of General Order 66-D, and recommend any revisions deemed appropriate. Staff shall, as part of this process, consider whether the CPUC's Rules of Practice and Procedure, or any other applicable procedural guidelines, should be amended to improve our implementation of the policies set forth in the Resolution and General Order.

6. CPUC staff shall develop a safety information portal for the CPUC's internet site, on which staff will post descriptions of the Commission's safety jurisdiction, and its safety inspection and enforcement activities. As part of this process, Staff shall develop a publicly accessible index or database of safety related records and information in the custody of the CPUC. To the maximum extent practical, the index or database should provide links to safety-related records, or portions of records, that are not subject to a CPRA exemption asserted by the CPUC, subject to a CPUC-held privilege against disclosure, or subject to other mandatory prohibitions or restrictions on disclosure.

7. 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 April 19, 2012, and that the following Commissioners approved it:

PAUL CLANON
Executive Director

DRAFT

ATTACHMENT 1

GENERAL ORDER 66-D

REGULATIONS REGARDING PUBLIC ACCESS TO RECORDS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND REQUESTS FOR CONFIDENTIAL TREATMENT OF RECORDS

INTRODUCTION

These regulations provide guidance regarding: 1) access to Commission records; 2) requests for confidential treatment; 3) confidentiality determinations; and 4) discovery seeking Commission records and/or the appearance of Commission employees.

1. <u>Access to Commission Records</u>

1.1 California Public Records Act

1.1.1 Commission Policy

1.1.1.1 The California Public Utilities Commission (CPUC) is committed to full, fair, and prompt compliance with the California Public Records Act. These regulations are designed and intended to facilitate access to public records pursuant to the California Public Records Act (CPRA). For detailed statutory language, please consult Cal. Gov't. Code § 6250 *et seq*.

1.1.1.2 In the event that any portion of these regulations are deemed in conflict with any law or regulation, such law or regulation shall prevail.

1.1.1.3 The CPUC will not limit access to a public record based upon the purpose for which the record is requested, if the record is otherwise subject to disclosure to the public. (Cal. Gov't. Code § 6257.5.)

1.1.1.4 The CPUC may limit access to CPUC records on the basis of the status of the requester or the purpose for which the record is requested, if the record is exempt from disclosure to the public, but conditional disclosure to other governmental agencies, individuals, or subsets of the public is authorized by law, and the conditions necessary for such conditional disclosures have been met. (*See*, *e.g*., Cal. Gov't. Code §§ 6254.5, 6260, 6265; Cal. Civil Code § 1798 e*t seq*.)

1.1.1.5 The CPUC shall not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to the California Public Records Act. (Cal. Gov't. Code § 6253.3.)

1.1.1.6 Public records, as defined in Cal. Gov't. Code § 6252(e), in the physical custody of the CPUC shall be made available for inspection and copying in accord with the following provisions.

1.2 Requests for Inspection of Public Records

1.2.1 Subject to reasonable notice, any person may inspect public records in the custody of the CPUC during normal business hours. Physical inspection of such records shall be permitted at locations within the Offices of the CPUC in San Francisco, California, or Los Angeles, California, as determined by the Executive Director, or his or her designee. Special arrangement must be made in advance for the inspection of voluminous records.

1.2.2 Inspection of public records maintained by the CPUC shall be permitted only in the presence of Commission staff, except as the Executive Director or the Executive Director's designee otherwise determine.

1.2.3 Persons inspecting public records shall not destroy, mutilate, deface, or alter any such records or remove any such record or records from the location designated for inspection. The records shall be physically returned in the same condition and order as received, upon either the completion of the inspection or the request of CPUC staff presiding during the inspection.

1.2.4 Functions of the CPUC shall not be suspended to permit, and public records shall not be made available for, inspection during periods in which such records are reasonably required in the performance of the duties and responsibilities of the CPUC.

1.2.5 The CPUC may refrain from providing an opportunity to inspect any records, or portions of records, that are exempt from disclosure under the CPRA. (Cal. Gov't. Code § 6255.)

1.3 Requests for Copies of Public Records

1.3.1 Upon receipt of a request for copies pursuant to the CPRA, and payment of the fees set by the CPUC pursuant to Cal. Pub. Util. Code § 1903 to cover direct copy costs, or the applicable statutory fee, the CPUC shall promptly provide the requested records, to the extent they are not exempt from disclosure under the CPRA. An initial fee schedule, which may be periodically updated by the Executive Director or his or her designee, shall be included in the CPUC's guidelines for access to records.

1.3.2 Requests for copies of public records pursuant to the CPRA must reasonably describe an identifiable record or records. Requests should be specific, focused, and sufficiently describe the requested records so that they can be identified, located, and retrieved by CPUC staff.

1.3.3 Where a request is specific or focused, and the records are not listed in a public index of CPUC records, CPUC staff will attempt to assist the requester to

identify records and information responsive to the request, or to the purpose of the request, if stated; describe the physical location of such records, and the technology in which they are maintained; and provide suggestions for obtaining access to the records or information, where such records are not subject to an exemption listed in the CPRA.

1.3.4 Requests sent through the postal service should be directed to: Public Records Office, CPUC, 505 Van Ness Ave., San Francisco, CA 94102. Requests sent by electronic mail should be directed to: fnh@cpuc.ca.gov. Requesters may contact the Public Records Office by calling: (415) 703-1557.

1.3.5 When a request requires a delay in response due to the need to search for, retrieve, review, or redact records and cannot be accommodated with immediate inspection or copying, the CPUC shall have ten calendar days from the receipt of the request by the Public Records Office to determine whether the request seeks copies of disclosable public records in the possession of the CPUC. The CPUC shall promptly notify the requesting party of the determination. If the request is denied, in whole or in part, the response will set forth the basis for the denial and identify the person responsible for the denial.

In unusual circumstances, as specified in Cal. Gov't. Code § 6253(c), the CPUC may extend the time in which the requesting party is to be notified of the determination. Notice of the extension shall be in writing, setting forth the reasons for the extension and the date on which a determination is expected. The extension shall not exceed fourteen additional calendar days.

1.3.6 A response to a written request pursuant to the CPRA denying the request, in whole or in part, shall be in writing.

1.3.7 The CPUC may refrain from providing copies of any records, or portions of records, that are exempt from disclosure under the CPRA. The CPUC shall justify withholding any record, or portion of a record, by demonstrating that the record in question is exempt under express provisions of the CPRA, or that, on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest in disclosure. (Cal. Gov't. Code § 6255.) Any reasonably segregable portion of a record shall be provided to the requesting party after removal of the information in the record that is exempt from disclosure by law.

1.3.8 The CPUC is not required to compile data, gather information, perform research, or otherwise create a record that does not exist or that is not maintained by the CPUC in the normal course of business.

1.3.9 Requests for copies pursuant to a CPRA request will be forwarded to the division or divisions within the CPUC that generate, file, and/or maintain such documents. Commission responses to copy requests shall not require CPUC staff to suspend normal operations in order to comply with a request. Responses to

requests for copies of voluminous records may need to be processed over a reasonable period of time in order to permit staff to carry out their normal regulatory responsibilities.

