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

Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and perform Long-Term Gas System Planning.

Rulemaking 20-01-007

**ADMINISTRATIVE LAW JUDGE'S RULING ON GAS UTILITIES' CONFIDENTIALITY CLAIMS CONCERNING CUSTOMER GAS CONSUMPTION AND INFRASTRUCTURE DATA AND ORDER REQUIRING RESUBMISSION OF DATA**

**Summary**

This Ruling addresses the confidentiality claims of Southern California Gas Company ("SoCalGas") and San Diego Gas & Electric Company ("SDG&E") (collectively known as "Sempra"), Pacific Gas and Electric Company ("PG&E"), and Southwest Gas Corporation ("Southwest Gas") concerning gas consumption data and infrastructure data these companies submitted in response to the Administrative Law Judge's (ALJ's) April 15, 2022 Ruling in this proceeding. A subsequent Ruling on September 21, 2022 required similar but more detailed information. For reasons explained in this Ruling, only customer gas consumption data submitted by these utilities should be granted confidential treatment. Accordingly, the Sempra companies and Southwest Gas are ordered to submit their information consistent with the orders contained herein.

**1. BACKGROUND**

The February 9, 2022 ALJ's Ruling Seeking Data from California's Gas Utilities, which was revised on March 1, 2022 and April 15, 2022 (hereinafter

referred to as the “April 15 Ruling”), ordered the California investor-owned gas utilities to submit data regarding their gas distribution systems and other related information. PG&E, Sempra, and Southwest Gas provided responses on May 20, 2022.

On the same day, PG&E and Sempra filed Motions for Leave to File Under Seal certain responsive data for which they requested confidential treatment (the “PG&E Motion” and “Sempra Motion,” respectively).<sup>1</sup> PG&E sought confidential treatment for certain “customer gas consumption information provided by census tract and zip code.” Sempra requested confidential treatment for “(1) sensitive gas system infrastructure information including risk/consequence possibilities, risk score, Transmission Integrity Management Program (TIMP) Score, units, and asset identifiers tied to location, and (2) aggregated customer demand information that does not meet the 15/15 Rule.” PG&E and Sempra submitted to Commission staff confidential versions of their responses to the April 15 Ruling and served redacted versions on the service list.

No party filed oppositions to the PG&E and Sempra Motions to File Under Seal. As these motions were unopposed, the ALJ granted the motions on June 15, 2022, without discussion of the underlying confidentiality claims. This Ruling supersedes the June 15, 2022 Ruling. It provides an analysis of those confidentiality claims, finding that only customer gas consumption data warrants confidential treatment. The requirements of this Ruling also apply to

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<sup>1</sup> Motion of PG&E (U39G) for Leave to File Under Seal Confidential Materials Filed in Response to Revised ALJ’s Ruling Seeking Data from California’s Gas Utilities; SoCalGas Company’s (U904G) and SDG&E Company’s (U902G) Joint Motion for Leave to File Under Seal Specifically Identified Portions of Their Responses to the Revised ALJ’s Ruling Seeking Data from California Gas Utilities.

Southwest Gas. While Southwest Gas did not submit a motion for confidentiality with the information it submitted, the information it provided was too general in nature and therefore not consistent with what the April 15 Ruling required. This Ruling directs Southwest Gas to submit its information with redactions as necessary consistent with this Ruling.

On September 21, 2022, the ALJs' Ruling Seeking Revised Data from California's Gas Utilities ("September 21 Ruling") ordered the same utilities to submit additional detailed information. A Ruling on October 4 extended the deadline for responses to November 4, 2022. The requirements of this Ruling apply to the responses to the September 21 Ruling.

## **2. DISCUSSION**

PG&E's and Sempra's confidentiality motions seek to protect three types of information: (1) customer gas consumption data; (2) customer counts; and (3) infrastructure data. Both PG&E<sup>2</sup> and Sempra<sup>3</sup> argue that Public Utilities (Pub. Util.) Code Sections 8380(b) and (d) and Commission Decision (D.) 14-05-016 protect the customer gas consumption data at issue.

Sempra redacted customer counts, but it failed to substantiate these redactions in its Motion.

