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

The California Public Utilities Commission (CPUC) is taking steps to improve 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 The CPUC's regulations for public access to CPUC records, set forth in General Order (G.O.) 66-C, are outdated, cumbersome, and often delay rather than facilitate access to records.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. Refinements to the version of Draft G.O. 66-D previously circulated for public comment are necessary before we adopt new regulations for public access to records and requests for confidential treatment.

By taking a fresh look at policies that currently impede our ability to share documents with the public we serve, we will provide the public with more immediate access to accident reports and records of our safety investigations. In addition, by updating our 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.

Proposed improvements to the public records process include:

(1) We propose to 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, instead of permitting a company to identify documents filed with the CPUC as confidential, in a manner that requires the Commission to take explicit action to release the documents. We would require parties seeking confidential treatment to submit sufficient

information to enable us to determine whether confidential treatment is permitted and in the public interest. If we determine that a document is confidential, we must be able to demonstrate that the public interest is served by maintaining the confidentiality of the document.

(2) We propose to disclose CPUC records of completed safety-related investigations and audits on a routine basis, after any appropriate redactions, 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. We will create a list of safety-related records that will automatically be disclosed to the public and posted on our internet site, after appropriate redactions, upon the conclusion of the CPUC's investigation of safety-related incidents.

(3) We propose creation of a comprehensive online index that describes the records maintained by the CPUC, and explains whether, and how, they may be located.

(4) We propose the creation of industry, division, or subject matter matrices identifying classes of records as public or confidential to supplement the energy procurement records matrices adopted in Rulemaking (R.) 05-04-030.

(5) We propose an online database to include requests received by the CPUC to treat documents as confidential and the CPUC's responses to such requests.

(6) We will also create an online safety portal that will augment and house the safety-related records and information we currently provide. 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.

Through the changes proposed in this Resolution, we hope to improve the public's access to records that are not exempt under the CPRA or other state or federal law, 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 individuals, short-term market sensitivity, and critical infrastructure and system security.

The proposed index of CPUC records and related confidentiality determination database will take time to develop and refine. The proposed development of additional industry, division, or subject matter matrices of public and confidential information will also take time, since workshops and comment opportunities will be required. We will, therefore, defer adoption and implementation of comprehensive new regulations until further refinement of our proposed regulations and implementation resources. We will direct staff to proceed as promptly as practical with these workshops, and with the development of the databases and records management systems necessary for implementation of the procedures outlined in this Resolution.

In recognition that further refinements to our proposed rules are required, the adoption of a G.O. 66-D will await the results of pending workshops and additional comments on our proposed changes.

## 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] Rules that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.[3]

[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." *See also, International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (*International Federation*) (2007) 42 Cal.4th 319, 328-329.

[2] Cal. Const., Article 1, § 3(b)(2): "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest." *See*, *e.g.*, *Sonoma County Employee's Retirement Assn. v. Superior Court* (*SCERA*) (2011) 198 Cal.App.4th 986, 991-992.

[3] *Id*.

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."[4] 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.[5] The CPRA favors disclosure, and CPRA exemptions must be narrowly construed.[6] 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 disclosure, CPRA exemptions are permissive, not mandatory; they allow nondisclosure but do not prohibit disclosure.[7]

The CPRA authorizes state agencies, including the CPUC, to adopt regulations, requires them to adopt written guidelines for access to agency 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.[8] Resolution L-151, which adopted G.O. 66-C in 1974, noted that the Commission must establish written guidelines for accessibility of public records and that "Section 6253(b), as amended, provides:

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[4] 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." *See also*, *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370: "The Public Records Act, section 6250 *et seq*., was enacted in 1968 and provides that "every person has a right to inspect any public record, except as hereafter provided." (§ 6253, subd. (a).) We have explained that the act was adopted "for the explicit purpose of 'increasing freedom of information' by giving the public 'access to information in possession of public agencies.' " (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651 [citation omitted])."

[5] 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."

[6] Cal. Const., Article 1, § 3(b)(2), *supra*. *See, e.g., American Civil Liberties Union of Northern California v. Superior Court* (ACLU) (2011) 202 Cal.App.4th 55, 67; and *SCERA*, *supra*, 198 Cal.App.4th at 991-992.

[7] *See*, *e.g*., *CBS, Inc. v. Block*, *supra*, 42 Cal.3d at 652; *ACLU*, *supra*, 202 Cal. App. 4th at 67-68 fn. 3; Cal. Gov't. Code § 6253(e); *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 905-906; *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; D.05-04-030, at 8.

[8] Cal. Gov't. Code § 6253.4(b): "Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. …"

> (b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make such records accessible to the public."[9]

Resolution L-151 then stated that:

> General Order No. 66-B of this Commission predates the California Public Records Act and is, to some extent, inconsistent with that Act," and that "[i]n compliance with the legislative mandate and policy as expressed in Government Code Sections 6250-6260 … General Order No. 66-C … is adopted to supersede General Order No. 66-B.[10]

G.O. 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, G.O. 66-C is outdated and requires review. The nature of materials submitted to the CPUC and circumstances of the industries under the CPUC's jurisdiction have changed in many respects. The G.O. references provisions of law that have been amended or repealed[11] and CPUC positions that have been renamed,[12] and includes exemptions that do not match those in the CPRA.[13] Further, although intended to increase public access to CPUC records, the current G.O. 66-C has instead too often acted as an impediment to prompt disclosure of CPUC records.

By including § 583 as an example of statute making records confidential, G.O. 66-C § 2.2 makes it easy for utilities to claim confidentiality and often requires the CPUC to take explicit action to release information, even though § 583 does not in fact limit our disclosure of records.[14] Cal. Pub. Util. Code § 583 states that:

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[9] Resolution L-151 at 1.

[10] *Id*.

[11] Cal. Pub. Util. Code §§ 1903, 3709 [as referenced in General Order 66-C, § 1903 sets specific fees for copies of records; currently, § 1903 simply directs CPUC to fix fees to be charged for copies; § 3709 has been repealed.].

[12] G.O. 66-C §§ 4 and 4.2 refer to the "Secretary" of the CPUC, rather than to the "Executive Director," and § 3.3 refers to "Examiners," rather than to "Administrative Law Judges."

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

[14] G.O. 66-C § 2.2: "Records or information of a confidential nature furnished to, or obtained by the Commission (*See* P.U. Code §§583, 3709, 5228) [Footnote omitted.]"

> No information furnished to the commission by a public utility ... except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.[15]

Staff concerns that they 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.

Yet 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.)[16] 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.) Given the G.O. 66-C § 2.2 reference to § 583 as an example of a statute identifying

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[15] Cal. Pub. Util. Code § 5228 similarly makes it a misdemeanor for CPUC 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."

[16] *See also*, D.99-10-027 (1999) 1999 Cal. PUC LEXIS 748, at *2: "Public Utilities Code section 583 gives the Commission broad discretion to order confidential information provided by a utility made public. [Footnote omitted.] *Southern Cal. Edison Co. v. Westinghouse Elec. Corp.*, 892 F.2d 778, 783 (9th Cir. 1989). The information provided by Telmatch about how it solicited and billed its California customers is central to this investigation. [Footnote omitted.] In order to conduct a full and fair public hearing on the allegations set forth in the OII, public disclosure of the evidence supporting the allegations is necessary and in the public interest."

records of a confidential nature, G.O. 66-C often 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. Our experience shows that the G.O.'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 led in a substantial decrease in prompt public access to our records.

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

We affirm our intent to disclose records unless they are subject to a CPRA exemption or other provision of law prohibiting or limiting disclosure. We may reduce or eliminate the uncertainties associated with the current language of G.O. 66-C § 2.2 by making clear that Cal. Pub. Util. Code § 583 does not limit our authority to disclose information, and that utilities should not make automatic assertions of confidentiality and unsupported requests for confidential treatment based solely on references to that statute.

In what follows, we briefly address illustrative problems with two specific G.O. 66-C § 2.2 exemptions that delay disclosure or create confusion. First, G.O. 66-C § 2.2(a), which identifies 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 and audits. 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 CPUC investigations will have no adverse effect on our ability to carry out our responsibilities. We have, accordingly, issued dozens of resolutions authorizing the release of safety-related investigation records, after redacting privileged or personal information when appropriate.

By authorizing the disclosure of records of our completed safety-related investigations and audits on a routine basis, with any appropriate redactions, we may speed up our responses to records requests and discovery.[17] CPRA exemptions and other legal authority will still permit us to preserve the confidentiality of investigation and audit

[17] 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.

records, to the extent necessary, where our investigation or audit is not complete and in other circumstances where the need for confidentiality clearly outweighs the public interest that would be served by disclosure.

Second, G.O. 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 an unfair 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 that require us to balance the *public* interest in having access to information, against the *public* interest in nondisclosure.

Often, the interests of the regulated entity and the public may overlap: disclosure might both place a regulated company at an unfair business disadvantage, and also disrupt the workings of a competitive market, thus reducing competition, increasing utility costs, and ultimately increasing rates paid by utility customers. At other times, confidential treatment may lead to a lack of transparency that impairs the efficient functioning of a competitive market, and has the potential to result in increased costs to ratepayers.

To the extent a confidentiality assertion based on §2.2(b) seeks confidential treatment for information that falls within the scope of a specific CPRA exemption and/or privilege against disclosure, we can base our confidentiality determination on the exemption or privilege, and on our balancing of public interests for and against disclosure, without the need for a potentially conflicting CPUC-created exemption. The potential for disclosure to adversely affect the functioning of a competitive market and thus result in increased utility costs to be borne by ratepayers is a valid consideration, as is the potential for confidential treatment to impair the functioning of such markets.

This Resolution reflects our intent to replace G.O. 66-C with new regulations and guidelines that permit more efficient access to CPUC records in stricter conformity with the CPRA, 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**

All too often, 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, G.O. 96-B, General Rule 9, provides guidance to those filing advice letters, and G.O. 167 provides guidance to Generating Asset Owners. However, we have frequently failed to provide clear guidance regarding 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 G.O. 96-B, G.O. 167, and our practice in formal CPUC proceedings, we affirm that the party initially requesting confidential treatment bears the burden of demonstrating that such treatment is both authorized and appropriate. We therefore propose to require parties seeking confidential treatment to submit sufficient information to enable us to determine whether confidential treatment is permitted and in the public interest, and to permit secondary recipients to simply reference the submitting party's request for confidential treatment in any subsequent motion to file under seal or similar document.

The CPRA prohibits us from allowing others to make confidentiality determinations regarding records otherwise subject to disclosure under the Act.[18] We must make our own independent assessment as to whether records are subject to an exemption in the CPRA. If we assert an exemption that requires a balancing of the public interests for and against disclosure, we must be able to demonstrate the *public* interest served by maintaining the confidentiality of such records.

Unless the Cal. Pub. Util. Code itself, or other state or federal law, specifically directs 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 identified as confidential and furnished to the CPUC by utilities has generally been a ruling or order by the Commission, an ALJ, or an Assigned Commissioner, during the course of a CPUC hearing or proceeding. This is useful when a disclosure question falls within the scope of an open proceeding, but not in other situations.

The other common format for CPUC orders regarding disclosure of material identified as confidential by a utility has been a resolution addressing a specific 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.

Requirements for repetitive rulings regarding similar requests for confidential treatment have the potential to interfere with the smooth flow of information between regulated entities and the CPUC. Although we cannot allow a regulated entity to make confidentiality determinations that fall within our responsibilities, we have authority to adopt rules, such as the energy-procurement information matrices adopted in D.06-06-066, that specify classes of information as public, or confidential. When confidential treatment is sought for filings that include information identified as confidential in a matrix, the main question is whether the information falls within a

[18] Cal. Gov't. Code § 6253.3: "A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter."

confidential category, not whether that category of information is confidential. If a matrix identifies a class of information as public, our adoption of that matrix represents our decision that confidential treatment is not appropriate; no further review of that issue is necessary or appropriate. By adopting additional matrices, or similar broad determinations, we can limit the need for repetitive requests for confidential treatment, or disclosure.

We propose exploring additional ways to limit the need for repetitive confidential treatment determinations. It might be useful for us to adopt procedures through which we could thoroughly review the classes of records a regulated entity routinely submits to the CPUC, the entity's specific confidentiality concerns, and relevant CPRA exemptions, privileges, and other authority bearing on questions of disclosure and confidentiality, and then adopt entity-specific standard public and confidential status resolutions that could be maintained in a public database and provide a reference point for subsequent short-form public and confidential status designations. Entity-specific resolutions would allow recognition of the fact that different regulated entities within a class of entities may have differing concerns. In our experience, some entities are more concerned with the confidentiality of certain records or information than other similarly situated entities.

The standard resolutions would be adopted after ample notice and opportunity to comment, and would clearly identify classes of records routinely provided by the entity that are available to the public, and classes that are not available, or that are conditionally available, with reference to CPRA exemptions, privilege, and other bases for withholding records from the public. The entity requesting adoption of a standard resolution would, of course, bear the burden of proving confidential treatment is both permissible and in the public interest.

The standard public and confidential status resolution process might reduce the need for continual detailed reviews of requests for access to, or confidential treatment of, routinely filed records. The standard public and confidential status resolutions would in many ways serve a purpose similar to that served by initial motions for confidential treatment of routinely filed records that include information subject to D.06-06-066 matrices. D.08-04-023 Ordering Paragraph 9 states:

> An IOU or ESP need not seek confidentiality of regular compliance filings every time it files, but only the first time. The ESP or IOU may simply cite a prior ruling or motion when making subsequent compliance filings. Where the ESP or IOU makes a compliance filing that is not initially accompanied by a motion – *e.g.*, where the filing is made with the Energy Division – the ESP/IOU need only refer back to the initial showing it made to Energy Division in seeking confidentiality for subsequent filings of the same information.

One difference between the standard public and confidential status resolutions and the initial motions or rulings noted in D.08-04-023 is that the resolutions would include an initial determination regarding the public status of routinely filed records, as well as a determination regarding the confidential status of such records.

If an entity sought confidential treatment for records or information not identified as confidential in a standard resolution, a detailed request for confidential treatment would still be required.

Any procedure for the adoption of standard public and confidential status resolutions, or for designations of records as confidential pursuant to a CPUC matrix, would need to include opportunities for CPUC staff and others to comment or protest such resolutions and short-form status designations. Otherwise, we run the risk that new short-form designations would simply replace the current common shorthand references to information as being "confidential pursuant to Cal. Pub. Util. Code § 583 and G.O. 66-C," without providing an adequate forum for a reasoned review to determine whether records do in fact fall within a confidential classification.