1.3.10 The CPUC may respond to requests for copies of records by referring the requester to the location on the Commission's internet site where such records may be located and copied. Where the CPUC does not have or maintain the requested records, the CPUC may refer the requester to the internet site of another governmental agency responsible for maintaining such records.

1.4 Appeals of Denials of Access to Records

1.4.1 Formal Commission Proceeding, Advice Letter Filings, and other contexts in which the Commission has established a specific procedure

If the CPUC has established a formal requirements for processing requests for information, motions to compel the production of records, or for requiring parties to make information available upon request, as is the case for formal CPUC proceedings, advice letter proceedings, and similar matters, the procedures already established will continue to apply unless specifically modified. For example, parties in formal CPUC proceedings may appeal decisions or rulings denying access to records or information in accord with the CPUC's Rules of Practice and Procedure.

1.4.2 Other Contexts

If a request for records is denied, in whole or in part, in a context other than an open formal CPUC proceeding, advice letter proceeding, or similar matter subject to specific CPUC requirements for processing requests for information, the person seeking the records may request CPUC review of the denial of access. Requests for CPUC review of initial denials of access to records shall be filed with the CPUC's Public Records Office, and shall set forth specifically the grounds on which the requester considers the denial of access to be unlawful or erroneous.

The Public Records Office will prepare and place on the CPUC's meeting agenda a proposed resolution addressing the request for review of an initial denial of access to records, and serve it on: the requester; and, to the extent practical, any regulated entity that provided the CPUC with records to which access was denied. The resolution may be served on other persons where appropriate. Cal. Pub. Util. Code § 311(g) requires that most proposed resolutions be circulated for public comment at least 30 days before the CPUC takes action on the proposed resolution at one of its regularly scheduled business meetings.

Individuals or entities whose records are subject to a request for review of an initial denial of access to records are encouraged to consider informally resolving issues regarding the accessibility of such records or information, and to enter into confidentiality or nondisclosure agreements where appropriate.

The Public Records Office may refer requests for review of initial denials of access to CPUC records to a presiding officer in any formal proceeding in which the records to which access is sought have been filed or admitted into the evidentiary record under seal.

1.4.3 Applications for Rehearing and Petitions for Modification

CPUC resolutions addressing the disclosure of CPUC records are a form of decision subject to applications for rehearing and petitions for modification in accord with the CPUC's Rules of Practice and Procedure.

1.4.4 Actions.

Any action filed with a court pursuant to Cal. Gov't. Code § 6258 to compel the disclosure of records must be served on the CPUC, and should be directed to the attention of the General Counsel, California Public Utilities Commission, 505 Van Ness Ave., San Francisco, CA 94102.

1.5 Guidelines

The Public Records Office will prepare and, as necessary, update, guidelines for access to CPUC records. A copy of those guidelines, and these regulations, shall be posted in a public location in the CPUC's San Francisco, Los Angeles, and Sacramento Offices. A copy shall be made available at no charge to any person upon request.

1.6 Fees for Copying Public Records

1.6.1 Cal. Pub. Util. Code § 1903 requires the CPUC to set the fees to be charged for the making and furnishing of copies, including certified copies, of papers, records, and documents of the CPUC. The fees shall as nearly as practicable reflect the costs of furnishing the materials and providing the service.

1.6.2 Upon a request for a copy of records, other than records the CPUC has determined to be exempt from disclosure under the CPRA, and payment of the fees set by the CPUC, or any other statutory fee, the CPUC shall promptly provide the requested copies.

1.6.3 Pursuant to Cal. Pub. Util. Code § 1903, the Executive Director or his or her designee shall set, and periodically update, the fees for providing copies of CPUC records, in a manner that, to the extent practicable, enables the CPUC to recover the costs of furnishing the materials and providing the services associated with the provision of such copies.

2. <u>Requests for Confidential Treatment</u>

2.1 Definitions

2.1.1 Request for Confidential Treatment

For the purposes of this General Order, "request for confidential treatment" means any assertion of confidentiality, or request for confidential treatment, in any format, made by any individual or entity, within or outside the scope of any formal CPUC proceeding. The term includes, but is not limited to, the following: motions for leave to file records under seal, advice letter filings asserting confidentiality or requesting confidential treatment; and responses to data requests or information requests that include assertions of confidentiality or requests for confidential treatment.

2.1.2 Responses to Requests for Confidential Treatment

For the purposes of this General Order, "response to a request for confidential treatment" means any CPUC response to any assertion of confidentiality or request for confidential treatment, made, in any format, within or outside the scope of any formal CPUC proceeding.

2.2 Basic Principles Regarding Request for Confidential Treatment

2.2.1 Burden of Establishing Basis For Confidential Treatment

2.2.1.1 Individuals or Entities other than Employees of the CPUC

Any person, other than a person filing an informal complaint with the CPUC, a CPUC employee, or a governmental entity, filing or submitting records or information to the CPUC, either within or outside the scope of formal CPUC proceedings, who desires that those records or information or portions of those records or information, be kept confidential by the CPUC, and not disclosed to the public in response to records requests or discovery, bears the burden of proving why any particular document, or portion of a document, must or should be withheld from public disclosure.

Any request for confidential treatment of information must reference the specific law prohibiting disclosure, the specific statutory privilege that the person believes it holds and could assert against disclosure, the specific privilege the person believes the CPUC may and should assert against disclosure, or the specific provision of any General Order or other CPUC decision, order, or ruling that authorizes a document to be kept confidential.

2.2.1.2 CPUC Employees

CPUC employees are not required to request confidential treatment pursuant to this General Order, and thus do not as a general rule bear the burden of establishing a basis for confidential treatment.

CPUC employees who participate as representatives of a unit of the CPUC participating as a party in a CPUC proceeding, or in a similar representative capacity, may bear the burden of establishing a basis for confidential treatment of any records subject to a motion for leave to file under seal, or other request for

confidential treatment, in accord with the CPUC's Rules of Practice and Procedure.

2.2.1.3 Other Governmental Entities

Other governmental entities are not required to request confidential treatment pursuant to this General Order, and thus do not as a general rule bear the burden of establishing a basis for confidential treatment in accord with its provisions.

A governmental entity that participates as a party in a CPUC proceeding may bear the burden of establishing a basis for confidential treatment of any records subject to a motion for leave to file under seal, or other request for confidential treatment, in accord with the CPUC's Rules of Practice and Procedure.

A governmental entity subject to the CPUC's jurisdiction may be asked to justify any assertion that records or information provided to the CPUC must or should remain confidential, so that the CPUC may reach an independent determination regarding public disclosure of such records or information, as required by Cal. Gov't. Code § 6253.3.

2.2.2 Limitations on Requests for Confidential Treatment

2.2.2.1 Records or Information for Which Confidential Treatment may be Requested

Confidential treatment may be requested only for the kinds of records or information for which treatment is authorized by federal or state statute; by federal or state regulation; by prior CPUC General Order, decision, order, or ruling; or by the provisions of this General Order.

