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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Improve Public Access to Public Records
Pursuant to the California Public
Records Act.

Rulemaking 14-11-001

**ADMINISTRATIVE LAW JUDGE RULING
NOTICING PHASE 2B WORKSHOP REGARDING
DEVELOPMENT OF CONFIDENTIAL MATRICES**

This ruling notices a Workshop in Rulemaking 14-11-001 on Thursday, March 29, 2018, 9:45 a.m., at the California Public Utilities Commission (CPUC or Commission) Auditorium, 505 Van Ness Ave., San Francisco, CA 94102. Phase 2B of this proceeding is focused on substantive claims of confidentiality for information submitted to the Commission. Parties submitted proposed confidential matrices in late 2017, which attempt to detail proposed confidential treatment of different types of information submitted to the Commission. The objective of this workshop is to provide context to substantive claims of confidentiality by hosting a panel discussion by information requestors and then a presentation of the proposed matrices by the matrix sponsors. The panel discussion will include on entities that request information by using the California Public Records Act and seek to make information public. The panel discussion will be followed by a presentation of the proposed claims of confidentiality in confidential matrices submitted by entities regulated by the

Commission. The proposed confidential matrices are available on the docket for this proceeding.

Workshop Agenda

- 9:45-10:00 AM: Opening Remarks, CPUC President Michael Picker
- 10:00-11:00 AM: *Panel Discussion: What types of information do different types of groups request by California Public Records Act requests?*
- Moderator: James Wheaton – Founder and Senior Counsel, First Amendment Project (<https://www.thefirstamendment.org/>)
- Panelist:
- Local Government Representative: Marc Zafferano – City Attorney, City of San Bruno
(https://www.sanbruno.ca.gov/gov/city_departments/city_attorney.htm)
- Community Group/Non-Profit Representative: Kimberly Pye – Attorney, Open Door Legal (<https://opendoorlegal.org/>)
- Media Representative: Sammy Roth – Journalist, Desert Sun
(<https://www.desertsun.com/staff/26671/sammy-roth/>) (appearance by video or telephone)
- 11:00-11:15 AM: **Break**
- 11:15 AM-12:15 PM: **Presentation of confidential matrices**
- Presentations will occur in the following sequence: California Water Association, Independent Storage Providers, the TNC Working Group, Communications Industry Coalition, and Joint Energy Utilities Working group. Each matrix sponsor has 15 minutes to present and then questions from the audience will be allowed for 15 minutes. The next presentation will start immediately after unless a short break is necessary.
- 12:15 PM-1:15 PM: **Lunch**
- 1:15 PM-3:00 PM: **Presentation of confidential matrices continued**
- 3:00 PM-3:30 PM: **Public Comment**

Details

Panel Discussion

This panel will address how different types of groups use the California Public Records Act. The panel will be moderated by James Wheaton, Founder and Senior Counsel, First Amendment Project. Mr. Wheaton is an expert on the California Public Records Act. The panelist will include a representative from a local government (Marc Zafferano, City Attorney, City of San Bruno), a community/non-profit group (Kimberly Pye, Open Door Legal), and a journalist (Sammy Roth, Desert Sun). Each of these organizations offer a unique perspective regarding the use of the California Public Records Act requests and why information should be made public.

Presentation of Confidential Matrices

Proposed confidential matrices were submitted by California Water Association, Independent Storage Providers, the TNC Working Group, Communications Industry Coalition, and the Joint Energy Utilities Working group. Each of these entities are requested to briefly summarize their respective proposed matrices. The summary should also address the following areas:

- Discuss why each section of the matrices were selected for inclusion in the matrix.
- For confidential claims related to critical infrastructure, identify what types of industry-specific infrastructure should be protected as critical infrastructure. In addition, discuss whether infrastructure visible to the public can be treated as confidential. Lastly, discuss how the physical location and attributes of infrastructure relates to its security per 6 U.S.C.A. § 131(3).
- For competitive disadvantage confidential claims, explain in what circumstances an entity with a state sanctioned monopoly is placed at a competitive disadvantage. Specifically, discuss whether it includes circumstances when services are solicited from third parties. Discuss whether an analysis of a competitive disadvantage confidential claim is

different for regulated entities, which do not have a monopoly, and participate in a competitive market place.

- Discuss whether it is appropriate for confidential matrices to include citations to attorney/client communications and attorney work product when sharing such information with the CPUC would presumably waive the privileges.
- Discuss whether invoices, quotes, and pricing information with third parties can qualify as trade secrets subject to confidentiality.

California Water Association, Independent Storage Providers, the TNC Working Group, Communications Industry Coalition, and the Joint Energy Utilities Working group are directed to notify the service list by **March 14, 2018**, to confirm whether the group will present at the workshop. Power point presentations may be used if the presentation is submitted to Administrative Law Judge Lirag by Monday, **March 26, 2018**. Other parties are encouraged to have questions regarding the proposed matrices prepared and may want to consider emailing them to the matrices sponsors in advance to facilitate a productive discussion (please copy the service list on such an e-mail).

IT IS SO RULED.

Dated March 8, 2018, at San Francisco, California.

 /s/ RAFAEL L. LIRAG
Rafael L. Lirag
Administrative Law Judge