The standard public and confidential status resolution process is but one option to be considered when we develop new rules to improve public access to our records without unduly interfering with the smooth flow of information to the CPUC.

We encourage staff, and others, to suggest new tools for improving the ease of public access to records that are not subject to 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 central indexes or databases of records, and of requests for confidential treatment and our responses to such requests, contributes to the uncertainty surrounding disclosure. There is no simple way for the public, regulated entities, other governmental entities, and the CPUC and its staff, to determine where records may be accessed, and whether we have already resolved a confidentiality issue in a formal proceeding, or in response to an advice letter filing.

Members of the public and others cannot easily determine whether we have previously decided that a class of records is 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, interested parties 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 status rulings, and the expenditure of unnecessary time revisiting matters already 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 therefore direct staff to begin developing such indexes or databases. Once such databases have been established, we may require those seeking confidential treatment to accompany any request for confidential treatment with a declaration attesting that they have reviewed all 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.

We may also be able utilize such databases in other ways as well. If we adopt procedures through which a regulated entity, or a group of regulated entities, may request that we adopt a standard public and confidential status resolution, tailored to the specific classes of records routinely submitted to the CPUC, such resolutions, and associated records, could be maintained in a public database. Database entries that reference CPRA exemptions and privileges familiar to courts and those who use records requests or subpoenas to seek records from the CPUC may limit our need to explain how our decisions to refrain from providing the public with access to records mesh with the CPRA and discovery laws. If subsequent short-form public or confidential status designations were linked to such standard resolutions in an accessible database, a person encountering the short-form confidential status designation could immediately learn the basis for the confidential designation, and thus be equipped to evaluate the designation by comparing the records description to the scope of confidential treatment authorized by the CPUC. Likewise, if a standard resolution identified routinely filed reports as open to the public, and each such report was accompanied by a short-form notice that the report was public, any ambiguity about the status of that document would be removed.[19]

The development of these indexes or databases, and of any standard formats or procedures for entity-specific public access and confidential status resolutions, 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, databases, or resolutions. We will instead instruct staff to work on these

[19] Currently, it is not always clear to the public or staff whether a report or other document submitted by a utility, but not identified by the utility as confidential, is considered confidential by the utility pursuant to its assumption that such documents remain confidential pursuant to Cal. Pub. Util. Code § 583 unless we have explicitly authorized their disclosure. We intend to return to the practice set forth in G.O. 66 and make clear that records and information furnished to the CPUC are presumed to be public, in the absence of an approved request for confidential treatment or authorized confidential status designation.

issues and establish such indexes, databases, and potential model standard public access and confidential status resolutions as soon as practical.

We order staff to hold a series of workshops during which stakeholders will discuss issues relating to public access, and confidentiality treatment of, CPUC records on an industry, division, or subject matter basis. We have attached to this Resolution a Workshop Preparation Questionnaire we hope will make such workshops more productive by providing a basis for discussions focused on details rather than abstract principles. We encourage regulated entities to enhance the value of these workshops by submitting Workshop Preparation Questionnaires that provide input regarding the types of reports and other records submitted to the CPUC by such entities, the specific types of reports or other records they believe must or should remain confidential, and the periods of time for which they believe confidential treatment is appropriate.

**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 is complete, 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 is still open, our resolutions usually state that disclosure is authorized once the investigation has been completed.

Provisionally, we see no reason to continue our current practice of addressing such routine requests through individual resolutions regarding the disclosure of records of our investigations of specific safety-related incidents or audits.[20] We propose to authorize disclosure of CPUC records of routine safety-related incident investigations, inspections, and audits, once those investigations, inspections, or audits, are completed, subject to any appropriate redactions. Redactions may include information subject to a statutory prohibition or privilege against disclosure; personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy; and information subject to other CPRA exemptions or laws limiting disclosure the CPUC finds are applicable and in the public interest to assert.

[20] G.O. 66-C does not designate inspection records as confidential; thus no disclosure resolutions are needed.

There is no statute forbidding disclosure of the records of safety investigations initiated by the CPUC, although portions of such records may be 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.[21] When responding to records requests or posting information on the internet, we often refrain from making available to the public detailed maps and schematic diagrams showing the location of specific utility regulator stations, valves, and similar facilities; the numerical element of street addresses included in work papers and other documents associated with the CPUC's investigation and/or a utility's internal audits; and certain employee information that may not contribute to an understanding of an incident. Disclosure of detailed schematic diagrams, facility location information, and unnecessary employee information may in some situations create a risk of harm to utility facilities, 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. Such records, or portions of records, may be exempt from disclosure in response to CPRA requests, pursuant to Cal. Gov't. Code §§ 6254(c), 6254(k), or other CPRA exemptions.

The scope of redactions may vary with the facts of a particular case. The objective reasonableness of privacy expectations varies with the context, as does the sensitivity of utility facility location information, which may be available to the public through other sources.[22] Assertions of the need to redact information alleged to raise security and privacy concerns in a particular context must be backed by evidence that disclosure would result in problems that are more than merely speculative, since there may be competing interests favoring disclosure.[23]

The workshops we direct staff to hold regarding safety-related records will provide us with ideas regarding the scope and nature of the confidential treatment to be generally accorded to certain types of safety-related records, or portions of records. The workshops should consider the best ways to balance competing interests for and against disclosure in individual contexts as well.

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[21] Cal. Pub. Util. Code § 315 bars the use of accident reports filed with the CPUC, and orders or recommendations of the CPUC, as evidence in actions for damages associated with accidents involving utility facilities and operations, but does not limit disclosure of such records.

[22] *See*, *e.g.*, *International Federation*, *supra*, 42 Cal.4th at 330-333; *Hill v. National Collegiate Athletic Ass'n.* (NCAA) (1994) 7 Cal.4th 1, 35-37: "in addition, customs, practices, and physical settings surrounding particular activities may create or inhibit reasonable expectations of privacy." (7 Cal.4th at 37). *See also*, *Pioneer Electronics* (*USA*), *Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370-376; *Tom v. City and County of San Francisco* (2004) 120 Cal.App.4th 674, 683-684; D.05-04-030 at 11-19; D.94-02-007; and Resolutions L-265, L-272, and L-332, *passim*.

[23] *See*, *e.g.*, *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 299-303.

As a reasonable first step towards providing the public with easier access to routine safety records, in a manner intended to be straightforward, efficient, and relatively easy to implement in the near term, we plan to routinely post standard sets of correspondence and CPUC reports relating to routine safety inspections, audits, investigations, and citations. We may choose to post additional records relating to such activities, with any redactions we deem appropriate.

Typically, audit and inspection records include the following types of correspondence and reports, at a minimum: (1) CPUC correspondence informing a regulated entity of audit or inspection findings, often accompanied by an audit or inspection report generated by the CPUC in a specific CPUC format or in a format created by another agency such as the United States Department of Transportation Pipeline and Hazardous Materials Administration (PHMSA); (2) regulated entity correspondence responding to CPUC audit or inspection reports, which may be accompanied by corrective action plans or similar material in compliance with CPUC directives; and (3) follow-up correspondence and reports.

We do not view these types of correspondence and reports as requiring confidential treatment, as a general rule, and believe that posting these documents will go a long way toward increasing the public understanding of the activities of the CPUC and the entities it regulates. Many such letters and related documents are already available on our internet site. We wish to avoid the potential for misunderstandings that might result if only one side of a story is posted, and for this reason plan on generally refraining from posting CPUC letters and reports informing a regulated entity of the CPUC's audit or inspection findings until the period for the entity's response to such letters and reports has lapsed, so that both the CPUC letters and reports and the regulated entity's responses may be posted at the same time.

While we understand that inspection and audit correspondence and reports of the type identified above may include personal information, such information is likely to be directly relevant to the purpose of the audit. The names of utility employees identified in such records include the individual sending the letter, individuals who received copies of the letter, individuals identified in the letter as persons from whom additional information may be requested, and, on occasion, individuals whose activities had a positive or negative effect on safety issues covered in the inspection or audit. We do not believe that such individuals generally have objectively reasonable expectations of privacy with regard to their identity and actions in the context of their performance of safety-related duties or their communications with the CPUC, and therefore will not routinely redact such names from posted records. At the same time, we recognize that detailed employee personnel records may be subject to greater privacy expectations, and will accordingly limit the posting of such records.

We believe it may not always be necessary to include certain personal or technical information in documents we choose to post on our internet site in order to give the

public the ability to review the actions of regulated entities and the CPUC, whether or not such information is exempt or privileged from disclosure in response to records requests or discovery. We intend to balance the public interest in safety records with the burdens associated with posting large volumes of records and the desirability of limiting unnecessary access to sensitive infrastructure and personal information. A key to this balancing will be our determination whether disclosure is necessary for, or significantly furthers, the public understanding of a safety-related matter and/or how the CPUC conducts the people's business. [24]

In some situations, inspection or audit records may include other confidential and/or privileged information. For this reason, we will permit regulated entities to notify us of concerns they may have regarding disclosure of specific information in such records, with the clear understanding that we expect such notifications to be rare exceptions rather than common occurrences, and that we will make the final decisions regarding confidential treatment. The safety-related records workshops will discuss such disclosure issues in more detail.

Correspondence and reports regarding safety-related investigations typically include, at a minimum, the following: (1) regulated entity notices to the CPUC of the occurrence of an incident, or notices provided by another regulatory or enforcement agency, with the initial notices often being followed by more detailed notices or correspondence at a later time; (2) data requests and responses during the course of the investigation; and (3) CPUC generated reports regarding the investigations. Although we intend to defer decisions regarding the posting of comprehensive records regarding each investigation until after our safety records workshops, we plan to begin posting CPUC generated reports regarding completed safety investigations, with any redactions we deem necessary to protect public safety or objectively reasonable privacy interests. We may also post incident reports filed with other agencies by entities that provide copies of such reports to the CPUC, unless the other agencies have designated the reports as confidential.

Correspondence regarding safety citations based on inspections, audits, or investigations generally includes, at a minimum: (1) CPUC notification that a citation has been issued; and (2) the regulated entity's response, if any to the CPUC. By routinely posting such notices and responses, once the period for the entity's response has elapsed, we can inform the public about our enforcement activities.

There are, of course, situations in which an inspection, investigation or audit is not routine, and/or where there is a concrete and definite prospect of substantial enforcement activity. In such situations, a more individualized resolution of disclosure issues may be necessary. For example, where our staff participates in a National Transportation Safety

[24] *See*, *e.g.*, *Commission on Peace Officer Standards & Training v. Superior Court, supra,* 42 Cal.4th at 295-300.

Board (NTSB) investigation of an accident involving utility facilities or is working with law enforcement agencies or other governmental entities, public disclosure of our investigation records, and/or of 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 may be both unlawful and inappropriate.

Various provisions of law, including Cal. Gov't. Code § 6254.5(e), permit us to share information in confidence with other governmental entities, and to receive information in confidence from such entities, without waiving our ability to assert CPRA exemptions as a basis for not providing such information in response to records requests, where the information is shared pursuant to confidentiality agreements or understandings.[25] Our public disclosure of records subject to such prohibitions and/or confidentiality agreements and understandings, would clearly be against the public interest because such disclosures may violate the law, undermine relationships of trust with other governmental entities, and adversely affect our ability to work cooperatively and effectively with such agencies. For these reasons, we stop short of mandating disclosure of records of all CPUC safety-related investigations and audits.

Regulated entities subject to our safety jurisdiction are often also subject to the jurisdiction of other state or federal agencies that may require them to file various reports relevant to the jurisdiction of such agencies. Entities may be required by law or regulation to provide the CPUC with a copy of such reports, or may be directed by the CPUC to do so. Often, such documents are public, and are available on the internet site of the other agencies, or in response to CPRA or Freedom of Information Act requests.

We are not required to track down records of other agencies in order to provide such records to those who request such records from us. Nonetheless, we may choose to make some such records available on our internet site, and/or inform the public where to seek such records.

For example, we receive a number of gas pipeline reports that gas utilities are required to submit to PHMSA, which does not consider them to be confidential. Such reports, or information from such reports, may be available directly from PHMSA. In some cases,

[25] Cal. Gov't. Code § 6254.5; "Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. … This section, however, shall not apply to disclosures: (a) Made pursuant to the Information Practices Act … or discovery proceedings. (b) Made through other 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. … (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…."

however, the California utility data may be 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 many of these reports on our internet site, or otherwise making such reports available, we may improve the public's understanding of California-specific gas safety issues, and limit the need for individual responses to requests seeking such records.

Our G.O. 112-E requires gas utilities to provide us with reports filed with PHMSA, and with additional reports similar but not identical to those required by PHMSA. With minor redactions, such reports can be posted on our internet site.

The safety-related reports we propose 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, and G.O. 112-E § 122.1. Such reports include written incident reports submitted on DOT Form PHMSA F7100.1 and PHMSA F7100.2 in compliance with G.O. 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 G.O. 112-E § 122.2(d), with any redactions we deem necessary to protect public safety or objectively reasonable privacy interests. Redactions may include 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.[26]

3. Annual reports required by 49 CFR Part 191 [§§ 191.11 and 191.17] and G.O. 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 G.O. 112-E § 124.1, with any redactions we deem necessary to protect public safety. Redactions may include detailed facility location information, such as the numerical portions of street addresses, maps, drawings, schematic diagrams, and similar information.

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

5. Proposed installation reports required by 49 CFR Part 191 [§191.11] and/or G.O. 112-E § 125.1, with any redactions we deem necessary to protect public safety. Redactions may include detailed facility location information, such as the numerical portions of street addresses, maps, drawings, or schematic diagrams, and similar information.

6. Strength testing failure reports required by 49 CFR Part 191 [191.15], and G.O. 112-E § 125.2.

7. Change in maximum allowable operating pressure reports required by G.O. 112-E § 126.

8. Reports of gas leaks or interruptions submitted on standard reporting form, "Report of Gas Leak or Interruption," CPUC File. No. 420 (G.O. 112-E Appendix B), after any redactions we deem necessary to protect public safety or objectively reasonable privacy interests. Redactions may include the same types of personal information redacted with respect to quarterly summary reports, and the detailed facility information redacted with respect to safety-related condition reports and proposed installation reports.

9. G.O. 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).[27]

10. 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*.

11. 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*.