Sempra also claims that the gas infrastructure data it submitted is confidential, while PG&E did not seek confidential treatment for this same information. Sempra argues the gas infrastructure data should be protected on several grounds: (a) the data is critical infrastructure information, critical energy infrastructure information, or otherwise protected under the Pipeline and Hazardous Materials Safety Administration ("PHMSA") guidelines; (b) the data

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<sup>2</sup> PG&E Motion, at 3 and Attachment p. 3.

<sup>3</sup> Sempra Motion, at 4-5.

constitutes a trade secret; and (c) the California Public Records Act balancing test weighs substantially in favor of withholding the information.

We discuss the claims in each Motion below.

**a. Customer Gas Consumption Data**

PG&E and Sempra argue that Pub. Util. Code Sections 8380 (b) & (d) protect individual electricity and gas consumption data. However, Section 8380 (f) allows for the disclosure of aggregated consumption data if information identifying individual customers has been removed.<sup>4</sup> In the case of electricity data, D.14-05-016 made clear that, for aggregated data to be considered anonymized, the Commission “follow[s] a 15/15 Rule for the public posting of data concerning commercial, industrial and agricultural data.”<sup>5</sup> A 15/15 Rule refers to keeping confidential any data set that includes fewer than 15 customers, or includes any single customer account reflecting more than 15 percent of that subtotal. PG&E and Sempra argue that selected parts of the consumption data that they submitted in response to the April 15 Ruling are not sufficiently anonymized per the 15/15 Rule and are confidential per Commission precedent

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<sup>4</sup> “(f) (1) This Section does not preclude an electrical corporation or gas corporation from using customer aggregate electrical or gas consumption data for analysis, reporting, or program management if all information has been removed regarding the individual identity of a customer. (2) This section does not preclude an electrical corporation or gas corporation from disclosing a customer’s electrical or gas consumption data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, provided that, for contracts entered into after January 1, 2011, the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer’s prior consent to that use. (3) Except as provided in subdivision (e), this Section does not preclude an electrical corporation or gas corporation from disclosing electrical or gas consumption data as required or permitted under state or federal law or by an order of the commission.” Cal. Pub. Util. § 8380(f).

<sup>5</sup> D.14-05-016 (May 5, 2014), at 118.

and statute.<sup>6</sup> Upon review of the redacted data, this Ruling finds that the gas consumption data redacted by PG&E and Sempra should be treated as confidential. This information shall remain under seal.

**b. Customer Counts**

Sempra redacted the number of customers in cases where the consumption data did not pass the 15/15 Rule. But, in its motion, Sempra did not explain why customer counts should be treated as confidential, discussing only gas consumption information. We reject Sempra's attempt to redact customer counts. Pub. Util. Code Sections 8380 (b) & (d) protect consumption data, and not records of the existence of customers. Thus, customer counts are deemed public information. Sempra shall resubmit this information unredacted.

**c. Gas Infrastructure Data**

Sempra is the only gas utility that claims gas infrastructure data is confidential. Specifically, Sempra requests confidential treatment for "gas system infrastructure information including risk/consequence probabilities, risk score, Transmission Integrity Management Program ("TIMP") Score, units, and asset identifiers tied to location."<sup>7</sup>

To support this confidentiality claim, Sempra makes several arguments: (1) this data is protected as Critical Infrastructure Information ("CII"); (2) the data is similar to data protected as Critical Energy Infrastructure Information ("CEII") under federal regulations, where the disclosure poses a public and pipeline safety risk; (3) engineering design values should be considered "restricted attributes" per PHMSA guidelines as they risk exposing the criticality and vulnerabilities of certain gas infrastructure; and finally, (4) certain

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<sup>6</sup> PG&E Motion at 3; Sempra Motion at 4-5.

<sup>7</sup> Sempra Motion at 2.

infrastructure data constitutes trade secrets, citing Gov't Code § 6254(k), Gov't Code § 6254.7(d), Cal. Evid. Code § 1060, and Cal. Civil Code §§ 3426 et seq<sup>8</sup>; and (5) the CPRA weighs in favor of withholding the information.