Confidential treatment may not be requested for records or information subject to a CPUC General Order, decision, order, or ruling, designating a class of records or information, and/or specific records or information, as being accessible to the public or otherwise subject to disclosure, once any applicable period for appealing the General Order, decision, order, or ruling has expired. Requests for confidential treatment of such records or information shall be rejected, in the absence of evidence that the relevant provisions of the General Order, decision, order, or ruling, are inconsistent with current laws, regulations, and CPUC policies regarding access to such records or information.

Once the CPUC has established a comprehensive index of CPUC records and a database of requests for confidential treatment and responses to such requests, persons requesting confidential treatment will be required to accompany the request with a declaration attesting that the requester has reviewed any publicly accessible index or database, and determined, to the best of the person's knowledge, that no CPUC General Order, decision, order, or ruling requires or authorizes public access to such records or information, or otherwise prohibits or limits requests for confidential treatment of such information.

If the entity requesting confidential treatment is a public utility, the public utility should not cite Cal. Pub. Util. Code § 583 as a sole basis for the CPUC's nondisclosure of information since, as noted in D.91-12-019, § 583 does not create for a utility any privilege that may be asserted against the CPUC's disclosure of information or designate any specific types of documents as confidential.

2.2.2.2 Privilege Assertions

Any person asserting a privilege against disclosure has the burden of establishing that the privilege applies to the records or information in the context in which the privilege is asserted or confidential treatment is requested. A person asserting a privilege has the right to claim an absolute statutory privilege, such as the attorney-client privilege, for information requested. If such a privilege applies, the person may not be required to provide such information to the CPUC. However, the person must specify the statutory privilege applicable to particular information and explain how the information meets each element or criteria necessary for the assertion of the privilege. Any person may also assert a claim of privilege for documents or information provided to the CPUC on a confidential basis, such as the trade secret privilege. In such cases, the person must assert the specific privilege(s) it believes the person and/or the CPUC holds and why the document, or portion of document, should be withheld from public disclosure.

If a privilege holder's provision of privileged records to the CPUC might result in a waiver of the privilege, such as may be the case with regard to records subject to the lawyer-client privilege set forth in Cal. Evid. Code § 950 *et seq*., the privilege holder shall, before providing such records, either: 1. explain why the provision of the privileged records would not result in a waiver of the privilege; or 2. demonstrate to the CPUC's satisfaction that the records would, if provided to the CPUC, fall within the Cal. Evid. Code § 1040 (a) definition of "official information," and be subject to the CPUC's assertion of absolute official information privilege in Cal. Evid. Code § 1040(b)(1) for information subject to a federal or state law prohibiting disclosure; or the conditional official information privilege in Cal. Evid. Code § 1040(b)(2), which may be asserted by the CPUC where there is a need for confidential treatment that outweighs the necessity for disclosure in the interests of justice, with certain exceptions. The privilege holder must explain how the public's interests would be served by the CPUC's assertion of the CPUC-held privilege.

2.2.2.3 Confidentiality Claims Requiring a Balancing of Interests

If a confidentiality request is based on a privilege or exemption requiring a balancing of interests for and against disclosure, rather than on a statutory prohibition against disclosure or a privilege held by the individual or entity, the person requesting confidential treatment must demonstrate why the public interest in an open process is clearly outweighed by the need to keep the material confidential.

When balancing of public interests for and against disclosure, the CPUC will take in account the following: 1) the balancing of interests for and against disclosure may shift over time; 2) the interests of the public in accessing information, or in having information withheld, may in some circumstances coincide, and in some circumstances differ, from the interests of the individual or entity providing the records or information to the CPUC; 3) privacy interests are important, but not absolute, and at times must be balanced against the necessity for the public to understand adequately the actions of the CPUC and the entities it regulates (*See, e.*g., *Hill v. National Collegiate Athletic Association*, (1994) 7 Cal.4th 1).

2.2.3 Limitations on Confidential Treatment

2.2.3.1 Independent CPUC Determinations

The CPUC cannot allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to the CPRA. Cal. Gov't. Code § 6253.3. The fact that records may fall within a CPRA exemption does not preclude the CPUC from disclosing the records.

Except with respect to records subject to a law prohibiting disclosure, CPRA exemptions are discretionary, rather than mandatory, and the CPUC 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; *see also*, *Re San Diego Gas & Electric Company* (SDG&E) (1993) 49 Cal.P.U.C.2d 241, 242.

For the above reasons, the fact that a person may demonstrate that the records for which confidential treatment is requested may fall within the scope of a CPRA exemption the CPUC could choose to assert is no guarantee that the CPUC will determine that the assertion of the exemption is in the public's interest.

The same is true with regard to CPUC-held privileges that may be asserted in response to records requests and/or discovery.

2.2.3.2 Records Requests vs. Discovery

Cal. Gov't. Code § 6260 provides that the provisions of the CPRA shall not be deemed in any manner to affect the rights of litigants, including parties to administrative proceedings, under the California laws of discovery, nor to limit or impair any rights of discovery in a criminal case. Thus, CPUC responses to discovery may not base objections to disclosure on the existence of one or more applicable CPRA exemptions. Similarly, discovery objections in formal CPUC proceedings should not be based on the existence of applicable CPRA exemptions.

A confidentiality determination that finds that records, or portions of records, are subject to one or more CPRA exemptions will not insulate such records from disclosure in response to a subpoena or other discovery procedure, unless the determination finds that the records are also subject to a CPUC-held privilege or

other prohibition or limitation on disclosure in response to subpoenas or other discovery.

If a confidentiality determination finds that the records are also subject to a CPUC-held privilege or other prohibition or limitation on disclosure in response to subpoenas or other discovery, the determination will generally find that the records are also exempt from mandatory disclosure in response to records requests, pursuant to the Cal. Gov't. Code § 6254(k) exemption for: "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."

2.2.3.3 Disclosure to Governmental Entities

If the CPUC provides any information to another governmental agency (whether in response to a request, subpoena, or on the CPUC's own initiative), the CPUC will ensure that the information is accompanied with a copy of any request for confidential treatment that has been submitted pursuant to this General Order. Where appropriate, the CPUC may enter into a confidentiality agreement with the other governmental agency.

When the CPUC obtains information indicating a possible violation of any federal, state, or local law, the CPUC may provide that information to the appropriate governmental agency.

Requests for confidential treatment will not prevent the CPUC from providing that information to other governmental agencies.

2.2.3.4 Duration of Confidential Treatment

A request for confidential treatment, whether or not specifically acted upon by the CPUC, expires on the earliest of the following dates: (a) at the end of the period specified by the individual or entity pursuant to the request for confidential treatment; (b) at the end of a period specified in a specific CPUC ruling or decision (Confidentiality Determination); or in the event (a) or (b) are inapplicable, then (c) two years after the request for confidential treatment was first submitted to the CPUC. To reassert a request for confidential treatment, the person must again satisfy the requirements for confidential treatment before the end of the confidentiality period. Staff may disclose information provided under a claim of confidentiality or request for confidential treatment if the CPUC has authorized disclosure of that information, or class of information.