[27] 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 exempt from disclosure pursuant to Cal. Gov't. Code § 6254(k).

We direct staff to create an informative safety information portal on our internet site, where information and records regarding our safety jurisdiction, and our implementation of our safety responsibilities, will be readily accessible to the public. This process need not be delayed until we revise or replace G.O. 66-C, since many of our safety-related records are not subject to any G.O. 66-C disclosure exemptions and/or procedural restrictions on immediate disclosure.

We consider the changes outlined in this Resolution, and in our Draft G.O. 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 we find applicable and in the public interest to assert. As noted earlier, we are deferring adoption of a G.O. 66-D until we hold workshops, receive comments, and further refine our proposed new rules.

## COMMENTS ON DRAFT RESOLUTION

The original Draft Resolution of the CPUC'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 April 25, 2012, by the California Water Association (CWA), Calpine, the City and County of San Francisco (CCSF), the Cogeneration Association of California (CAC), the Communications Industry Coalition (CIC), the Division of Ratepayer Advocates (DRA), the Independent Energy Producers Association (IEP), Pacific Gas and Electric and Southern California Edison (PG&E/SCE), and San Diego Gas and Electric Company and Southern California Gas Company (SDG&E/SCG).

## CWA

CWA comments that: (1) generic problems with the draft resolution and proposed G.O. 66-D justify limiting immediate implementation to gas safety matters, with broader implementation awaiting more thorough consideration in a rulemaking or workshop process; (2) documents submitted prior to the adoption of the new G.O. should remain subject to the rules and procedures of G.O. 66-C and § 583, and the utility concerned should be given timely notice of any request or intention to release such documents to the public or a third party and a fair opportunity to oppose such release; (3) confidential commercial or financial information should continue to be accorded confidential treatment similar to that provided in G.O. 66-C; (4) parties seeking confidential treatment should not be required to attest to having reviewed an index or database of confidential treatment requests until CPUC staff has made an adequate index or database available; (5) types of information recognized as confidential in the context of safety investigations should be protected in other contexts as well (*e.g.* 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 or laws limiting disclosure the CPUC finds applicable and in the public interest to assert); (6) documents submitted to DRA under a confidentiality claim in the context of a formal proceeding, including pre-filing notices, proposed applications, and related documents, and responses to DRA data requests during the course of a proceeding, should be treated as confidential absent a ruling to the contrary by the Presiding Officer or the CPUC, in order to avoid adding complexity to such proceedings; (7) the new G.O. should require CPUC staff to act within a specified reasonable time on any request for confidential treatment and to honor such requests until the internal review and appeal process has been completed, since, absent specific time limits, responses to requests for confidential treatment are likely to languish until a records request is received, at which point staff may give short shrift to confidentiality claims; and (8) the proposed limits on the duration of confidentiality are ambiguous and absurdly short; CWA proposes clarifying language and that the two-year default limit specified in the proposed G.O. be extended to five years.

**CALPINE**

Calpine comments that the Draft Resolution and proposed G.O. 66-D should be revised to: (1) require CPUC staff to timely respond to all requests for confidential treatment, since, if such staff determinations are delayed until a records request or subpoena is received, the records submitter will have no idea if the staff intends to disclose the records, and the specified time periods for responses to records requests or subpoenas may unfairly prejudice an entity's ability to seek review of a staff determination that confidential treatment is unwarranted; (2) prohibit public disclosure of information subject to a request for CPUC review of a staff determination unless and until the CPUC affirms the staff determination that confidential treatment is unwarranted, even where the staff determines that confidential treatment is unwarranted because a statute, CPUC decision, order, or ruling requires the that the information be open to the public, since there may be legitimate reasons for disagreement regarding whether a particular document falls within such a class of information or records, and permitting access while a review is pending eviscerates the purpose for such a review; and (3) prohibit the disclosure of information provided to staff as part of G.O.167 audits and investigations until the Generating Asset Owner (GAO) has a chance to review and comment on the draft audit report and make recommendations regarding confidentiality, and the CPUC issues a resolution approving staff's report and authorizing disclosure, in accord with current practice regarding G.O.167 audit reports.

**CCSF**

CCSF comments that: (1) the Draft Resolution and proposed G.O., with their provisions for indexes to help the public locate information, and for streamlined access to CPUC safety investigation records, go a long way toward bringing the CPUC into compliance with the CPRA principles, and replace a system in which those seeking records had to overcome a presumption of confidentiality with one that properly assumes records the

agency receives or generates are public unless the person seeking confidentiality meets the burden of proving the records are subject to a CPRA exemption or other basis for nondisclosure; (2) the CPUC should modify the proposed G.O. to make clear that it takes precedence over conflicting prior CPUC decisions, orders, and rulings, so that the currently proposed option of referencing prior CPUC decisions, orders, and rulings as a basis for confidential treatment does not result in a continuation of problems associated with such past decisions orders, and rulings; (3) the CPUC should apply the Draft Resolution and proposed G.O. retroactively to provide public access to the public records previously filed under seal on the basis of a claim the filer would be subject to an unfair business disadvantage, since the CPRA does not exempt such records as a class, but instead only exempts trade secret information, information regarding utility system development, and similar more limited types of information; (4) the CPUC's provision of an option to appeal staff records request responses to the CPUC may be inconsistent with the CPRA provision for prompt judicial review of agency responses to records requests (Cal. Gov't. Code §§ 6258, 6259), since, presumably, any court review of the CPUC's resolution would have to be by a writ to the court of appeal or Supreme Court pursuant to Cal. Pub. Util. Code § 1759,[28] the CPUC should consider providing for staff determinations with no right of appeal to the Commission, so that "an aggrieved party could file a writ in the superior court challenging the Commission's determination as to whether or not the document is a public record subject to disclosure"[29]; (5) the CPUC should expand the list of safety records to be routinely disclosed to include records of audits of gas operators' regional divisions; operation, maintenance and emergency plans; and integrity management programs, all other safety-related incident investigations, inspections, and audits, and correspondence related to each of these investigations and audits, once those investigations, inspections, or audits are completed; and (6) the CPUC should allow any person to file reply comments to the comments filed April 25, 2012.

## CAC

CAC comments that: (1) The California Constitution, CPRA, and other laws and regulations promoting public access "compel the Commission to support greater disclosure and transparency of the records of public utilities over redaction and secrecy; and the CPRA sets the foundational premise that confidential treatment of information is to be the narrow exception to the broader rule of full public access to information;"[30] (2) the Draft Resolution and proposed G.O. comply with these legal mandates, and, with

[28] Cal. Pub. Util. Code § 1759(a) states: "No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court."

[29] CCSF Comments at 8.

[30] CAC Comments at 2.

the revision proposed by CAC, should be adopted; (3) the CPUC should expand the automatic disclosure of energy procurement information, including Renewal Portfolio Standard (RPS) and non-RPS Power Purchase Agreements (PPAs), once the three-year period for confidential treatment of such PPAs set forth in the matrixes adopted in D.06-06-066 expires; (4) the CPUC should also automatically disclose, or ensure public awareness of the expiration of the confidential period, for the following energy procurement information, once period for confidential treatment of such PPAs set forth in the D.06-06-066 matrices expires: solicitation information for utility requests for offers (RFOs) and corresponding work papers and documents; all specific quantitative analyses involving scoring evaluations participating bids; all winning bid information from the RFOs, including levelized and/or escalated bid prices, transmission cost upgrade adders, wheeling charges, congestion costs, delivery characteristics, portfolio fit, 'dump energy' quantities and costs.

**CIC**

CIC Comments that: (1) the creation of a safety portal might be worth considering in a limited Draft Resolution; (2) G.O. 66-C is working well; (3) the Draft Resolution: (a) has identified no specific problems related to confidential documents and information communications providers submit to the CPUC; (b) would harm the CPUC's ability to conduct business in the communications arena, and would create significant uncertainties and potential competitive harm to communications providers; (c) misinterprets Article 1, § 3 of the California Constitution, by stating that the (3)(b) provision favoring public access to CPUC records applies to records utilities provide to the CPUC, as well as to records the CPUC generates; (d) misconstrues and misapplies § 583, in stating that the CPUC has authority to issue broad rules determining what classes of records are confidential; (e) unlawfully delegates to staff functions reserved exclusively to the Commission in § 583; and (f) should not be adopted because it could conflict with pending legislation which could significantly modify the law governing confidentiality of company information coming into the custody of the CPUC (Senate Bill (S.B.) 1000 (Yee) and Assembly Bill (A.B. 1541 (Dickinson)).

**DRA**

DRA comments that: (1) DRA supports the CPUC's fresh look at policies that impede the agency's ability to share documents with the public it serves; (2) DRA recommends that Draft Resolution be adopted, after being modified to clarify that: (a) the requesting party who owns or controls the confidential information bears the burden of demonstrating the basis and need for confidential treatment – not parties who request or use such information - who should be able to simply reference the initial request for confidential treatment when they request that such information be filed under seal; (b) confidentiality of employee-specific training and certification records should be determined on a case by case basis, with the public's interest in full disclosure being balanced against any employee privacy interest, since the Draft Resolution does not explain how disclosure of

such information poses a risk of harm or invasion of privacy, and employee training information may be relevant to incident investigations; (c) an online database and other tools for improving the ease of public access to records should be developed with stakeholder input and participation; and (d) a central database and form for requesting confidential treatment will ensure consist and uniform application of the new regulations; (3) the CPUC should identify minimum requirements for the databases discussed in the Draft Resolution; these should include, at a minimum: (a) an index of requests for confidential treatment, with a hyperlink to the actual request; a hyperlink to all protests; (c) the purpose of the information provided (*e.g.*, for a formal proceeding, compliance report, response to CPUC staff request); and (d) an explanation of the disposition of each request; and 6) the CPUC should create a central Docket Card type system for advice letters, which are currently maintained separately by each CPUC Division.

**IEP**

IEP comments that: (1) the principles stated in Draft Resolution L-436 are laudable: "'The CPUC is a public agency and the public should have the widest possible access to information we possess,' " 'The public has a constitutional right to access most government information,' " and "'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 people's business.' "[31]; (2) the Draft Resolution will not automatically result in widest possible public access because it does not address separate restrictions on access to energy procurement information imposed by D.06-06-066, as modified by D.07-05-032, which provide that to extent the matrix [of confidentiality rules for procurement data] contradicts G.O. 66-C, the matrix shall govern until the Commission changes or repeals G.O. 66-C; (3) the Draft Resolution's silence regarding its interaction with matrix and other confidentiality provisions of D.06-06-066 and its progeny "means that much of the information in procurement proceedings will remain out of the public's reach;"[32] (4) refinements to the energy procurement matrix should be considered because: (a) although D.06-06-066 warns against over-assertions of the need for confidentiality, there is practically no enforcement of this limit on confidentiality claims, and thus no consequences; (b) parties with access to information not available to the public have no incentive to complain, while those without access have no way to assess legitimacy of confidentiality assertions since they do not have access to the information kept from the public; and (c) information subject to confidential treatment for a limited period of time under a procurement records matrix should be automatically made available to the public and/or posted on the CPUC's internet site when the confidential period expires; and (5) the CPUC should establish procedures for Public Records Office review of confidentiality claims for materials falling under G.O. 66-D and the procurement matrix; enhance the online index so that as

[31] IEP Comments at 1, quoting Draft Resolution at 2, 3, and 6, respectively.

[32] IEP Comments at 2.

confidentiality protections expire, the documents become internet accessible; and ensure that confidentiality provisions do not deprive generation developers of information about where future generation will be needed and the types of operational characteristics required for system reliability and safety.

**PG&E/SCE**

PG&E/SCE comment that: (1) they support the CPUC's effort to streamline access to CPUC records, provide for consistent processing of records requests and requests for confidential treatment, and update outdated G.O. 66-C; (2) the CPUC cannot adopt rules providing that broad classes of information furnished by utilities are available to the public; Cal. Pub. Util. Code § 583 bars disclosure of any information furnished by a utility, whether or not confidential treatment is requested, in the absence of an order of the Commission, or the Commission or a Commissioner in a hearing or proceeding, unless a provision of the Cal. Pub. Util. Code expressly requires that certain such information be available to the public; and, although Cal. Pub. Util. Code § 701 gives the CPUC authority to do all things necessary and convenient in the exercise of its jurisdiction, this broad authority does not allow the CPUC to act contrary to express provisions of Cal. Pub. Util. Code § 583; (3) the CPUC could comply with the requirements of § 583 and further its intent to act in a manner consistent with the spirit of the CPRA - which favors public access to agency records – by having the Public Records Office (PRO) created by the Draft Resolution prepare a standing PRO resolution for each Commission meeting that would provide the status of each request for confidential treatment received by the CPUC during a given period, and otherwise authorize disclosure of public utility information submitted to the CPUC during that period, with this PRO resolution being similar to "the ALJ Resolution on Preliminary Categorization and Hearing Determinations for Recently Filed Formal Applications that currently appears as a regular item on the CPUC's business meeting agendas"[33]; and (4) PG&E/SCE support the creation of a safety portal and the CPUC's recognition of the importance of protecting information that could pose national security risks, and request that staff be directed to work with utilities to ensure appropriate redactions. PG&E/SCE provided a redlined version of Draft Resolution L-436 and its accompanying documents.