As a general matter, information customarily found in the public domain is not confidential.<sup>9</sup> Much of the location information at issue here is public: gas distribution pipeline locations are public knowledge, as the public is already aware that such pipelines run beneath streets in areas served by gas utilities. In fact, the Environmental Defense Fund and Google Earth Outreach performed a pilot study mapping pipeline leaks by simply driving city streets, where one of the locations was Pasadena, California, which is in SoCalGas territory.<sup>10</sup> On transmission pipelines, the National Pipeline Mapping System provides publicly available maps of their locations with a minimum accuracy of +/- 500 feet.<sup>11</sup> Where the information is publicly available, confidentiality protections are not appropriate.

#### **i. Critical Infrastructure Information**

This Ruling rejects Sempra's claim that the infrastructure data at issue constitutes protected CII. The Commission considered and rejected many of these same arguments in D.20-12-021. There, the Commission found that the federal disclosure limitations of CII do not apply to state agencies that obtain

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<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *See, e.g.*, D.20-012-021 at 72 (The statute, 6 U.S.C. § 671, defines "critical infrastructure information" as information "not customarily in the public domain and related to the security of critical infrastructure or protected systems ...").

<sup>10</sup> *See* Environmental Defense Fund, Los Angeles Area: Snapshot of natural gas leaks under city streets, available at <https://www.edf.org/climate/methanemaps/city-snapshots/los-angeles-area> (last visited September 13, 2022).

<sup>11</sup> *See* the National Pipeline Mapping System at <https://www.npms.phmsa.dot.gov/>.

information independent of CII procedures, which is the case here.<sup>12</sup> The Commission obtained the gas infrastructure information directly from the utilities and thus the federal rules regarding CII do not apply.

**ii. Critical Energy Infrastructure Information**

This Ruling rejects Sempra’s claim that the protections in CEII apply to Sempra’s infrastructure information at issue. CEII does not apply to information concerning only the “general location of the critical infrastructure,”<sup>13</sup> which is what Sempra submitted. None of the gas infrastructure data at issue here includes addresses or precise locations. The greatest level of geographic detail requested and provided is data by census tract and zip code. The average census tract in California houses more than 4,000 people across 17 square miles.<sup>14</sup> Given that only the “general location” of infrastructure was provided, Sempra’s CEII confidentiality claim lacks merit.

**iii. PHMSA Guidelines**

Sempra’s PHMSA argument also lacks merit because this regulatory framework only applies to disclosures made by PHMSA itself.<sup>15</sup> This Ruling rejects this claim.

**iv. Trade Secret Protections**

Sempra’s trade secret claim also fails. While Sempra cites to provisions concerning trade secrets protections, Gov’t Code § 6254(k),

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<sup>12</sup> D.20-012-021 at 30 (citing 6 U.S.C. § 673 (c)). Had the Commission received the subject information from a federal agency, certain restrictions may apply, but that is not the case here. See 6 U.S.C. § 673 (a) (1),

<sup>13</sup> 18 C.F.R. § 388.113 (c) (2) (iv).

<sup>14</sup> See total California census tracts, population and land area, US Census Bureau, <https://data.census.gov/>.

<sup>15</sup> See 81 Fed. Reg. 40763 (PHMSA would only release [these safety-sensitive elements] to covered persons with a need to know the information, as defined in 49 CFR part 15”).

Gov't Code § 6254.7 (d), Cal. Evid. Code § 1060, and Cal. Civil Code §§ 3426 et seq, it fails to substantiate this claim with particular facts demonstrating how the gas infrastructure data qualifies as a trade secret. Those who assert trade secret protections under Gov't Code Section 6254(k) bear the burden of explaining why the statutory protection applies.<sup>16</sup> Sempra fails to meet its burden.

To be a trade secret, data must belong to the asserting party, be secret, have “independent economic value” by virtue of being secret, and be deliberately kept secret.<sup>17</sup>

It is unclear from the Sempra Motion why this data would meet the third prong of the test above, having independent economic value from being secret.