2.2.3.5 Communication with Persons Requesting Confidential Treatment

In a number of circumstances, the CPUC may need to contact a person who has requested confidential treatment, and/or who has provided the CPUC with records subject to a CPUC confidentiality determination; may wish to provide others the opportunity to contact the person to discuss issues relating to the accessibility or

confidentiality of such records, or may wish to inform the person that the records are being sought through a records request, subpoena for records, or other procedure.

If the person requesting confidential treatment does not provide the CPUC with consistently current contact information, the CPUC may be unable to engage in such necessary or desirable communication. This may, as a practical matter, affect the person's ability to defend their position regarding the need for confidential treatment before the CPUC or in other forums.

Any CPUC index or database of requests for confidential treatment, and CPUC responses thereto, shall include current contact information for each person requesting confidential treatment.

2.2.4 Minimum Requirements for Requesting Confidential Treatment

A person desiring confidential treatment of information provided to the CPUC shall, in any document requesting confidential treatment, at a minimum:

2.2.4.1 Specifically indicate the information the person wishes to be kept confidential, clearly identifying each page, or portion of a page, for which confidential treatment is requested.

2.2.4.2 Identify the length of time the person believes the information should be kept confidential and provide a detailed justification for the proposed length of time, or identify the length of time a CPUC decision addressing the information authorizes the information to be kept confidential. The business sensitivity of information generally declines over time and the balancing of interests for and against disclosure may change accordingly.

2.2.4.3 Identify any specific provision of state or federal law the person believes prohibits disclosure of the information for which it seeks confidential treatment and explain in detail the applicability of the law to that information.

2.2.4.4 Identify any specific state or federal regulation, or CPUC General Order, Rule of Practice and Procedure, decision, order, or ruling, the person believes prohibits or limits disclosure of the information for which it seeks confidential treatment, and explain in detail the applicability of the law to that information.

2.2.4.5 Identify any specific privilege, if any, the person believes it holds and may assert to prevent disclosure of information, and explain in detail the applicability of that law to the information for which confidential treatment is requested. The person must explain how the information meets each element or criteria necessary for the assertion of the privilege. For example, if a person asserts that information is subject to a trade secret privilege (Cal. Evid. Code § 1060 *et seq.*), the person must explain how the information fits the definition of a trade secret. The person must explain how the information provides the privilege holder with economic

value by virtue of its not being generally known to the public and what steps the person has taken to maintain the secrecy of the information.

2.2.4.6 Identify any specific privilege the person believes the CPUC holds and may assert to prevent disclosure of information and explain in detail the applicability of that privilege to the information for which confidential treatment is requested.

If the privilege involves a balancing of public interests for and against disclosure, such as the conditional official information privilege in Cal. Evid. Code § 1040(b)(2), the person must demonstrate that the information falls within the definition of official information, and that there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.

2.2.4.7 State whether the person would object if the information were disclosed in an aggregated format.

2.2.4.8 State whether and how the person keeps the information confidential and whether the information has ever been disclosed to a person other than an employee of the individual or entity.

2.2.4.8 Provide, and update, contact information sufficient to allow the CPUC to:

1. Contact the person to provide a copy of any subpoena or other discovery procedure in which a party to a proceeding seeks records or information subject to a request for confidential treatment based on an assertion that the person requesting confidential treatment holds and asserts a privilege against disclosure.
2. Inform any person seeking access to records or information subject to a pending request for confidential treatment, or a confidentiality determination granting such treatment, how they can contact the person requesting, or granted, confidential treatment, to determine whether access may be obtained, subject to a nondisclosure agreement, or in some other fashion.
3. Contact the person to provide information regarding of any CPUC confidentiality determination affecting the status of the records or information for which confidential treatment was requested and/or obtained.

2.2.4.9 Submit the request for confidential treatment in a document separate from the document(s) that include the information for which confidential treatment is requested. Requests for confidential treatment received from entities regulated by the CPUC are open to the public.

3. Procedure for Requesting Confidential Treatment

3.1 Context of Request

3.1.1 Formal CPUC Proceeding, Advice Letter Filings, and other contexts in which the CPUC has established a specific procedure

If the CPUC has established a formal procedure for requests for confidential treatment, and responses to such requests, as is the case for formal CPUC proceedings, advice letter proceedings, generating asset owner filings, and energy procurement documents subject to the public access and confidentiality matrices established in D.06-06-066 and its progeny for records that may include market sensitive information, the procedures already established will continue to apply unless specifically modified.

For example, in formal CPUC proceedings, the CPUC's Rules of Practice and Procedure will continue to govern motions to file records under seal, motions to seal the evidentiary record, and motions to compel the production of documents. Similarly, General Order 96-B will continue to govern requests for confidential treatment of records associated with advice letter filings, and objections to such requests.

We will supplement those procedures in one respect. The division of the CPUC that receives and/or responds to any request for confidential treatment shall maintain a file of such requests and response, and provide the Public Records Office with access to such files upon request. These requests for confidential treatment and the CPUC's responses to such requests may be included in any public index or database of such records developed by the CPUC.

3.1.2 Other Contexts

A person requesting confidential treatment in a context other than a formal CPUC proceeding, advice letter filing, or other contexts in which the CPUC has established a specific procedure shall submit the request for confidential treatment in a document that includes the information set forth in § 2.2.4 of this General Order. The requester may use one of the model forms in Appendix C of this General Order.

A CPUC division that receives a request for confidential treatment from a regulated entity in a context in which the CPUC has not established a specific procedure shall respond to such requests as follows:

1. Review the request to determine whether it seeks confidential treatment for a class of records or information that the CPUC has determined to be confidential.

   Commission divisions implementing specific CPUC programs are familiar with CPUC decisions that affect those programs,

and specific confidential treatment provisions in those decisions. The comparison of a request for confidential treatment to the provisions of a CPUC decision that identify specific program-related classes of records or information as confidential is a ministerial task. The indexes and databases discussed elsewhere in this General Order should make this process easy and routine, in most cases.

2. If a CPUC division cannot determine with certainty that the record or information falls within a class of records or information that the CPUC has determined to be confidential, the division shall consult with the Public Records Office and other appropriate authority.

   The division, and/or the Public Records Office, may ask the person seeking confidential treatment to provide additional information regarding the request for confidential treatment, in order to obtain sufficient information to permit the CPUC to determine independently whether confidential treatment is permitted by law, and warranted.

3. If the division, in consultation with the Public Records Office, finds that the record or information does not fall within a class of records or information that the CPUC has determined to be confidential, the division, or the Public Records Office, will, in an initial response to the request for confidential treatment, notify the person requesting confidential treatment of this determination.

The grounds for a determination that the record or information does not fall within a class of records or information that the CPUC has determined to be confidential include, but are not limited to, the following:

1. A provision of the Cal. Pub. Util. Code or other law expressly requires such records or information to be public;

2. The CPUC has issued a General Order, decision, order, or ruling determining that the class of records or information is open to the public;

3. A CPUC decision, assigned Commissioner decision or ruling, ALJ decision or ruling; or similar CPUC determination, mandates disclosure of the records or information for which confidential treatment is requested.