**SDG&E/SCG**

SDG&E/SCG comment that: (1) they support the CPUC's goal of improving public access to records subject to disclosure under the CPRA and developing clear and consistent rules for processing records requests and requests for the confidential treatment of records, (2) they concur that G.O. 66-C is outdated and cumbersome, but believe Draft G.O. 66-D requires modifications to correctly balance the public right of access to CPUC records with the public in protecting the confidentiality of certain data and avoid violations of Cal. Pub. Util. Code § 583; (3) the CPUC should first address

[33] PG&E/SCE Comments at 4.

safety records, and then address other issues through a second phase consisting of workshops "which would provide a valuable forum for all interested parties and Staff to analyze the possible consequences of releasing sensitive information, discuss what particular types of documents deserve confidential treatment, and determine how confidentiality requests and public disclosure should be handled. A similar process resulted in D.06-06-066, which governs the confidential treatment and public disclosure of electric procurement-related documents, and provides a helpful matrix to guide confidentiality determinations."[34]; (4) as an alternative, they support the procedural process proposed by PG&E/SCE; (5) they concur that the list of utility-generated safety-related reports listed in the Draft Resolution may be publicly disclosed, after appropriate redactions, without fear of releasing confidential and sensitive information, and suggest that the utilities and staff should discuss expanding this list in workshops; (6) safety-related records should only be disclosed once the documents are considered final and complete by the author (whether the CPUC, a utility, or third party), and the author has been given the opportunity, prior to submission, to redact any such privileged, sensitive or personal information, (7) G.O. 66-D should be modified to ensure confidential utility information is adequately protected; particularly, information of the types of commercially sensitive information currently protected by G.O. 66-C; 9) G.O. 66-D's confidentiality request review can be made less administratively burdensome by specifying "well-established exceptions" to public disclosure which would include: (a) commercially sensitive and proprietary business information; (b) customer information, the disclosure of which could intrude on a customer's privacy, or place the customer at unfair business disadvantage; (c) private individual information, the disclosure of which could intrude on individual privacy rights; and (d) critical energy infrastructure and system security information, the disclosure of which could pose a danger to public safety; (8) the Draft Resolution's proposed confidentiality determination process should be modified, since: (a) publicly releasing documents based on a staff denial of a request for confidential treatment violates Cal. Pub. Util. Code § 583; (b) permitting staff to determine whether confidential treatment is appropriate may inappropriately delegate CPUC authority; (c) requests for confidential treatment based on a submitter's assertion of a privilege should not be publicly posted, and such requests should only be required to provide general information regarding the records subject to the privilege assertion, and not the documents themselves; (d) utilities should be able to assert a privilege against self-incrimination as a basis for a request that the CPUC withhold such incriminating information from the public; (e) whistleblowers and individuals should not be exempted from the requirement that they provide the information required of others who seek confidential treatment; (f) all requests for records, and for confidential treatment, should be in writing; (g) several of the forms accompanying the Draft Resolution are confusing; (h) documents should not be disclosed while any review of an initial determination denying confidential treatment is pending; and (i) documents submitted to DRA as confidential during a proceedings should be

[34] SDG&E/SCG Comments at 3.

treated as confidential absent a ruling to the contrary by a presiding officer or the CPUC; (9) records disclosure rules should be amended to provide utilities with notice and an opportunity to object, prior to disclosure of utility records, and with notice of any inadvertent disclosures of confidential information; and that (10) records submitted to the Commission prior to the adoption of G.O. 66-D should not be subject to its provisions. SDG&E/SCG listed specific types of records they are especially concerned about, and a redlined version of Draft Resolution L-436 and the related documents.

## RESPONSE TO COMMENTS

We found the comments received regarding Draft Resolution L-436 useful and informative. Commenters raise several fundamental legal issues, practical procedural concerns and a variety of industry-specific concerns, and made a number or productive recommendations. Several commenters asserted that the Commission cannot, or should not, apply proposed Draft G.O. 66-D to information submitted to the Commission prior to its adoption. CCSF asks the CPUC to apply the Draft Resolution and proposed G.O. to records already in the CPUC's possession; CCSF asks the CPUC to override earlier orders that granted confidential treatment based on claims that disclosure would subject the submitter to an unfair business disadvantage, since the CPRA includes no such exemption.

### Workshops

In response to CWA and SDG&E/SCG comments recommending we hold workshops on issues raised in the Draft resolution, staff held a workshop on June 19, 2012, and indicated that additional workshops would be scheduled in the future. Although we scheduled two days of workshops, at the end of the first day the majority of attendees expressed the belief that a second day of workshops attended by all stakeholders might not be productive at this time. We hope that this initial workshop made clear the CPUC's intent to proceed with its reform of its records management processes on a careful and thoughtful basis, and that we did not plan on immediately making public all utility records received prior to the adoption of G.O. 66-D.

### Burdensome Requirements

CWA and SDG&E/SCG expressed concern that the proposed requirements for justifying confidential treatment are complicated, and could impede the free flow of information between utilities and staff during formal CPUC proceedings, and in response to data requests, and thus result in frequent litigation regarding disclosure or in less information being made readily available to the CPUC.

We acknowledge that our proposals would involve a period of adjustment to new procedures, and impose certain new burdens on regulated entities and staff. At the same time, we reiterate that some changes are necessary. We are considering changes to our

proposals that may involve somewhat more work initially, but that may allow subsequent streamlined public and confidential status designations that are tied to the initial rigorous analysis of the legal basis for, and the desirability of, any confidential treatment.

**Secondary References to Requests for Confidential Treatment**

DRA expressed the opinion that only the initial utility or other person or entity seeking confidential treatment should bear the burden of proving the existence of a legal basis and reason for confidentiality, and that DRA and other parties with access to such information who may wish to introduce such information under seal in a proceeding should be able to reference the utility's confidentiality claim, and not independently duplicate the entire process of justifying confidential treatment.

We modified Draft G.O. 66-D to provide this option.

**Cal. Pub. Util. Code § 1759**

CCSF comments that the CPUC's procedures allowing for appeals to the Commission of initial denials of access to CPUC records may result in CPUC decisions subject to Cal. Pub. Util. Code § 1759, which provides that only the California Supreme Court and courts of appeal can reverse or overrule CPUC decisions, or take action that interferes with the CPUC's implementation of its regulatory responsibilities, and that this limitation on review may be contrary to the provisions of the CPRA providing that the exclusive opportunity for review of agency determinations regarding access to records is through a superior court. CCSF recommends the CPUC delegate disclosure decisions to staff, with no internal right of appeal, so that aggrieved parties could go directly to superior court for a review of such determinations.

We agree that our procedures allowing for appeal to the Commission of initial denials of access to CPUC records may result in CPUC decisions subject to Cal. Pub. Util. Code § 1759. This situation is not new. G.O. 66-C § 3.4 currently provides that requesters initially denied access to CPUC records may appeal such denials to the full Commission. When such appeals are received, the Legal Division may prepare and circulate for public comment a draft resolution addressing the appeal, to be acted upon by the Commission at one of its regular business meetings. Final CPUC resolutions regarding such appeals are CPUC decisions subject to § 1759.

We believe our process for internal review of initial denials of access to records may reduce the probability that a denied requester or subpoenaing party will seek to litigate the disclosure denial in court, and thus require the CPUC to expend energy and resources on unproductive litigation. With regard to safety-incident investigation records, for example, CPUC staff often initially denies disclosure pursuant to the limits in G.O. 66-C § 2.2(a), and then circulates a draft resolution through which we authorize disclosure of the investigation records once the investigation is complete. Under CCSF's approach,

those initially denied access may go immediately to court, rather than wait for us to authorize disclosure, even though such authorization would be the rule, rather than the exception.

**Public Records Office Resolutions**

PG&E/SCE's comments were particularly useful in suggesting a new approach that could help us centralize our information regarding requests for confidential treatment, and also provide routine CPUC orders authorizing disclosure of information furnished by utilities with no request for confidential treatment. The vehicle proposed by PG&E/SCE is a standing PRO resolution that would be presented for the CPUC's consideration at each business meeting. PG&E/SCE suggest that such PRO resolutions identify requests for confidential treatment received in a given period, and any disposition thereof, without addressing each request in depth, and expressly authorize disclosure of all other information received from utilities during that period. PG&E/SCE believe we lack authority to adopt rules designating broad classes of records as public or authorizing disclosure of records furnished by utilities without a request for confidential treatment.

We are confident that we can adopt rules addressing broad disclosure issues, and providing that information furnished by utilities is public unless confidential treatment is requested and authorized. We recognize, however, that the proposed PRO resolutions identifying requests for confidential treatment and the status of such requests, and expressly authorizing disclosure of all information furnished by utilities for which confidential treatment is not requested, may be useful as an information management tool. Further, such resolutions would provide citable CPUC orders confirming our disclosure authorizations.

We modified Draft G.O. 66-D to include a standing PRO resolution process similar to that recommended by PG&E/SCE. We propose to explore in workshops or through comments whether there may be ways to expand this routine resolution process to address other issues.

The PRO resolutions proposed by PG&E/SCE have the limited purpose of identifying requests for confidential treatment received in a given period and their status, and creating a mechanism for the CPUC to order that all utility information for which confidential treatment was not requested is open to the public.

We are considering adopting procedures for two basic types of routine PRO resolutions: one which simply identifies requests for confidential treatment and the status of such requests and authorizes disclosure of records or information submitted without a request for confidential treatment; and one which provides a process through which the CPUC can routinely take action to address a variety of subjects including: (1) appeals of initial denials of access to records; (2) protests of confidentiality requests or confidential status designations; (3) protests of provisional rejections of requests for confidential treatment

or confidential status designations; (4) requests by CPUC staff, or other parties to CPUC proceedings, and others, for disclosure of or access to information identified as confidential in a matrix or other CPUC determination outside a formal CPUC proceeding; (5) requests for confidential treatment of information identified as public in a matrix or other CPUC determination, where a utility believes there are special circumstances warranting confidential treatment and is not seeking to undercut public access, extend an established confidentiality period, or otherwise delay disclosure; (6) requests for confidential treatment of record or information not identified as confidential in a CPUC matrix, decision, or ruling; and (7) other matters as required. Such resolutions will generally be circulated for public comment before we take action, pursuant to Cal. Pub. Util. Code § 311(g). Our planned workshops may include discussions of resolution details.

**Pre-Disclosure Notice of Requests and Subpoenas, and Opportunities to Object**

CWA and SDG&E/SCG state that the CPUC should modify its records disclosure procedures to give utilities notice of records requests and subpoenas seeking information they provided to the CPUC, an opportunity to object to disclosure, and an opportunity to appeal any rejection of their objections, prior to disclosure.

Practical considerations such as staffing constraints, the CPRA requirement that the CPUC respond to written records requests within ten days (absent specific circumstances allowing extra time), and the timelines for responses to subpoenas, preclude adoption of the extensive pre-disclosure notification process some recommend. We invite ideas for narrower notice options.

We may choose to post records requests and subpoenas for records on our internet site, as well as the requests for confidential treatment and public and confidential status designations we propose to disclose. This might allow us to provide notice regarding records requests and subpoenas seeking records subject to confidentiality claims without unrealistically burdening staff with a duty to contact regulated entities each time the CPUC receives a records request or subpoena that seeks records they may have been identified as confidential.

**Additional Matrices**

Several commenters, including SDG&E/SCG, cite with approval the D.06-06-066 matrices establishing classes of energy procurement records that are public, and classes which are confidential for up to three years, as an approach we may wish to use to develop the public and confidential indexes, databases, or guidelines proposed in Draft Resolution L-436. CAC and IEP suggest that the D.06-06-066 matrixes be refined, and that classes of procurement records be automatically disclosed once the confidential periods expires.

We agree that the public/confidential matrices developed in D.06-06-066 are a useful example of an approach that could enable us to streamline public access to records the CPUC determines must and/or should be public, and the process for handling requests for confidential treatment. Matrices may clarify what information is, or is not, public. At the same time, we note concerns expressed about our staff's ability to determine whether a request for confidential treatment seeks confidential treatment for information in a matrix class determined to be confidential, or for information in a class determined to be public.

Our recognition of the potential for different interpretations of laws, regulations and decisions requiring information to be public, or to be confidential, leads us to the conclusion that we should be as careful and detail-oriented as possible when developing new matrices, so that we can to the greatest extent practical reduce uncertainties on all sides regarding whether specific types of information submitted to, or generated by, the CPUC will be available to the public. It also leads us to conclude we must provide public opportunities for questioning whether specific information submitted to the CPUC falls within a particular matrix identified as confidential. Regulated entities want to be able to challenge staff determinations that information falls outside such a matrix, while others worry that entities may designate information as confidential pursuant to a matrix in a way that does not permit review of the validity of such designations.

Once detailed matrices are established, and our procedures for handling requests for confidential treatment are refined after additional workshops and comments, we would anticipate a lessening of fears that we will inappropriately disclose legitimately confidential information, where there is lawful basis and a public interest in refraining from making the information available.

To make any new matrices more clear and useful, we may include in the matrices themselves references to the legal authority for confidential treatment, or for disclosure. We may further our goal of clarifying what information is, or is not, public by requiring the cover page of reports filed routinely with the CPUC to include a statement as to the public or confidential status of the document, much as the cover page of the Fair Political Practices Commission Statement of Economic Interest Report ("Form 700") expressly states that "This is a Public Document." Cover page public or confidential status designations would reduce the possibility for confusion over the public or confidential status of a document.

**Advice Letter Database**

DRA comments that we should develop a database for advice letter filings that would provide the public and others with a central location for tracking advice letter filings, protests, responses to protests, and other actions associated with the myriad of advice letters received by the CPUC and currently maintained by individual divisions.

We agree. We will direct staff to develop such a database, which should to the extent practical incorporate electronic links permitting access to advice letter filings and related documents.

**Cal. Pub. Util. Code § 583**

CIC and PG&E/SCE express the belief that we do not have the legal authority to make decisions authorizing disclosure of classes of information furnished by utilities, and that Cal. Pub. Util. Code § 583 requires us to issue an order specifically authorizing any disclosure of records furnished by a utility. Calpine asserts that we cannot delegate to staff even the simplest task of determining if a request for confidential treatment seeks such treatment for records required by law, or by prior CPUC decision or order, to be public.

We feel the need to provide some initial thoughts about our legal authority to issue broad decisions regarding classes of information furnished by utilities available to the public absent case by case orders authorizing disclosure, and to delegate to staff the duty to determine whether specific records fall within a class of records we have determined to be public.

We disagree with those who contend that Cal. Pub. Util. Code § 583 bars us from issuing decisions authorizing disclosure of multiple classes of records. Nothing in § 583 states that the CPUC is precluded from issuing decisions regarding disclosure of information furnished by utilities on a class-wide basis, rather than a case by case basis. We decline to read such a limitation into the law.

The CPUC has long considered the issuance of a single order authorizing disclosure of multiple classes of information furnished by utilities to be consistent with Cal. Pub. Util. Code § 583, and relied on its staff to provide access to records subject to disclosure under CPUC guidelines.

In 1923, the CPUC [then the Railroad Commission] approved G.O. 66, which quoted former Cal. Pub. Util. Code § 28(d),[35] a statutory predecessor to § 583 with almost identical language, and stated that:

[35] G.O. 66 quoted former Cal. Pub. Util. Code § 28(d) as follows:

"No information furnished to the Commission by a public utility, except such matters as are specifically required to be open to public inspection by the provisions of this act, 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 officer or employee of the commission who, in violation of the provisions of this subjection, divulges any such information shall be guilty of a misdemeanor." (Emphasis in original.)