As to the concern that making this information public could have adverse financial impacts, none of the public safety or privacy concerns that Sempra raised have merit. All of Sempra's various assertions that location disclosure “could potentially present a risk to public and pipeline safety” are unsupported and merely speculative: Sempra did not provide any evidence to support the notion that location confidentiality is safer; rather, risk scores relate to risk of leaks. It appears Sempra's only basis for confidential treatment here is that this information has independent economic value to Sempra by being kept secret. However, financial impact alone is not a sufficient basis for confidential protection: “private economic interest is an inadequate interest to claim in lieu of a public interest.”<sup>18</sup> Accordingly, this Ruling rejects Sempra's trade secret claims.

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<sup>16</sup> General Order (GO) 66-D, § 3.2 (b).

<sup>17</sup> Cal. Civ. § 3426 (d); *see also* D.20-12-021 at 110.

<sup>18</sup> GO 66-D, § 3.2 (b), *emphasis in original*, cited in D.20-012-021 at 76.

**v. Balancing Test**

Finally, the CPRA balancing test does not weigh in Sempra's favor. The Commission has recognized that public safety considerations may weigh in favor of protecting certain infrastructure information.<sup>19</sup> To determine when such protections are appropriate, the Commission applies the CRPA "balancing test" from Gov. Code Section 6255 (a).<sup>20</sup> Under the balancing test, the Commission weighs the public interest served by withholding the information against the public interest served by disclosure.<sup>21</sup> In order to withhold information under the CPRA balancing test, the Commission "must find 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.'"<sup>22</sup>

The public interest served by disclosure is significant. Disclosure of this information is critical to supporting stakeholder discussions regarding geographic variations in bases for maintaining or decommissioning gas infrastructure. Understanding the geographic differences in assessed pipeline risk, consequences, and other infrastructure-related information will facilitate meaningful debate and decision-making about which areas should be prioritized for decommissioning and which areas should be prioritized for pipeline maintenance. Being able to compare this information with other geographic data, such as the locations of disadvantaged communities, will support prioritization and goal setting by enabling identification of which attributes vary

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<sup>19</sup> See D.20-12-021 at 32.

<sup>20</sup> *Id.* at 33.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.* (quoting Gov. Code § 6255(a)).

together (*e.g.* whether assessed risk is typically higher in disadvantaged communities), which attributes do not seem related, and which vary most or least across communities. Further, disaggregated information at the census tract level will enable community members and local planners to identify data relating to their communities and allow researchers outside the Commission to conduct their own analyses.

The public interest in withholding the information chiefly concerns public safety. But given the low granularity of the subject information – *i.e.*, precise locations are not at issue – the risk to public safety associated with disclosure appears low. Thus, the public interest in disclosure substantially outweighs Sempra’s alleged private economic interest or the public interest served by withholding the infrastructure information at issue.

### **3. Conclusion**

Based on the foregoing analysis, this Ruling grants PG&E’s and Sempra’s Motions to file under seal the individual customer gas consumption data. This data may remain redacted. This Ruling denies all other confidentiality claims in Sempra’s Motion. PG&E, Sempra and Southwest Gas are directed to submit their responses to the September 21 Ruling in a manner consistent with the orders herein.

#### **IT IS RULED that:**

1. The gas consumption data redacted by Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company is confidential and will remain filed under seal.
2. Confidential treatment is not warranted for the customer count information redacted by Southern California Gas Company and San Diego

Gas & Electric Company, as that information is deemed public and these companies shall resubmit this information in unredacted form.

3. Confidential treatment is not warranted for the gas infrastructure data redacted by Southern California Gas Company and San Diego Gas & Electric Company, as that information is deemed public and these companies shall resubmit this information in unredacted form.

4. Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas & Electric Company and Southwest Gas Company are directed to submit their responses to the September 21 Ruling by November 4, 2022 in the manner prescribed in this Ruling.

5. This Ruling supersedes the Administrative Law Judge's June 15, 2022 Ruling on the Motions to File Under Seal of Pacific Gas and Electric Company, Southern California Gas Company and San Diego Gas & Electric Company.

Dated October 28, 2022, at San Francisco, CA.

/s/ KARL J. BEMESDERFER

Karl J. Bemesderfer  
Administrative Law Judge