4. Initial CPUC responses providing notice that records or information for which confidential treatment is requested do not fall within a class of records or information that the CPUC has determined to be confidential shall inform the person requesting confidential treatment that they may, within 10 days, file a request for review of the denial of confidential treatment. Confidential treatment will continue until the time for filing a request for review has expired, or the request for review has been resolved by the CPUC, with certain exceptions.

If the notice that confidential treatment is not warranted is based on the existence of a statute specifically mandating that the records or information be open to the public, or a CPUC decision, order, or ruling mandating that the records or information be open to the public, public access will not be limited while any request for review is pending.

Requests for CPUC review of initial notices that confidential treatment is unwarranted shall be filed with the CPUC's Public Records Office, and shall set forth specifically the grounds on which the requester considers the notice that confidential treatment is unwarranted to be unlawful or erroneous.

The Public Records Office will prepare and place on the CPUC's meeting agenda a proposed resolution addressing the request for review of an initial notice that confidential treatment is unwarranted, and serve it on: the requester; and, on other persons where appropriate. The resolution may be served on other persons where appropriate. Cal. Pub. Util. Code § 311(g) requires that most proposed CPUC resolutions be circulated for public comment at least 30 days before the CPUC takes action on the proposed resolution at one of its regularly scheduled business meetings.

Regulated entities that who receive notice that confidential treatment is unwarranted are encouraged to consider informally resolving issues regarding the accessibility of such records or information.

Initial notices that confidential treatment is unwarranted are not final CPUC decisions. The request for review procedure noted above may result in a final CPUC decision.

This General Order does not require CPUC divisions to respond to requests for confidential treatment in every situation, or to respond within a specified time period. However, the receipt by the CPUC of a records request, subpoena for records, or other discovery request, will trigger a need for the CPUC to respond to the records request or discovery process within the time periods applicable to such requests or discovery. For this reason, our divisions are encouraged to review and respond to requests for confidential treatment as soon as practical.

The division of the CPUC that receives and/or responds to any request for confidential treatment shall maintain a file of such requests and response, and provide the Public Records Office with access to such files upon request. These requests for confidential treatment and the CPUC's responses to such requests may be included in any public index or database of such records developed by the CPUC.

Initial responses to requests for confidential treatment may be based on the model forms in the Appendix to this General Order.

3.1.3 Special Circumstances

Other governmental agencies, whistleblowers, and individuals, making requests for confidential treatment are not required to provide the information required in this General Order. However, such requesters may be asked to provide information that would permit to make a reasoned decision regarding the confidentiality request, if the legal basis for the request is not immediately clear, or in other appropriate circumstances.

Confidentiality or nondisclosure agreements between the CPUC and another governmental entity, entered into in accord with Cal. Gov't. Code § 6254.5(e) or other authority, shall generally be signed by the Executive Director or General Counsel.

Such requests for confidential treatment, and any response thereto, shall be forwarded to the CPUC's Public Records Office, for inclusion, where appropriate, in any index or database of requests for confidential treatment.[14]

[14] In certain contexts, the public disclosure of a request for confidential treatment, and the CPUC's response to the request, may restricted by law, and/or against the public's interest. The CPUC reserves its right to refrain from disclosing such records in response to records requests or

3.2 Informal Resolution

Individuals or entities whose records are subject to a request for review of an initial denial of access to records are invited to consider informally resolving issues regarding the accessibility of such records or information, and to enter into confidentiality or nondisclosure agreements where appropriate.

3.3 General Counsel Review

The General Counsel, and/or his or her designee, may, in response to a request for assistance from the Commission, a Commissioner, an ALJ, a Commission Division, or other Commission staff, provide advice and make recommendations regarding the application of the CPRA, discovery law, or other authority to matters involving the disclosure of CPUC records and/or the assertion of CPRA exemptions, Commission-held privileges, or other authority requiring or limiting public access to CPUC records.

If the CPUC, a Commissioner, a Commission Division, or other appropriate Commission staff determines that confidential treatment is not warranted, and has been unable to resolve the dispute with the individual or entity seeking confidential treatment on an informal basis, the General Counsel or designee has the option of providing an additional forum for the informal resolution of the disclosure dispute.

3.4 Review and Appeal Records

A copy of all CPUC responses to appeals of any request for review, or appeal, of a CPUC decision, order, ruling, or initial determination that confidential treatment is not warranted, shall be provided to the Public Records Office for inclusion in any index or database regarding requests for confidential treatment and the CPUC's responses to such requests.

4. <u>DISCOVERY</u>

4.1 Records

Subpoenas for CPUC records should be served on a representative of the Public Records Office, or other CPUC employee authorized to accept service of process. Such employees include: the Executive Director, Assistant Executive Directors, General Counsel, Assistant General Counsel, and representatives of the Public Records Office.

Copy fees will be charged in accord with the provisions of Cal. Evid. Code § 1563.

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discovery, and to refrain from including such records in any publicly accessible index or database of such requests for confidential treatment, where the records are subject to one or more CPRA exemptions from mandatory disclosure, one or more CPUC-held privileges against disclosure, or similar legal authority.

4.2 Appearances

Subpoenas seeking the appearance of a specific CPUC employee must be served on the employee or his or immediate supervisor, in accord with the requirements of Cal. Gov't. Code § 68097.1. Subpoenas seeking the appearance of the "person most knowledgeable" should be served on a representative of the Public Records Office, or other CPUC employee authorized to accept service of process.

Witness fees must be paid in accord with the provisions of Cal. Gov't. Code § 68097.2, on or before the date of the appearance.

4.3 Original Records

Availability of original records is necessary for the conduct of the CPUC's duties. Cal. Evid. Code §§ 1560 *et seq*. provide for the admissibility into evidence of true copies of records such as are maintained by the CPUC. The personal appearance of the Custodian of Records is not required.

4.4 Appearance of the Custodian of Records

A subpoena demanding original CPUC records or personal appearance of the Custodian of Records is an unwarranted interference with the CPUC in the performance of its duties and may be resisted. (Cal. Pub. Util. Code § 1759.)

The Executive Director is the CPUC's Custodian of Records. The Custodian of Records may designate a member of the CPUC staff responsible for the direct supervision of the records in question to appear in his or her stead as the Custodian of Records subject to the subpoena, where necessary and appropriate.

DRAFT

FORM 1 RCT

RCT NO.____
[For CPUC Use Only]

REQUEST FOR CONFIDENTIAL TREATMENT OF RECORDS

Name: _____ Today's Date: _____

Address:_____

Telephone No: _____ Email: _____

Description of the records for which confidential treatment is requested: _____

_____

_____

Identification of the records, or portions of records, for which confidential treatment is requested: _____

_____

Name of document(s): _____

Pages that include information subject to the request for confidential treatment:_____

Portions of pages that include such information: *e.g.*, lines xx-xxx; paragraphs 1 and 2; the first sentence of the second full paragraph, price information, *etc*. _____

_____

_____

Do not include the information for which confidential treatment is requested in this Request for Confidential Treatment: _____

_____

_____

Time period for which confidential treatment is requested: _____

Justification for time period:_____

_____

Basis for confidential treatment: _____

_____

_____

Federal or state statute prohibits disclosure (cite): _____

Commission Decision, Order, or Ruling prohibits or limits disclosure (cite): _____

_____

_____

Records are exempt from mandatory disclosure in response to California Public Records Act (CPRA) (Cal. Gov't. Code § 6250 *et seq*.), pursuant to one or more CPRA exemptions (cite)[15]**:**: _____

_____

_____

Records are subject to a Commission-held privilege or similar limitation on mandatory disclosure in response to subpoena for records or other discovery procedure (cite): _____

_____

_____

[15] If citing Cal. Gov't. Code § 6254(k); 6254(ab); or 6255, see additional requirements on page 2.