WHERAS, The Railroad Commission finds that the information hereinafter specified, furnished to the Commission by public utilities, should be open to public inspection;
IT IS HEREBY ORDERED that the following information furnished to the Commission by public utilities shall be open to public inspection:

1. Complaints and information furnished in connection therewith.
2. Applications and information furnished in connection therewith, unless at the time of filing the same the applicant specifically requests that such information or designated portions of thereof be not open to public inspection, whereupon the commission will take such action on such requests as it may deem expedient.
3. The annual reports of utilities.
4. All tariffs and rate schedules of public utilities.
5. All maps, profiles, station plats, drawings and inventories furnished by public utilities.
6. All information furnished in compliance with the general orders or resolutions of the Commission, unless at the time of filing the same the public utility specifically requests that such information or designated portions thereof be not open to public inspection, whereupon the Commission will take such action as it may deem expedient.

The CPUC recognized that Cal. Pub. Util. Code § 583's predecessor required Commission authorization for the public inspection of information furnished by utilities, and then proceeded expressly to provide such authorization through a specific order stating that certain classes of records furnished by utilities will be available to the public. G.O. 66 also established the presumption that an application and associated information, and information furnished in compliance with general orders or resolutions, is public: "unless at the time of filing the same the public utility specifically requests that such information or designated portions thereof be not open to public inspection, whereupon the Commission will take such action as it may deem expedient."

Amendments to G.O. 66 expanded the list of classes of information furnished to or generated by the CPUC that were available to the public. G.O. 66-B, adopted in 1967, lists the following 21 classes of records as open to public inspection:

1. Annual Reports and General Orders of the Commission.
2. Uniform Systems of Accounts.
3. Annual Reports filed by public utilities, including reports to stockholders and individual system reports of multi-system utilities.
4. All pleadings, briefs, exhibits, and transcripts in formal proceedings.
5. Material filed in compliance with Commission decisions.
6. All reports (except accident reports) filed with the Commission pursuant to any of the Commission's General Orders, unless at the time of filing request is made in writing that any part thereof be not open to public inspection and the Commission has so ordered. Accident reports are not open to public inspection.
7. Tariff schedules, including 'advice letters' and service area maps contained in such tariff schedules.
8. Resolutions and minutes of the Commission.
9. Contracts filed by utilities for services at other than filed rates, and filings of rate deviations.
10. Filed contacts between utilities.
11. Material or reports which have been declared by Commission action to be open to public inspection.
12. Grade crossing data:

    Name of street and location and number of crossing.

    Number and description of tracks at crossing.

    Description of existing crossing protection and date installed.

    Accident experience at crossing, *i.e.*, date and number of persons killed or injured only.
13. Special tariff docket applications filed pursuant to General Order No.109.
14. Powers of attorney and concurrences applicable in connection with transportation tariffs.
15. Copies of Interstate Commerce Commission filings, pleadings and copies of reports, orders, and certificates filed pursuant to the Interstate Commerce Act.
16. Annual Reports relating to hospital service filed by common carriers by rail pursuant to Labor Code Sec. 5208.

17. All applications for the issuance or transfer of permits or licenses filed under the Highway Carriers' Act, City Carriers' Act, Household Goods Carriers' Act, For-Hire Vessel Act, Motor Transportation Brokers' Act, and Passenger Charter Party Carriers' Act, and all permits, license, authorizations and notices in connection therewith.
18. Certificates of insurance pertaining to bodily injury and property damage insurance, including notices of cancellation and reinstatement, bodily injury and property damage liability bonds.
19. Certificates of cargo insurance, notices of cancellation and notices of reinstatement.
20. C.O.D. bonds, required by General Order No 84-F, including notices of cancellations and notices of reinstatement.
21. Subhaul lease bonds, required by General Order No. 102-A, including notices of cancellation and notices of reinstatement.

Copies of any of the above-described records could be obtained upon request to the Commission's Secretary. The records could also be inspected by any person at the Commission's offices in San Francisco or Los Angeles at any time during its regular business hours.

G.O. 66-B tightened the rules for confidential treatment by listing as public: "4. All pleadings, briefs, exhibits, and transcript in formal proceedings," Applications and information furnished in connection with applications were no longer subject to requests for confidential treatment to the extent such records were part of a formal proceeding file. G.O. 66-B further reinforced the principle that the CPUC can issue orders covering broad classes of records by including in the list of disclosable records: "11. Material or reports which have been declared by Commission action to be open to public inspection."

G.O.s 66 through 66-B governed disclosure of CPUC records from 1923 until 1974, when G.O. 66-B was replaced by G.O. 66-C. The latter was intended to provide greater public access to CPUC records in a manner consistent with the language and intent of the CPRA.

We are aware of no challenges to the CPUC's authority to adopt G.O.s 66 through 66-C based on the assertion that § 583 or its predecessors require an individual Commission or Commissioner order regarding disclosure of each document furnished by a utility, and do not permit the CPUC to issue a decision or adopt a rule designating multiple classes of records containing information furnished to the CPUC by public utilities as open to public inspection. Nor are we aware of challenges to the implicit delegation to staff set forth in the several iterations of G.O. 66. When a member of the public requests copies of records from the Commission's Secretary (a title replaced by "Executive Director"), or

comes to inspect public records at the CPUC's offices, staff is expected to, and does, determine if the requested records fall within a class of records designated as public by the CPUC. A separate order authorizing disclosure of records designated as public is not required.

As noted in Resolution M-4801 and D.02-02-049, and G.O. 96-B, and the more recent Safety Citation Resolution ALJ-274[36], we can delegate to staff responsibility to carry out its G.O.s and other directives, as long as we provide sufficient guidance, and can expect staff to exercise judgment and serve as more than a simple rubber stamp. Virtually every aspect of government involves the exercise of some degree of discretion, and without delegation, the wheels of government would grind to a halt.

The delegations to staff proposed in Draft G.O. 66-D are similar to those in mandated in M-4801 and D.02-02-049, and incorporated in G.O. 96-B. G.O. 96-B provides that if a utility advice letter filing complies with CPUC rules and policies, staff shall process the advice letter. If not, staff shall reject the advice letter. If more information is needed, staff may request it. If the matter requires processing through a Division Resolution, then staff is to suspend the advice letter. In each situation, we expect and rely on staff to make the factual evaluations necessary to determine how the advice letter is to be handled.

G.O. 96-B includes provisions for requests for confidential treatment, although it notes that confidentiality rulings would normally have already been made in the decision or proceeding requiring or authorizing the advice letter. Those protesting advice letter confidentiality claims are directed to try to resolve disclosure issues informally, with unresolved issues being referred to the relevant division. Staff is delegated the duty to try to resolve confidentiality issues informally, and to refer to the ALJ Division matters that cannot be so resolved.

[36] Resolution ALJ-274 at 4: "Existing law, such as Pub. Util. Code § 7, allows the Commission to delegate certain tasks to Commission Staff. The Commission may lawfully delegate to its Staff the performance of certain functions, including the investigation of facts preliminary to agency action and the assessment of specific penalties for certain types of violations. [Footnote omitted.] …" The delegated authority we approve today is designed to allow our Consumer Protection and Safety Division (CPSD) Staff inspectors, or such other Staff as may be designated by the Executive Director, to issue citations as part of their inspection duties in order to help ensure the safety of gas facilities and the utilities' operating practices."

This is essentially the same level of delegation included in Draft G.O. 66-D. If staff determines confidential treatment is appropriate, it is to proceed in a specified manner. If staff questions whether such treatment is appropriate, it is to seek more information. If staff believes confidential treatment is not appropriate, based on its analysis of applicable CPUC directives, then it is to so inform the party seeking such treatment, and notify that party of appeal options. Disclosure would be stayed while any appeal was pending, except in some situations where a matrix or other authority clearly requires disclosure, and the primary impact of the appeal might be to delay public access to information we have already clearly identified as public, and to serve as an improper collateral attack on our prior determination.

Comments objecting to Draft G.O. 66-D provisions authorizing division staff to respond to requests for confidential treatment make arguments similar to arguments made by those who unsuccessfully challenged our M-4801 and D.02-02-049 delegation of broad advice letter processing responsibility to staff.[37] M-4801 and D.02-02-049 withstood the delegation challenges presented a decade ago. We believe the delegation proposed currently would also survive appeal.

We agree with commenters who note that details are important, however, and that we should consider refinements to Draft G.O. 66-D to clarify delegation details and other issues. Since we are deferring adoption of Draft G.O. 66-D, and considering modifications that may reduce the number of requests for confidential treatment requiring detailed staff evaluations, we need not address delegation in further detail at this time. Suffice it to say that we have confidence that our staff can determine whether a document falls within one class of records or another.

PG&E /SCE suggest that the standing PRO resolutions they propose can overcome our inability to delegate to staff any authority to determine the merits of a confidentiality claim by serving as a Commission ratification of any proposed staff determinations regarding disclosure of information not identified by a regulated entity as confidential. We do not believe such ratification is essential since we have confidence in our ability to order that information furnished to the CPUC without a request for confidential treatment is presumed to be public, and to delegate to staff responsibility to determine whether

[37] D.02-02-049 at 1-2 states that: "Applicants assert that in Resolution M-4801 the Commission: (1) exceeds its jurisdiction by delegating discretionary authority to staff in absence of explicit statutory authorization; (2) violates due process requirements of the United States and California Constitutions by allowing suspension of advice letters without a hearing; (3) violates Public Utilities Code Section 455, which permits suspension of advice letters only pending a hearing concerning the propriety of the proposed tariff; (4) violates Public Utilities Code Section 455 by authorizing automatic extensions of initial suspensions; (5) exceeds its jurisdiction by ratifying previously unauthorized staff suspensions; (6) improperly asserts that authorizing staff to suspend advice letters is vital to the Commission's exercise of its regulatory authority; and (7) improperly ratifies staff's suspension of a specific advice letter, wherein the 120 day initial suspension period expired prior to the April 19, 2001 ratification date."

information falls within a class designated as public, a class designated as confidential, a class requiring additional information prior to such a determination, or a class requiring specific action by the Commission. Nonetheless, we view PRO resolutions as providing a useful procedure for us to affirm staff determinations and provide citable evidence of our disclosure authorizations.

## COMMENTS ON REVISED DRAFT RESOLUTION L-436

We modified the proposed Draft G.O. 66-D in minor respects in response to the initial comments, with the understanding that further amendments would be made following workshops. Revised Draft Resolution L-436 was circulated for comments on July 13, 2012. Comments were received from: CAC, CALTEL, CWA, CIC, Clean Coalition, DRA, PG&E, SDG&E/Sempra, SCE, and TURN.

### CAC

CAC comments that the CPUC should adopt Revised Draft G.O. 66-D and should require additional automatic disclosures pursuant to D.06-06-066, and other CPUC decisions. CAC also comments that: (1) under the dictates of D.06-06-066, data that is publicly available is not confidential; and "confidential" procurement information is "market sensitive" for a maximum of three years, after which it must be released; (2) implementation of D.06-06-066 limits on redactions and subsequent disclosure requirements would improve public access to, and transparency of, procurement data; (3) procurement contracts in staff-maintained databases should be automatically disclosed on a quarterly or semi-annual basis; and (4) additional classes of procurement data should be automatically disclosed once matrix limits on confidential treatment expire.

CAC believes we should hold workshops on energy-related records and consider modifying the energy-procurement matrices to limit mistaken redaction of information publicly available from other sources, such as "new and clean" generating facility heat rate information available in permit applications, and actual operating heat rates that are reported annually on FERC Form 1s. CAC provides examples of such over-redaction.

### CALTEL

CALTEL comments that: (1) although the CPUC has historically not received many CPRA requests for telecommunications records, the process proposed by the Draft Resolution will encourage carriers to use the CPRA to attempt to obtain financial and market share data and other confidential trade secrets of their competitors; (2) it is unlawful for the CPUC to disclose information subject to a CPRA exemption; (3) trade secrets are privileged and exempt from disclosure under the CPRA; (4) attorney work product exemptions cannot be overridden (5) G.O. 66-D should not be applied

retroactively; (6) the Revised Draft Resolution does not adequately protect submitting parties' confidentiality interests; (7) Rule 2.2.3.2 should be modified to require notice and an opportunity to be heard and seek judicial relief when a company's confidential information is subject to subpoena or other discovery; (8) parties should have an opportunity to withdraw documents or file an appeal following denial of confidentiality; (9) G.O. 66-C should remain in effect on an interim basis; (10) additional workshops should be held before CPUC procedures are modified; (11) the CPUC should develop an interim plan for maintaining the confidentiality of confidential information extracted by staff from confidential documents; and (12) the CPUC should review commonly recurring documents that include information considered confidential by CALTEL members and develop specific report templates or forms which protect legitimate confidentiality interests.

**CIC**

CIC comments that in the Revised Draft Resolution the CPUC: (1) misconstrues Cal. Pub. Util. Code § 583 to reverse the statutory presumption of confidentiality afforded to documents submitted by utilities to the CPUC; (2) repeals G.O. 66-C, a law observed by the CPUC for decades, and finds that the general order is illegal; (3) has the authority under Cal. Pub. Util. Code §§ 583 and 701 to observe a business disadvantage exemption even if such a provision is not included in the CPRA; (4) arbitrarily eliminates the protection of competitively-sensitive information in all contexts because providers can no longer rely upon well-established G.O. 66-C categories to request protective treatment; (5) adopts an unnecessary and convoluted process for seeking protection of materials in those situations in which a specific CPUC procedure has not been adopted, thus replacing the current streamlined process with a burdensome new system that is likely to chill providers' willingness to share documents and generate far more disputes over confidentiality issues than have occurred in the past; (6) harms communications providers, who operate in a highly competitive environment, by not including in G.O. 66-D the G.O. 66-C § 2.2(b) exemption for records, the disclosure of which would place companies at a competitive disadvantage; (7) proposes a PRO resolution process that is insufficiently fleshed out, and does not provide enough guidance as to whether staff, or the Commission, will handle requests for confidential treatment; (8) proposes an approach that does not survive a cost benefit analysis and meet the Cal. Pub. Util. Code § 321.1 requirement that the CPUC must find that the benefits of any new rules outweigh the burdens, since its procedures would apply to all requests for confidential treatment of information submitted to the CPUC, not just those subject to CPRA requests; and (9) improperly delegates confidentiality decisions to staff without adequate guidance to support that delegation. CIC states that it supports the iterative workshop process outlined in the Revised Draft Resolution and urges the CPUC to complete the process in its entirety before adopting a new G.O. in order to provide clear and consistent rules for all stakeholders; and that the establishment of workable rules to provide the public with greater access to safety-related documents should be the CPUC's first priority – CIC

recommends that a final resolution regarding safety-related documents be issued prior to addressing issues relating to public access and confidentiality requests for all other types of documents.