Requester would object if information were disclosed in an aggregated format: (check one) ☐ Yes ☐ No

Requester has made the records available to the public prior to the date of this request. (check one) ☐ Yes ☐ No

Requester has reviewed Commission indexes or databases of records and located no information that would preclude this request for confidential treatment. (check one) ☐ Yes ☐ No

I declare under penalty of perjury that the foregoing is true and correct.

_____ _____

Name Date

Additional requirements that may apply:

1. If the exemption cited is Cal. Gov't. Code § 6254(k), the requester MUST identify federal or state law prohibiting or limiting disclosure; privilege or similar limitation on disclosure that the Commission holds and may assert; or other basis for a Commission's assertion of the Cal. Gov't. Code § 6254(k) exemption. Cal. Gov't. Code § 6254(k) is not an independent exemption; it requires an underlying statutory prohibition, a privilege, or similar basis for confidentiality.

2. If privilege cited as a basis for the Commission's potential assertion of the Cal. Gov't. Code § 6254(k) exemption is the Cal. Evid. Code § 1040 official information privilege, the requester MUST demonstrate that: (1) the information for which confidential treatment is requested falls within the Cal. Evid. Code § 1040(a) definition of official information: and (2) either: (a) The information is subject to a federal or state statute prohibiting disclosure; or (b) that the necessity for confidentiality outweighs the necessity for disclosure in the interests of justice. If the (2)(b) option is chosen, the requester should describe how the public's interest in NOT having the information publicly available clearly outweighs the public interest that would be served by having the information available. (See, e.g., case cite…..)

3. If privilege cited as a basis for the Commission's potential assertion of the Cal. Gov't. Code § 6254(k) exemption is a privilege the requester believes it holds and may assert to bar or limit disclosure, the requester should fill out the worksheet on page 3 of this request for confidential treatment.

4. If the exemption cited is Cal. Gov't. Code § 6254(ab), the requester MUST attest that the infrastructure information was voluntarily submitted to the California Office of Homeland Security for use by that office.

5. If the exemption cited is Cal. Gov't. Code § 6255, the requester MUST describe how the public's interest in NOT having the information publicly available clearly outweighs the public interest that would be served by having the information available. **Initial Response (Confidential Treatment Appears Warrante**

DRAFT

FORM 2 RCT-G

RCT-G NO.____
[For CPUC Use Only]

REQUEST FOR CONFIDENTIAL TREATMENT OF RECORDS (GOVERNMENTAL ENTITY)

Name: _____ Today's Date: _____

Address:_____

Telephone No: _____ Email: _____

Description of the records for which confidential treatment is requested: _____

_____

_____

Time period for which confidential treatment is requested: _____

Basis for confidential treatment: _____

_____

_____

Federal or state statute prohibits disclosure (cite): _____

_____

Other: _____

Records are subject to a non-disclosure agreement, confidentiality agreement, or memorandum of understanding entered into by requester and the Commission on _____

A copy of the non-disclosure agreement or similar document is attached: (check one) ☐ Yes ☐ No

The requester would be willing to provide the Commission with the records described above, provided that the Commission executed an appropriate nondisclosure agreement.

NOTE: Governmental entities may share information subject to one or more California Public Records Act exemptions with other governmental entities, pursuant to confidentiality agreements, without waiving their right to assert exemptions in response to public records requests. (Cal. Gov't. Code § 6254.5(e)).

Other provision of the Cal. Gov't. Code, and other applicable law, may permit other forms of records sharing between governmental entities as well.

_____ _____
Name Date

_____
Position

DRAFT

FORM 3 .1 RCT Initial Response – Incomplete

RCT NO.____
[For CPUC Use Only]

RESPONSE TO REQUEST FOR CONFIDENTIAL TREATMENT

REQUEST FOR CONFIDENTIAL TREATMENT IS INCOMPLETE

Incomplete Request:_____Today's Date: _____

The Commission received your Request for Confidential Treatment on _____

Your Request was incomplete. Please provide the following information:

_____

_____

The submitted records will be treated as confidential for 10 days. If you do not return a completed application by _____, the records or information will not be treated as confidential, unless the Commission determines that such treatment is warranted.

_____ _____
Name Date

_____
Position

DRAFT

RCT FORM 3.2. (Initial Response – (Request for Additional Information)

RCT NO.____
[For CPUC Use Only]

RESPONSE TO REQUEST FOR CONFIDENTIAL TREATMENT OF DOCUMENT

ADDITIONAL INFORMATION REQUESTED

Request for Additional Information: _____Today's Date: _____

The Commission received your Request for Confidential Treatment on _____

We are unable to fully evaluate your application on the basis of the information you provided.

Please provide the following information: _____

_____

_____

The submitted records will be treated as confidential for 20 days. If you do not provide the additional information we request by _____, the records or information will not be treated as confidential, unless the Commission independently determines that such treatment is warranted.

_____ _____
Name Date

_____
Position

DRAFT

RCT FORM 3. 3 Initial Response (Confidential Treatment Appears Warranted)

RCT NO.____
[For CPUC Use Only]

RESPONSE TO REQUEST FOR CONFIDENTIAL TREATMENT OF RECORDS

CONFIDENTIAL TREATMENT APPEARS WARRANTED

Today's Date: _____

We reviewed your request for Confidential Treatment on _____ _____.

The records appear to meet the criteria for confidential treatment for the following reasons:

☐ The records are exempt from mandatory disclosure in response to a California Public Records Act (CPRA) pursuant to one or more CPRA exemptions. Specifically: _____

_____

_____

☐ The records are exempt from mandatory disclosure in response to a discovery, pursuant to one or more Commission privileges. Specifically: _____

_____

_____

The records will be treated as confidential until: _____

Records subject to an initial response determining that the records for which confidential treatment is requested meet the criteria for confidential treatment denying a request for confidential treatment will not be disclosed except as ordered by a Commission decision or resolution; an assigned Commissioner or Administrative Law Judge ruling; or a court of competent jurisdiction.

_____ _____
Name Date

_____
Position

DRAFT

FORM 3.4 RCT Initial Response – Denial – Mandatory Public Access)

RCT NO.____
[For CPUC Use Only]

RESPONSE TO REQUEST FOR CONFIDENTIAL TREATMENT OF DOCUMENT

DENIAL – PUBLIC ACCESS IS MANDATORY

Initial Denial: _____ Today's Date: _____

We reviewed your request for Confidential Treatment on _____

The records of information do not appear to meet the criteria for confidential treatment for the following reasons:

☐ Disclosure is required by law: Specifically: _____

_____

_____

☐ Disclosure is required by a Commission, Decision, Order, or Ruling, Specifically: _____

_____

_____

If you disagree, you may request a review of this initial determination within 10 days. Request for review shall be submitted to the Commission's Public Records Office, at: _____.

The Commission' Public Records Office will prepare and circulate for public comment a draft resolution for the Commission's consideration at one of its regularly scheduled business meetings. In most situations, the Commission will not disclose records subject to a pending request for review of an initial denial of a request for confidential treatment. However, since the records clearly fall within a class of records that are required to be public pursuant to a federal or state statute, or a Commission decision, order, or ruling, the filing of a request for review will not limit or delay disclosure.

_____ _____
Name Date

_____
Position

DRAFT

RCT FORM 3.5. Initial Response (Denial – Other)

RCT NO.____
[For CPUC Use Only]

Today's Date: _____

RESPONSE TO REQUEST FOR CONFIDENTIAL TREATMENT OF DOCUMENT

DENIAL – OTHER

We received your request for Confidential Treatment on: _____. Your request does not appear to meet the criteria for Confidential Treatment.

Specifically, you assert the records or information are subject to _____

_____

_____

_____

However, _____

_____

_____

If you disagree, you may request a review of this application within 10 days. Request shall be submitted to the Commission Public Records office. The Commission' Public Records Office will prepare and circulate for public comment a draft resolution for the Commission's consideration at one of its regularly scheduled business meetings. Records subject to an and initial response denying a request for confidential treatment will not be disclosed while request for review is pending, except as ordered by a Commission decision or resolution; an assigned Commissioner or Administrative Law Judge ruling; or a court of competent jurisdiction.

_____ _____
Name Date

_____
Position

DRAFT

ATTACHMENT 2

Guidelines for Accessing Public Records

Californians have a right under the state Public Records Act and the California Constitution to access public information maintained by all state agencies, including the California Public Utilities Commission. The following are guidelines for accessing public records at the California Public Utilities Commission (CPUC). For more information, please see Cal. Gov't. Code § 6250 *et seq*; and CPUC General Order 66-D, and **Frequently Asked Questions** about accessing public records maintained by the CPUC.

- **Direct Your Request to the Public Records Office.** The CPUC's Public Records Office is responsible for facilitating responses to all public records requests. If you direct your request to the Public Records Coordinator, it makes it easier for us to track and process your request resulting in a prompt response. Contact the Public Records Coordinator by mail or facsimile at:

  California Public Utilities Commission Public Records Office
  Legal Division
  505 Van Ness Ave.
  San Francisco, CA 94102
  Phone: (415) 703-xxx
  Facsimile: (415) 703-2262

- **Written Requests Encouraged.** The CPUC encourages, but does not require, requests for records to be made in writing unless the request involves records maintained by the CPUC for the purpose of immediate public inspection. Examples of these types of records include Statements of Economic Interest, and these guidelines. Denials of any written requests will always be provided in writing. When requests are made orally, the CPUC may confirm the request in writing to ensure we have correctly understood your request and to expedite your request.
- **Records Defined.** "Records" include any writing owned, used or maintained by the CPUC in the conduct of its official business. Writings include information recorded or stored on paper, computers, email, or audio or visual tapes.
- **Identifying Records.** In order to help the CPUC provide records promptly, requesters should provide specific information about the records they seek including names of facilities and addresses. When a record cannot be identified by name, the requester should attempt to be as specific as possible in describing the record, based on its content. When a request is not sufficiently specific, CPUC staff will help the requester to identify the information, describe how the records are maintained and their physical location, and provide suggestions on how to overcome any practical barriers to disclosure.
- **Inspection of Public Records.** Public records maintained by the CPUC are available for inspection during regular business hours, 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding state holidays. Members of the public are not required to give notice in order to inspect public records at CPUC offices during normal working hours. However if the request requires the retrieval, review or redaction of records, a mutually agreeable time should be established for inspection of the records. In order to prevent records from being lost, damaged or destroyed during an inspection, CPUC employees may determine the location of, and may monitor, the inspection. Requests for Statements of Economic Interests, Public Records Guidelines, and CPUC publications usually can be provided quickly. Requests for other records may take more time because the records must be located and reviewed for any possible trade secret information. Please also note that numerous CPUC databases, fact sheets / FAQs, and other information resources are available at our website,

- **Processing Requests for Copies of Records.** When a copy of a record is requested, and the record cannot be produced immediately, the CPUC will determine within 10 days after receipt of the request, whether to comply with the request, and shall promptly inform the requester of its decision and the reasons for the decision. The initial 10-day period may be extended for up to an additional 14 days if the CPUC needs to:

  a. Communicate with field offices.
  b. Inspect voluminous records.
  c. Consult with other divisions or agencies.
  d. Construct a computer program or report to extract data.

  Whenever possible, the CPUC will provide records at the time the determination is made to disclose them. If immediate disclosure is not possible, the CPUC will provide an estimated date when the records will be available, and will provide the records within a reasonable period of time.

- **Copying Fees.** The CPUC must, pursuant to Cal. Pub. Util. Code § 1903, set fees to be charged for making and furnishing copies, including certified copies, of papers, records, and documents of the CPUC, which will, as nearly as practicable, reflect the costs of furnishing the materials and providing the service. The cost of duplication includes the pro rata expense of the duplicating equipment and the staff (salary/benefits) required to make a copy of the record. The cost of duplication does not include CPUC staff time in researching and retrieving the records. When the CPUC must compile electronic data, or extract information from an electronic record, to satisfy a request, the CPUC may require the requester to bear the full costs, not just the direct cost of duplication. The fees set by the CPUC are: 1)$.10 per page for standard copies; 2) $1.00 per page for color copies; 3) actual costs for reproducing oversize documents and documents requiring special processing; 4) actual postage charges; and 5) actual costs, if any, for retrieval and return of records held off-site in archives(currently, $7.00 per box). Reasonable clerical charges may be imposed if making copies requires special processing; *e.g.*, extensive or complex records or data compilation, programming, or certification. Such charges will be billed at a rate of $24 per hour per person, or $6 per quarter hour.

- **Exemptions.** The CPUC will provide access to all public records upon request unless the law provides an exemption from mandatory disclosure. Examples of records exempt from mandatory disclosure under the California Public Records Act include: certain personnel records, investigation records, drafts, confidential legal advice, trade secrets, records prepared in connection with litigation, and information that may be kept confidential pursuant to other state or federal statutes.[16] In most circumstances, if the CPUC removes or redacts exempt information from the record, it will disclose the remainder of the record.

- **Identification of Requesters.** CPUC personnel will not require that persons requesting to inspect records provide identification, or the reasons for wanting to inspect records. However, if records are to be picked up or mailed to a requester, relevant identifying information must be provided. Persons wishing to enter the CPUC building must comply with security protocols, including providing identification to security personnel.

- **Statement of Economic Interest.** These forms can be provided by contacting the Public Records Office at (415) 703-1557 during CPUC regular business hours, 8:30 a.m. to 4:30 p.m.

[16] A list of CPRA exemptions that may commonly apply to Commission records, or portions of records, may be found in the Appendix to these guidelines.