**CWA**

CWA comments that: (1) the Revised Draft Resolution includes significant improvements, such as the provision for a standing resolution at each CPUC business meeting that will (a) list all pending requests for confidential treatment of documents and (b) declare other recently received documents not accorded confidential status as public documents available for disclosure; (2) the Revised Draft Resolution does not address CWA's concerns about transitional issues, formal proceedings, and confidential commercial information: *e.g.*, it does not distinguish between information provided to, or created by, the CPUC, or ensure that proprietary information in confidential documents provided to the CPUC in the course of routine oversight and reporting would receive the same level of protection that such information would receive if filed in a formal proceedings where non-disclosure agreements or protective orders are available; (3) documents submitted prior to the adoption of new G.O. should remain subject to the procedures set by G.O. 66-C, and well-justified expectations that commercial and financial information will be held in confidence absent a specific contrary determination by the CPUC or a Commissioner in the course of proceeding; (4) the Revised Draft Resolution fails to respond to CWA's request for continuing protection for confidential commercial or market sensitive information; (5) the Revised Draft Resolution does not respond to CWA's concerns about the burdens and delays the new approach to confidentiality may impose on complex CPUC proceedings: such proceedings involve large volumes of data and tight procedural schedules; with the majority of discovery disputes between DRA and utilities being resolved with no ALJ or CPUC involvement. If every workpaper or response to a DRA data request is treated as potentially public, claims of confidentiality must be respected until a presiding officer, or the CPUC, has assessed the claim. The revised G.O. should provide that all documents submitted to DRA under a claim of confidentiality, in a formal proceeding, be treated as confidential absent a presiding officer or Commission ruling to the contrary; alternatively, and preferably, consideration of confidentiality issues regarding documents submitted in formal proceedings should be deferred until a request for such records is received from someone not subject to a non-disclosure agreement or protective order; and (6) in order to continue with what has been a constructive process toward developing an appropriate G.O.66-D, the CPUC should pursue the workshops indicated in the Revised Draft Resolution before adopting a new G.O.

**Clean Coalition**

The Clean Coalition comments that: (1) it strongly supports a presumption of transparency and non-confidentiality in all CPUC matters; (2) the Critical Infrastructure Information Act should not be inappropriately applied to hinder access to information: (a) infrastructure information should not be deemed confidential by default; (b) information released by other public agencies should be deemed as non-confidential unless a coordinated interagency policy changes deems otherwise; and (c), and information related to the location and nature of facilities does not merit confidentiality when such information is in plain view; (3) specific information relating to energy procurement should be addressed in more detail, providing transparency with respect to well-functioning markets; (4) while it is important to protect legitimately confidential information, the costs of denying public access must be weighed against the need for, and benefits of, confidentiality: where restrictions are warranted, the impact of such restrictions should be mitigated through anonymization and aggregation to allow public access to as much information as possible; and (5) the CPUC should hold workshops to develop matrices, similar to those adopted in D.06-06-066, for individual regulatory sectors, which could be incorporated into a final resolution, rather than adopt a broad definition for what is considered confidential.

**DRA**

DRA comments that: (1) the utilities' concerns that complex requirements impede the free flow of information is not persuasive since the new G.O. is intended to streamline confidentiality requests, since numerous provisions of the Cal. Pub. Util. Code impose a duty of full and complete disclosure on utilities and prohibit any delay in the disclosure of requested information, and since the form documents attached to the Draft Resolution provide simplified procedures for requesting confidential treatment; (2) the burden for establishing confidential treatment should remain with the party who propounds the information, as provided in the Revised Draft Resolution modification of Draft G.O. 66-D Rule 2.2.1.2, but this rule should be modified to delete the phrases "that was granted"…" and evidence the request was granted," and Rule 2.2.1.4 should be modified by the deletion of the phrase "subject to the granted request for confidential treatment" in order to provide those receiving information provided by a utility that identifies the information as confidential the opportunity to avoid the burden and delays that would be associated with the need to continue to file detailed requests for confidential treatment for such information up until the time the utility's request for confidential treatment is granted; (3) the proposal for a standing resolution at each CPUC meeting has merit and should be explored further, but DRA conditions its support on the removal of the language, "subject to the granted request for confidential treatment," from the final version of GO 66-D [Rules 2.2.1.2 and 2.2.1.4.]."; (4) DRA supports using the D.06-06-066 energy procurement matrices as a framework for developing public and confidential indexes, databases, or guidelines, but expresses concern that many of the

proposed topics involve complex policy considerations that need to be resolved through a formal record, and recommends that the CPUC open a rulemaking to resolve important policy questions material to the refinement of the D.06-06-066 matrices, as well as the development of other matrices; (5) DRA supports the recommendations of CAC and IEP that the CPUC revisit the D.06-06-066 energy procurement matrices, to address outdated policies and practices in that decision, such as the expiration dates and confidentiality periods for certain types of information, and whether utilities have an obligation to automatically disclose certain information upon the expiration of the confidentiality period, rather than keeping it confidential in perpetuity until such time that a CPRA request or action by CPUC staff dictates its release; (6) timeframes for staff to develop indexes and databases should be more clearly defined; and (7) the Revised Draft Resolution should include an ordering paragraph for the development of an advice letter "Docket Card" type database.

**PG&E**

PG&E comments that: (1) PG&E appreciates the CPUC's careful consideration of the parties' comments on the original Draft Resolution as well as at the June 19th workshop, reiterates its support of the CPUC's efforts to re-evaluate its implementation of the CPRA, and particularly appreciates the adoption of the PG&E and Southern California Edison Company's (SCE) joint recommendation for a standing PRO resolution; (2) PG&E supports the plan to convene further workshops to discuss both procedural and substantive issues pertaining to disclosure of confidential information, urges the CPUC to hold the Draft Resolution and G.O. in abeyance pending further discussions and revisions; (3) the legality of delegation may be closely linked to the level of detailed guidance that the CPUC provides to staff, and the adoption of a revised G.O., without absolute clarity about how the G.O. will be implemented, will only result in confusion among CPUC staff and practitioners; (4) the matrices of D.06-06-066 were the result of extensive and detailed discussions and arguments by the parties, and PG&E strongly opposes any efforts to re-visit that decision; and that (5) while PG&E is not opposed to continuing with this informal resolution process, PG&E urges the Commission to make sure that all parties are served with documents, including other people's comments, in a timely fashion.

**SDG&E/Sempra**

SDG&E/SoCalGas comment that they: (1) support the CPUC's goals of improving public access to records subject to disclosure under the CPRA, and developing clear and consistent rules for processing records requests and requests for confidential treatment; (2) support the Draft G.O. 66-D §§ 2.2.1.2 and 2.2.1.4 modifications that allow CPUC employees and other secondary users to reference claims made by others when proposing to use in CPUC proceedings records for which confidential treatment already been requested and granted, rather than requiring them to make independent, but duplicative,

claims; (3) Draft G.O. 66-D must be amended to protect confidential utility information, including information subject to "well-established exceptions" such as: (a) security-related information where disclosure is not required by statute independent of the CPRA and would jeopardize the safety of the public and/or the confidentiality, integrity, and availability of the information systems, infrastructure or operations of a utility, affiliate or subsidiary, or the furnishing entity; (b) proprietary business information, defined as any information designated as such by the owner or possessor of such information, without limitation, which, if publicly disclosed, would either: have an adverse impact on the effective functioning of a competitive market or place the furnishing entity, affiliate, parent or subsidiary, or third party which provides the information to the furnishing entity, at an unfair business disadvantage, and have the capacity to affect utility rates; (c) market-sensitive information, defined as information furnished to the CPUC with a request for confidential treatment, and not available to the public from other sources, where disclosure has the potential to materially affect rates to utility customers, the market price of any goods or services provided by the furnishing utility or third party, utility affiliate, or subsidiary, or the availability of products or services, (*e.g.* interstate capacity contract negotiation details); (d) personally identifiable information of employees of a utility or affiliate, where such employees have an objectively reasonable expectation that such information will be withheld from the public, and where disclosure would constitute an unreasonable invasion of personal privacy, with "personally identifiable information" having the same meaning as "personal information" in Cal. Civ. Code § 1798.3; and (e) personally-identifiable information of customers of a utility or affiliate, where the customer has not consented to disclosure, and where disclosure is not otherwise mandated by this subsection, and also utility usage data, billing and credit information, and similar customer information; (4) the proposed PRO resolution process is promising, and comports to California delegation law by requiring Commission ratification of staff disclosure determinations that are not ministerial determinations based on CPUC matrices, but requires further refinement in workshops; (5) the Revised Draft Resolution should be amended to: (a) include procedural protections for documents previously labeled confidential and submitted to the CPUC; (b) provide notice of unauthorized disclosures, so that the submitter may take steps to mitigate damages; (c) remove language exempting whistleblowers and individuals from being required to provide information justifying confidential treatment, so that utilities will have an opportunity argue for the confidentiality of any utility documents the whistleblower submits without the utility's consent; and (d) recognize that CPUC decisions, resolutions, and orders stating that particular information and reports are confidential (or must be disclosed) constitute "state law" for CPRA purposes and thus can be used to protect particular information or reports from public disclosure; and (6) look forward to additional industry and topic specific workshops, but believe the energy-related records workshop should not consider refining the existing D.06-06-066 matrices for energy-procurement-related records.

**SCE**

SCE reiterates and incorporates its comments on the initial draft of Resolution L-436, including those asserting that Cal. Pub. Util. Code § 583 bars the CPUC from adopting rules authorizing disclosure of broad classes of records, and additionally comments that the CPUC should make clear that it will not revisit the D.06-06-066 matrixes in the proposed workshops. SCE notes that the proceeding that resulted in those matrixes was a complex and extensive rulemaking that involved approximately 130 entities listed on the service list, over 260 filings, and 16 decisions. SCE notes that the proceeding took six years, and was finally closed in May, 2011. SCE does not believe there are any pressing energy procurement issues that must be addressed in the workshops and have not already been addressed in R.05-06-040, and that parties with concerns about matrices or issues from the Rulemaking should file a petition for modification in that Rulemaking.

**TURN**

TURN comments that: (1) the Draft Resolution and proposed G.O. should be amended to provide that a staff or CPUC determination that information is confidential, made outside the scope of a formal proceeding, should not preclude parties in subsequent proceedings from seeking a determination that the document in question does not warrant confidential treatment, since: (a) the CPRA does not affect the rights of litigants, including parties in administrative proceedings, to discovery under California law; (b) the CPUC, and parties to CPUC proceedings, cannot base objections to discovery on the existence of applicable CPRA exemptions; (c) TURN is unlikely to receive notice of, or be able to respond to, all non-proceeding requests for confidential treatment; and (d) without such opportunities, TURN and others may feel compelled to make protective challenges to request for confidential treatment; and (2) recommends the CPUC institute a rulemaking since further revisions to the proposed G.O. 66-D and the development of the confidentiality matrices may involve complex policy questions and contentious, multi-party discussions that may need to be resolved with a formal record.

**RESPONSE TO COMMENTS ON REVISED DRAFT RESOLUTION L-436**

**Laws Affecting Records Disclosure**

**Cal. Pub. Util. Code § 583**

SCE reiterates PG&E/SCE comments asserting that Cal. Pub. Util. Code § 583 bars the CPUC from issuing decisions adopting regulations providing that specified classes of records or information furnished by utilities, subsidiaries, or affiliates are available to the public, and that the agency can only authorize disclosure of information furnished by

utilities through specific orders.[38] PG&E/SCE suggest this process could be streamlined by adopting a process for standing PRO resolutions listing requests for confidential treatment received during a given time period and authorizing disclosure of anything submitted by a utility during that period for which confidential treatment was not requested.[39]

CIC asserts that the Revised Draft Resolution and proposed G.O. misconstrues § 583 to reverse what CIC views as a statutory presumption of confidentiality.[40]

As we noted in our response to the initial comments on Draft Resolution L-436, we believe CPUC decisions authorizing disclosure of broad classes of records are legal and appropriate. Cal. Pub. Util. Code § 583 does not include a substantive presumption of confidentiality, or require us to order disclosure one case or document at a time.

Section 583 states:

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

Section 583 does not include any language requiring that CPUC disclosure decisions be made on a case by case basis, or prohibiting the CPUC from issuing decisions that designate broad classes of records as being available to the public. Nor does § 583 prevent us from adopting the presumption that information furnished by utilities is public, unless the utility requests and is granted confidential treatment, as the CPUC did in 1923 when it adopted G.O. 1923 specifically to order that the public have access to broad classes of CPUC records furnished by utilities. We decline to read into the statute limits that do not exist.

If regulated entities had a problem with CPUC decisions authorizing automatic public access to broad classes of records furnished to the CPUC by utilities, or generated by the CPUC, one might have expected them to raise their concerns sometime between 1923, when G.O. 66 was adopted, and 1974, when G.O. 66-B was replaced by G.O. 66-C; or to

[38] SCE Comments on Revised Draft Resolution at 2, reiterating and incorporating PG&E/SCE Comments on Draft Resolution at 3-4. *See also*, CIC Comments on Draft Resolution at 5-6.

[39] PG&E/SCE Comments at 3-5.

[40] CIC Comments on Revised Draft Resolution at 1, 3-4.

have challenged the adoption in D.06-06-066 of matrices identifying classes of energy procurement records as public or as confidential for specified and limited periods of time. Since G.O. 66 expressly provided that applications and other information filed by utilities would be public unless at the time of filing the utility requested confidential treatment (which the CPUC could grant if appropriate), one might have expected utilities to have objected to the CPUC's adoption of a presumption of public status while that G.O. was in effect.

D.06-06-066 adopted matrices in order to streamline determinations regarding the public or confidential status of a broad range of classes of energy procurement records provided to the CPUC, thus reducing the need for case by case determinations. D.06-06-066 clearly explains that § 583 is not an independent substantive barrier to disclosure and does not create a presumption of confidentiality:

> As both courts and this Commission have stated in the past (and as reiterated in the OIR), § 583 does not require the Commission to afford confidential treatment to data that does not satisfy substantive requirements for such treatment created by other statutes and rules. This is important because several of the parties claim that there is a legal presumption of confidentiality for all data. If this were true, the Commission would be legally obligated to protect whole swaths of information without first considering whether the information meets relevant legal tests for trade secrets, privilege, or other established provisions protecting data from disclosure.[41]…
>
> As we stated in the OIR, § 583 does not limit our ability to disclose information. As the United States Court of Appeals for the Ninth District noted in *Southern California Edison Company v. Westinghouse Electric Corporation* (9th Cir. 1989) 892 F.2d 778, 783: "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." Similarly, *In Re Southern California Edison Company* [Mohave Coal Plant Accident], D.91-12-019, 42 CPUC 2d 298, 300 (1991), states that § 583 "assures that staff will not disclose information received from regulated utilities unless that disclosure is in the context of a Commission proceeding or is otherwise ordered by the Commission" but does not limit our broad discretion to disclose information.[42]

[41] D.06-06-066, as modified by D.07-05-032, at 27.

[42] *Id*. at 28.

D.91-12-019 notes: "Section 583 does not create for a utility any privileges of nondisclosure. Nor does it designate any specific types of documents as confidential. To justify an assertion that certain documents cannot be disclosed, the utility must derive its support from other parts of the law." 42 CPUC 2d at 301. That decision later states: "Further, simply citing Section 583 does not establish the confidentiality of a document. Section 583 does not discuss or define confidentiality, nor establish any privileges. In order to protect documents that would otherwise be released pursuant to Section 583, the utility must find its authority or relevant policy elsewhere." 42 CPUC 2d at 302-03.[43]

> Thus, the mere fact that a party invokes § 583 says nothing about whether a document contains trade secrets, is privileged, or is otherwise entitled to protection. The statute allows a party to submit information about which it has a concern under seal in the first instance, so that its claims about confidentiality may be tested. In determining whether the claims have merit, the Commission does not look to any provision in § 583, because nothing in the statute addresses what types of records should and should not be confidential. Other provisions – the trade secret law, the Evidence Code provisions regarding attorney-client and other privileges, confidentiality statutes such as § 454.5(g), GO 66-C as currently written - provide the substantive theories for asserting confidentiality.[44]

We believe the D.06-06-066 matrices provide a useful example of our exercise of our authority under Cal. Pub. Util. Code §§ 583 and 701 to adopt rules regarding public access to broad classes of records, and that D.06-06-066 properly identifies the limits of § 583 as a barrier to disclosure. Many commenters point to the D.06-06-066 matrices as a useful model for future CPUC confidentiality determinations, without challenging our authority to adopt such broad disclosure rules.

A determination that Cal. Pub. Util. Code § 583 establishes a substantive barrier to the CPUC's disclosure of records, or to the establishment of regulations or matrices that identify classes of records as public or confidential, would conflict with numerous prior CPUC decisions to the contrary, including D.06-06-066, and numerous resolutions in which we note that neither § 583 nor G.O. 66-C provides substantive barrier to disclosure, and that both § 583 and G.O. 66-C recognize the Commission's ability to authorize disclosure of information identified by a utility or the CPUC as confidential.[45] We choose not to reverse our own historical interpretations of § 583 at this time.

[43] *Id*. at 28-29, fn. 33.

[44] *Id*. at 29.

[45] *See, e.g.*, L-240, L-272, L-332, L-430.

Such a determination would at times also place us in the intellectually awkward position of asserting that we *cannot* disclose information subject to § 583 because we *have not decided to disclose the information*. This was a logical weakness pointed out by the Court in *Westinghouse*, *supra,* 892 Fed.2d at 783*:*

> Section 1040 of the California Evidence Code creates a qualified privilege against agency disclosure of "official information," which is defined as "information acquired in confidence by a public employee in the course of his or her duty and not open or, or officially disclosed, to the public …" Cal. Evid. Code § § 1040(a). Subsection (b)(1) provides that an agency may refuse such information in the following circumstances:
>
> (1) [When] [D]isclosure is forbidden by an act of the Congress of the United States or a statute of this state ….
>
> The CPUC argues, and the district court ruled, that Edison's quarterly reports are privileged under subsection (b)(1) because "a statute of this state" - § 583 of the California Public Utilities Code - forbids their disclosure. …
>
> As we read § 583, it is not a state statute that "forbids" disclosure within the meaning of § 1040(b)(1). On its face, § 583 does not forbid the disclosure of any information furnished to the CPUC by utilities. Rather, it 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. Moreover, even in the absence of an order by the commission, the information may be made public by an individual commissioner during a commission hearing.
>
> Although conceding that § 583 gives it complete discretion to order disclosure of official information, the CPUC argues that subsection (b)(1) should nonetheless apply in this case, because disclosure of Edison's reports will discourage utilities from sharing information with the commission. …

Although § 583 may not provide a solid substantive basis for nondisclosure, it still provides the CPUC with useful flexibility in certain situations. For one thing, in cases where there is no relevant existing matrix or decision governing disclosure of a specific class of records or set of documents, § 583 may serve as a basis for refraining from disclosing records furnished by utilities until the Commission, or a Commission or Commission during the course of a hearing or proceeding, has had an opportunity to

review and evaluate requested records, and any associated confidentiality claims, to determine whether they include information exempt from disclosure under the CPRA or subject to a privilege or provision of law limiting disclosure in response to discovery.[46] Section 583 is also helpful when we need to bridge the time gap between the CPRA, which requires written responses to written records requests within 10 days, with an optional fourteen day extension in limited circumstances, and Cal. Pub. Util. Code § 311(g), which requires that most CPUC decisions be circulated for public comments at least 30 days before the Commission acts on the draft decision.

This is a problem commonly faced by staff when responding to requests for audit or investigation records designated by G.O. 66-C § 2.2(a) as confidential in the absence of a CPUC order authorizing disclosure. Staff often must deny such requests, and then circulate for public comment a draft resolution authorizing disclosure, even though we have for years routinely authorized disclosure once an investigation is complete. The resolution process takes longer than the 10 days allowed for most records request responses. We think we would be better served by a revision of our investigation records disclosure rules than by a routine reliance on § 583 and G.O. 66-C § 2.2.(a) as the basis for delaying disclosure of investigation records until we have issued a resolution authorizing disclosure of those specific records.

For the above reasons, we believe the Revised Draft Resolution and proposed G.O. are fully consistent with Cal. Pub. Util. Code § 583.

## CPRA

### CPRA Exemptions

CALTEL contends that the CPUC does not have authority to release information subject to CPRA exemptions. CALTEL states that the statutory provisions barring state agencies from allowing others to control disclosure determinations, allowing agencies to respond more quickly than required to records requests, providing that records are open to public inspection after deletion of portions that are exempted by law, requiring agencies to respond to most records requests within 10 days, or allowing agencies to disclose their administrative files unless another disclosure limitation applies, do not authorize the CPUC to override CPRA exemptions, and that the existence of an exemption means that disclosure is prohibited by law. CALTEL argues that *Black Panther Party v. Kehoe*, *supra*, stands for the proposition that an agency cannot selectively disclose information to select segments of the public, and does not provide authority for an agency to refrain

[46] *See* D.06-06-066, as modified by D.07-05-032, at 28: "Thus, § 583 sets out the first procedural step for a party claiming confidentiality. That party has the right to submit relevant material under seal when it first submits it to the Commission. However, the material is not entitled to remain confidential forever based on the invocation of § 583. Rather, the affected party must accompany its records with a motion establishing the legal and factual basis for confidential treatment."

from asserting CPRA exemptions. CALTEL also argues that *Re San Diego Gas and Electric Company* (1993) 49 Cal. P.U.C. 2d 241, cited by the CPUC for "its extraordinary assertion of Commission authority to ignore statutory exemptions from disclosure under the CPRA," is a decision of the CPUC itself, which cannot bestow upon itself administratively the authority to ignore exemptions created by statute."[47]

CALTEL is wrong.[48] Unless an agency's assertion of a CPRA exemption is required because disclosure of requested records is expressly prohibited by law, an agency's assertion of CPRA exemptions is discretionary rather than mandatory.

The recent case of *Marken v. Santa Monica-Malibu Unified School District* (2012) 202 Cal. App.4th 1250, 1261-1262 (*rev. denied*, 2012 Cal. LEXIS 4200 (May 9, 2012)), provides a timely confirmation of the CPUC's interpretation of the CPRA. Plaintiff sought a writ of mandate barring a school district from disclosing to the public certain records regarding its investigation of the plaintiff teacher's behavior toward students. The investigation records exonerated plaintiff from most of the charges leading to the investigation, but not from all charges. Plaintiff contended that the agency's decision to disclose an investigation report and letter of reprimand was not authorized under the CPRA because the complaint was neither substantial nor well founded, and that the intended disclosure of his confidential personnel files would violate his rights of privacy protected by the Cal. Const., Cal. Gov't. Code and Cal. Educ. Code. The Court disagreed:

> While "mindful of the right of individuals to privacy" (§ 6250), the Legislature has declared "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (*Ibid*.) Thus, the CPRA generally provides "every person has a right to inspect any public record …" (§ 6253, subd. (a)), "[e]xcept with respect to public records exempt from disclosure by express provisions of law … ." (§ 6253, subd. (b).) Section 6254, in turn, lists 29 categories of documents exempt from the requirement of public disclosure, many of which are designed to protect individual privacy, including, "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." (§ 6254, subd. (c); *see also* § 6254, subd. (k) [exempting "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law"].) [Footnote omitted.] Section 6255, subdivision (a), also permits a public agency to

[47] CALTEL Comments on Revised Draft Resolution at 12.

[48] We agree with CALTEL's statement that *Black Panther Party*, *supra*, stands for the proposition that once an agency discloses information to one member of the public, it must generally disclose the same information to any other member of the public upon request, but note that the case also stands for the proposition CALTEL contests.

> withhold other records if it can demonstrate "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."
>
> These statutory exemptions from mandatory disclosure under the CPRA must be narrowly construed. Cal. Const., art. I, § 3, subd. (b)(2) ["[a] statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access"]; see *Sonoma County Employees' Retirement Assn. v. Superior Court*, *supra*, 198 Cal.App.4th at p. 992.) Moreover, the exemptions from disclosure provided by section 6254 are permissive, not mandatory: They allow nondisclosure but do not prohibit disclosure. (*CBS, Inc. v. Block*, *supra*, 42 Cal.3d at p. 652; *Register Div. of Freedom Newspapers, Inc*. v. *County of Orange* (1984) 158 Cal.App.3d 893, 905 … ; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 656 … ; see 68 Ops.Cal.Atty.Gen. 73 (1985).) Indeed, the penultimate sentence of section 6254 provides, "Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law." (*See also* § 6253, subd. (e) ["[e]xcept as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter"].)

The *Marken* court found that an agency may have no discretion to disclose certain classes of information, where disclosure is expressly prohibited by law.[49] We agree. Where it is clear that disclosure of a class of information is expressly prohibited by law, the CPUC would assert, in response to a records request seeking such information, the Cal. Gov't. Code § 6254(k) exemption for: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law." In response to subpoenas and other discovery seeking such information, the CPUC would assert the absolute official information privilege set forth in Cal. Evid. Code § 1040(b)(1).

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[49] 202 Cal.App.4th at 1266-67, fn. 12: "As discussed, the exemptions from disclosure provided by section 6254 are permissive, not mandatory. However, public agencies have no discretion to disclose certain categories of documents, for example, personnel records of peace officers as defined by Penal Code sections 832.7 and 832.8. (See § 6254, subd. (k); *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 289 [64 Cal. Rptr. 3d 661, 165 P.3d 462].) Similarly, under Education Code section 49076 a school district may not grant any person access to "pupil records" without written parental consent or judicial order except under certain express, limited circumstances. (*See BRV*, *supra*, 143 Cal.App.4th at p. 751.)"

In other situations, however, the *Marken* court stated:

> agency officials cannot be compelled to exercise discretion in a particular manner. "As discussed, the exemptions from disclosure provided by section 6254 are permissive, not mandatory." [Footnote 12] The exemptions in the CPRA protect only against only required disclosure, not permissive disclosure. A party seeking to enjoin an agency's disclosure must establish that such a disclosure is 'otherwise prohibited by law.'[50]

Opinions may vary as to whether disclosure of a class of information is expressly prohibited by law. We intend to retain our authority to independently make such determinations, as required by Cal. Gov't. Code § 6253.3.

We have long recognized our right to exercise discretion regarding our assertion of CPRA exemptions. D.05-04-030, which reviewed privacy issues related to G.O. 77 reports, stated that:

> Contrary to Applicants' apparent assumption, CPRA exemptions are permissive, rather than mandatory, and an agency may, but is not compelled to, assert the exemptions in a particular circumstance. (*Teamsters*, *supra*, 112 Cal. App.4th at p. 1511; *Black Panthers Party v. Kehoe* (1974) 42 Cal. App.3d 645, 656.) *Teamsters*, *supra*, 112 Cal. App.4th at p. 1511, recognizes the permissive nature of CPRA exemptions relevant to personal information:
>
> > Consequently, section 6254 lists a number of exceptions to the disclosure requirements of the CPRA, including subdivision (c), which provides: "Nothing in this chapter shall be construed to require disclosure of records that are any of the following: … (c) [p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." This statutory exception is permissive, meaning that public agencies may, but are not compelled to refuse to disclose the listed items. (*Black Panther Party*, *supra*, 42 Cal. App.3d at p. 656.)
>
> Thus, our assertion of CPRA privacy exemptions depends on our discretionary determination that those exemptions apply and should be asserted.[51]

[50] 202 Cal.App.4th at 1266.

[51] D.05-04-030 at 8-9.

The workshops we direct staff to hold as part of our process of developing new matrices will provide opportunities for regulated entities and others to provide their views regarding relevant statutes expressly prohibiting disclosure of certain classes of information. We will require detailed and careful analysis, rather than vague or general statements, in support of an assertion that the disclosure of information is expressly prohibited. We are mindful of the basic California Constitution and CPRA emphasis on the public right to review most government records, and their requirements that limitations on disclosure be construed narrowly. We are also aware that courts assessing privilege assertions based on statutory disclosure prohibitions also read such prohibitions narrowly.