Guidelines Appendix

CPRA Exemptions

1. Records will be made available for inspection or copying unless the records are exempt from disclosure. Any reasonably segregable portion of a record shall be provided to any requesting party after the removal of the information in the record that is exempt from disclosure by law.

2. The following types of records, which are commonly found in files maintained by the Commission, may be withheld from public disclosure in accordance with the provisions of the Government Code.[17]

• Preliminary drafts, notes, or interagency or intra-agency memoranda not retained by the Commission in the ordinary course of business, if the public interest in withholding the records clearly outweighs the public interest in disclosure. [Government Code § 6254(a)].

• Records pertaining to pending litigation to which the Commission is a party, or claims made pursuant to Division 3.6 of the Government Code (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled. [Government Code § 6254(b)].

• Records that are exempt or prohibited from disclosure by state or federal law. Such records may include, but are not limited to, the following: confidential attorney-client correspondence; notes and other work product prepared by legal counsel; materials constituting trade secrets of licentiates or applicants or contained in contract proposals; personal information, such as date of birth, social security number, and criminal history; and records that may be subject to other legal privilege (*e.g*., medical records prepared by a physician). [Government Code § 6254(k)].

• Records pertaining to personnel matters including, but not limited to, employee records, background checks, medical evaluations, psychological evaluations, *etc*. [Government Code § 6254(c)]. However, nothing in this section limits the Commission from providing such information to the employee to whom it pertains, to someone else with the written consent of the employee representative of the employee, or in response to appropriate discovery, to the extent no other provision of law limits such disclosure.

• Test questions, scoring keys, and other examination data used to administer a licensing examination, examinations for employment, or academic examination. [Government Code § 6254(g)].

• Correspondence with the Governor's Office. [Government Code § 6254 (l)].

• Records of informal complaints received by the Commission, to the extent such records include the name, home address, telephone number, e-mail address, utility account number, bank account number, social security number, or similar information, of any person, or family member of any person, filing such an informal complaint, and the disclosure of which may constitute an unwarranted invasion of personal privacy. [Government Code § 6254(c)]. However, nothing in this section shall prevent a person who filed such an informal complaint from requesting and receiving informal complaint records pertaining to the individual, from authorizing or the Commission to provide such records to someone else, or from making such information public by filing a formal complaint.

• Records of investigations conducted by the Commission, which are compiled for the purposes of law enforcement or licensing purposes, are not subject to mandatory public disclosure, except as set forth in Government Code § 6254 (f). However, nothing in this section shall require records reflecting the analysis or conclusions of an investigator to be disclosed. [Government Code § 6254(f)].

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[17] This list does not include all CPRA exemptions. The complete text of the CPRA may be accessed through the following links:

• Circulation records maintained by the California State Archives for the purpose of identifying parties that viewed archival materials. [Government Code § 6254(j)].

• Documents prepared by or for the Commission that assess its vulnerability to terrorist attack or other criminal acts intended to disrupt the Agency's operations and that is for distribution or consideration in a closed session. [Government Code § 6254(aa)].

• Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. [Government Code § 6254(ab)].

DRAFT

ATTACHMENT 3

CPUC Improves Public Access to Documents

April 2012

The California Public Utilities Commission (CPUC) has improved and streamlined the process for the public to access documents received or generated by the CPUC.

The CPUC's regulations for public access to CPUC records, as outlined in General Order 66-C and in the California Public Records Act, were outdated and cumbersome, and often delayed rather than facilitated access to records.

By taking a fresh look at outdated laws that impede the CPUC's ability to share documents with the public it serves, the CPUC will provide the public with more immediate access to documents. In addition, by updating the CPUC's regulations governing public access to CPUC records; establishing procedures for more uniform processing of records requests and requests for confidential treatment of documents provided to the CPUC; and improving access to records on the CPUC's website, the CPUC can substantially streamline public access to records and information.

Improving Access to Documents

Improvements to the public records process include:

- `Instead of permitting a company to identify documents filed with the CPUC as confidential, in a manner that requires the CPUC to take explicit action to release the document, the CPUC will treat documents as public information unless a company can show why its document should be subject to a disclosure exemption.
- The CPUC will automatically disclose to the public and post on its website records of completed safety related investigations upon the conclusion of the CPUC's investigation, as opposed to requiring a vote of the CPUC in order to make such documents public.
- The CPUC will create a comprehensive online index that describes the records maintained by the CPUC and explains whether, and how, they may be located.
- The CPUC will create an online database of requests received by the CPUC to treat documents as confidential and the CPUC's decision regarding those requests.
- The CPUC will create an online safety portal to house safety related records and information. The portal will describe the CPUC's safety jurisdiction and inspection, investigation, and enforcement activities; and provide access to a wide range of safety related records received or generated by the CPUC.

Automatically Disclosing Documents

The safety related reports the CPUC intends to disclose to the public and post its website on a routine basis without requiring a vote of the CPUC, as was previously required, include:

- Reports of gas incidents required by federal regulations and CPUC rules;
- Quarterly summary reports summarizing all CPUC reportable and non-reportable gas leak-related incidents submitted to the CPUC;
- Annual safety reports required by federal regulations and CPUC rules;
- Pipeline strength testing failure reports required by federal regulations and CPUC;
- Change in Maximum Allowable Operating Pressure reports required by General Order 112-E;
- Mobile home park annual reports, inspection reports, and citation records related to the CPUC's enforcement of federal pipeline safety standards for mobile home park operators;
- Propane operator annual reports, inspection reports, and citation records related to the CPUC's enforcement of federal pipeline safety standards for propane operators; and,
- Applications submitted to the CPUC by railroads proposing changes to rail crossings.

Accessing Documents

The CPUC's Public Records Office responds to public records requests. Contact the Public Records Coordinator at:
CPUC Public Records Office
Legal Division
505 Van Ness Ave., San Francisco, CA 94102
Fax: 415-703-2262

The CPUC encourages, but does not require, requests for records to be made in writing. When requests are made orally, the CPUC may confirm the request in writing to ensure we have correctly understood your request and to expedite your request.

In order to help the CPUC provide records promptly, requesters should provide specific information about the records they seek. When a record cannot be identified by name, the requester should attempt to be as specific as possible in describing the record, based on its content. When a request is not sufficiently specific, CPUC staff will help the requester to identify the information, describe how the records are maintained and their physical location, and provide suggestions on how to overcome any practical barriers to disclosure.

When a copy of a record is requested the CPUC will, within 10 days of receipt of the request, provide the document or inform the requester of the status of the request.

The CPUC must set fees to be charged for making and furnishing copies of documents if a hard-copy is requested or is the only form of the document. The fees set by the CPUC are: 1)$.10 per page for standard copies; 2) $1 per page for color copies; 3) Actual costs for reproducing oversize documents and documents requiring special processing; 4) Actual postage charges; and, 5) Actual costs, if any, for retrieval and return of records held off-site in archives (currently, $7 per box). Reasonable clerical charges may be imposed if making copies requires special processing; *e.g.*, extensive or complex records or data compilation, redaction, programming, or certification. Such charges will be billed at a rate of $24 per hour per person, or $6 per quarter hour.