**Records furnished to the CPUC by regulated entities vs. records generated by the CPUC**

Contrary to the belief of some commenters, the CPRA applies to records provided to, as well as records generated by, an agency. Cal. Gov't. Code § 6252(e) provides that: "'Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." If the Legislature intended the CPRA to apply only to records created by an agency, it could have said so. Instead, the CPRA definition refers to writings "prepared" by state agencies as one element in a list of the types of writings that fall within the definition of public records, thus indicating that writings "owned, used, or retained" by an agency are also public records, if they contain "information relating to the conduct of the people's business," even if those records were not "prepared" by the agency. Further, records received by the CPUC from entities it regulates "relate to the conduct of the people's business" of regulating those entities. Thus, they are "public records" as defined by the CPRA.

An interpretation of the CPRA as only applying to records generated by the CPUC is unnecessarily restrictive and inconsistent with the broadly inclusive language and purpose of the CPRA. In *Commission on Peace Officer Standards & Training v. Superior Court, supra,* 42 Cal.4th at 288, fn. 3, the California Supreme Court noted that:

> "Public records" include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency." (Gov. Code § 6252 subd.(e).) This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed. Only purely personal information unrelated to "the conduct of the people's business" could be considered exempt from this definition….(Assem. Statewide Information Policy Com., Final Rep. (March 1970) 1 Assem. J. (1970 Reg Sess.) appen. P. 9.)

Narrow interpretations of CPRA definitions are disfavored, since they conflict with the CPRA's intent to foster open government. When a school district sought to deny a district attorney access to certain records because the Cal. Gov't. Code § 6252 definition of a "person" who could make CPRA requests did not specifically include "District Attorneys," the court in *Los Angeles Unified School District v. Superior Court* (2004) 151 Cal.App.4th 759, 772, noted that:

> To construe the Act in the manner articulated by LAUSD ignores its purpose of providing openness in governmental affairs (*BRV*, *Inc. v. Superior Court*, *supra*, 143 Cal.App.4th at p. 750), and contravenes the CPRA's purpose to provide "[m]aximum disclosure of the conduct of governmental operations" (*CBS*, *Inc. v. Block*, *supra*, 42 Cal.3d at pp. 651-652) and to hold government agencies accountable by verifying their actions. (*BRV, Inc. v. Superior Court*, *supra*, at p. 750.)
>
> "We will not adopt '[a] narrow or restricted meaning' of statutory language 'if it would result in an evasion of the evident purpose of [a statute], when a permissible, but broader, meaning would prevent the evasion and carry out that purpose.' [Citation.]" (*Copley Press, Inc. v. Superior Court*, *supra*, 39 Cal.4th at pp. 1291–1292.)

Cal. Gov't. Code 6252(e) draws no line between records an agency generates and records it obtains from others while implementing the people's business. Such a distinction would be contrary to the open government emphasis of Cal. Const. Art. 1, § 3 and the CPRA.

**CPRA exemptions for privileged information**

A number of commenters appear to believe the CPUC denies the fact that the CPRA includes exemptions for information subject to the trade secret privilege, or other privileges, and assert the right to override or ignore privileges asserted by regulated entities. CIC, in particular, asserts that we cannot disregard the following laws establishing privileges or disclosure limitations: Cal. Evid. Code §§ 1060, 1061; Penal Code § 499c; Cal. Gov't. Code §§ 6254, 6254(k), 6254.7. 6276.04, and 11507.6. Such comments incorrectly reflect our position regarding the provision of privileged information to the CPUC.

The CPUC is well aware that the CPRA exempts privileged information from mandatory disclosure. Cal. Gov't. Code § 6254(k) exempts:

> 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.

This is one of the CPRA exemptions most commonly cited in CPUC responses to requests for records that include information subject to one or more Commission-held privileges. It can also apply to CPUC records that include information subject to privileges held by others.

Our assertion of the Cal. Gov't. Code § 6254(k) exemption requires the existence of a federal or state law exempting or prohibiting disclosure, a relevant privilege, or similar underlying authority. *San Diego County Retired Employees Retirement Ass'n., v. Superior Court* (2011) 196 Cal.App.4th 1228, 1236 notes that:

> the Act includes an exemption for "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code pertaining to privilege." (§ 6254, subd. (k).) " '[T]his exemption "is not an independent exemption. It merely incorporates other prohibitions established by law." ' " (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1320 [89 Cal. Rptr. 3d 374].)

With regard to privileges, *Los Angeles Unified School District v. Trustees if Southern California IBEW-NECA Pension Plan* (*LAUSD*) (2010) 187 Cal.App.4th 621, 627-628 states that:

> Under California's discovery statutes, "information is discoverable if it is unprivileged and is either relevant to the subject matter of the action or reasonably calculated to reveal admissible evidence." (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 655–656 [125 Cal. Rptr. 553, 542 P.2d 977]; see also Code Civ. Proc., § 2017.010.) Discovery "privileges are strictly statutory. Absent a statutory privilege, no person has a privilege to refuse to produce a writing in a legal proceeding." (*Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363, 370 [122 Cal. Rptr. 2d 504] (*DMV*); see also *Valley Bank of Nevada, supra*, 15 Cal.3d at p. 656.) "The party claiming a privilege shoulders the burden of showing that the evidence it seeks to suppress falls within the terms of an applicable [privilege] statute." (*HLC Properties, Ltd. v. Superior Court* (2005) 35 Cal.4th 54, 59 [24 Cal. Rptr. 3d 199, 105 P.3d 560]; see also *People v. Superior Court* (*Barrett*) (2000) 80 Cal.App.4th 1305, 1317 [96 Cal. Rptr. 2d 264] ["The burden is on the governmental agency to demonstrate the [official information] privilege."].)

Privileges and similar limitations on disclosure that may provide a foundation for our assertion of the Cal. Gov't. Code § 6254(k) exemption include; but are not limited to: the attorney-client privilege (Cal. Evid. Code § 950 *et seq*.); attorney work product doctrine (Cal. Code Civ. Pro. § 2018.010 *et seq*.); official information privilege (Cal. Evid. Code § 1040; confidential informant privilege (Cal. Evid. Code § 1041); trade secret privilege (Cal. Evid. Code § 1060-1061; Cal. Civ. Code § 3426.1; Cal. Pen. Code § 499c.); mediation communication protection (Cal. Evid. Code § 1115 *et seq*.), and the deliberative process privilege (*See*, *e.g*., *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325).[52] Each privilege or other limitation is limited to the types of information and contexts identified in the underlying statutes.

For example, Cal. Evid. Code § 1040 provides a privilege for "official information," defined as 'information acquired in confidence by a public employee during the course of his or her duty and not open, or officially disclosed, to the public prior to the time the privilege is asserted," where either a federal or state law prohibits disclosure, or the disclosure 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 interests of justice, and the assertion of the necessity for confidentiality is not based on the government agency's interest as a party to the proceeding.[53] The assertion of the absolute official information privilege in § 1040(b)(1) requires the existence of: (1) official information; and (2) a federal or state law prohibiting disclosure. The assertion of the conditional official information privilege in § 1040(b)(2) requires the existence of: (1) official information, and (2) a need for confidentiality that outweighs the necessity for disclosure in the interests of justice that is not based on the agency's self-interest as a party in a proceeding.

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[52] *Union Bank of California v. Superior Court* (2005) 130 Cal.App.4th 378, 388-389 states: "Evidentiary privileges are created by statute, and the courts of this state are not free to create new privileges as a matter of judicial policy but must apply only those privileges created by statute or that otherwise arise out of state or federal constitutional law. (Evid. Code, § 911; *Oxy Resources California LLC v. Superior Court*, *supra*, 115 Cal.App.4th at pp. 888-889.) The Evidence Code defines "statute" broadly to include treaties and constitutional provisions; the term is not limited to statutes codified in the Evidence Code or to state statutes in general. (Evid. Code. § 230; see also *id.*, § 920 [Evidence Code's enumeration of privileges does not repeal by implication privileges not listed].) Thus, federal statutes and treaties may supply the basis for a privilege recognized by California courts."

[53] *See*, *e.g*., *LAUSD*, *supra,* 187 Cal.App.4th at 628-629: "Section 1040 'establishes two different privileges [for "official information"]—an absolute privilege if disclosure is forbidden by a federal or state statute (subd. (b)(i)), and a conditional privilege in all other cases pursuant to which privilege attaches when the court determines … that disclosure is against the public interest (subd. (b)(2)). [Citation.]" ' (*County of San Diego v. Superior Court* (1986) 176 Cal.App.3d 1009, 1018-1019 …) The LAUSD contends that personal employee information contained in third party CPR's [certified payroll records] falls within subdivision (b)(i) of Evidence Code section 1040 because it is 'official information' whose disclosure is forbidden by Labor Code section 1776, subdivision (e). The parties do not dispute that the personal employee information constitutes "official information." Therefore, the question on review is whether section 1776, subdivision (e) is a statute that forbids disclosure within the meaning of Evidence Code section 1040, subdivision (b)(i)."

The trade secret privilege requires the existence of information that has economic value by virtue of not being public or generally known to the public, reasonable steps to maintain the confidentiality of such information; and the absence of a situation in which disclosure is necessary to prevent fraud or injustice. The assertion of other privileges requires the existence of other elements.

If a regulated entity wishes to assert a privilege against disclosure, it bears the burden of proving the existence and applicability of the privilege. As the California Supreme Court stated in *Costco Wholesale Corp. v. Superior Court* (*Costco*) (2009) 47 Cal.4th 725, 733: "The party claiming the privilege has the burden of establishing the preliminary facts necessary to supports its exercise." [54]

The CPUC has the right to determine whether it believes a regulated entity holds a privilege against disclosure. Review of the information for which the privilege is asserted may not be necessary or appropriate.[55] However, the CPUC may require disclosure or examination of information needed to evaluate the basis for a privilege claim, such as whether the privilege is held by the party asserting it, and whether other necessary conditions have been met.[56]

Under Cal. Evid. Code § 954, a client in a lawyer-client relationship "has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer." Cal. Evid. Code § 952 defines "confidential communication between client and lawyer" as meaning "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted." A party asserting the attorney-client privilege must, therefore, demonstrate the existence of: (1) an attorney-client relationship; and (2) a confidential communication, as defined in Cal. Evid. Code § 952, within that relationship. If the party fails to demonstrate these conditions, the burden of proof has not been met.

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[54] *See HLC Properties, Ltd., supra,* 35 Cal. 4th at 59-60. *See also*, G.O. 96-B General Rule 9.2: "A person requesting confidential treatment under this General Order bears the burden of proving why any particular document, or portion of a document, must or should be withheld from public disclosure…."

[55] Cal. Evid. Code § 915. *See S. Cal. Gas Co. v. Public Util. Com* (1990) 50 Cal. 3d 31, 45. *See also*, *Costco*, *supra*, 47 Cal.4th at 736-737, 739-740.

[56] *Costco*, *supra*, 47 Cal. 4th at 725.

There are many reasons why a privilege assertion may not withstand analysis. For one, not every communication between a corporate employee and a corporate attorney is subject to the attorney-client privilege.[57] Statements of a corporate employee to the corporation's attorney are not privileged if the employee speaks as an independent witness, even if the employer requires the employee to make the statement. When a corporate employer has more than one purpose for directing an employee to make a report, an analysis of the employer's "dominant purpose" in requiring the employee to make the statement may be needed. For another, if a client does not intend a communication with its attorney to be confidential, the privilege would not apply.

If the CPUC disagrees with a privilege assertion, or determines that it is not willing to accept the material subject to the asserted privilege and related confidentiality request, the privilege asserter could choose to withhold the records, subject to a possible challenge by the CPUC or others, or to provide it even though the CPUC does not agree to protect the information from disclosure.

If a privilege holder meets its burden of proof, the privileged information need not be disclosed to the CPUC.[58] However, if the CPUC agrees the burden is met, the CPUC is not compelled to accept the privileged information, or to accept it subject to the privilege holder's conditions. While this may be the usual case, there may be times when the agency has other options for obtaining necessary information, or has concerns that treating the privileged information as confidential will degrade its ability to engage in transparent decision-making, or effective regulatory and enforcement activities. Further, if a privilege holder wishes the CPUC to keep privileged information confidential, it should be prepared to show that it can provide the information and still assert the privilege, and/or that the CPUC holds a privilege or other basis for protecting the confidentiality of such information.

For example, Cal. Evid. Code § 912 provides that if a privilege holder discloses a substantial amount of attorney-client privileged material, it may be found to have waived the privilege. Utilities may assert the attorney-client privilege as a basis for refraining from providing information to the CPUC, but the privilege may be waived by a failure to assert it or by conduct inconsistent with a privilege claim.[59] Waiver of the attorney client privilege may also result if a client places its attorney's opinions directly at issue in litigation.[60] Accidental, inadvertent, or coerced disclosure may not result in a waiver of the attorney-client or work product privilege.[61] The sharing of attorney-client privileged

[57] *Costco*, *supra*, 47 Cal.4th at 737.

[58] See, e.g., S. Cal. Gas Co. v. Public Util. Com, supra.

[59] *See* Cal. Evid. Code § 912(a); *Regents of Univ. of Cal. v. Superior Court* (*Regents*) (2008) 165 Cal. App.4th 672, 679-680.

[60] See, e.g., S. Cal. Gas Co. v. Public Util. Com, supra.

[61] See, e.g., Rico v. Mitsubishi Motors Corp., (2007) 42 Cal.4th 807; Regents, supra.

documents with a governmental agency during negotiations regarding a licensing agreement may not result in a waiver of the privilege, where the disclosure furthers the purpose of the attorney-client relationship.[62] However, the voluntary disclosure of attorney-client privileged records to a government agency during litigation or a government investigation, where the disclosing party and government agency may not share the same interests in maintaining the confidentiality of that information, may result in a privilege waiver, even if the agency agrees to keep the records confidential.[63]

If a regulated entity provides privileged information to the CPUC in confidence, the information may fall within the Cal. Evid. Code § 1040(a) definition of official information. The CPUC may be able to assert that the privileged information is also subject to the CPUC's official information privilege. The viability of official information privilege assertions based on statutes that prohibit or limit disclosure depends on the facts presented.[64] We note that: "evidentiary privileges should be narrowly construed because they prevent the admission of relevant and otherwise admissible evidence. (*People v. Sinohoi* (2002) 28 Cal.4th 205, 212 [citation])" [65]

This Resolution and Draft G.O. 66-D include cautions about privilege claims not because we plan to disregard privileges, but because we know there are many facets to privilege analysis.

**CPUC acceptance of privileged information**

Once we establish that a privilege has been properly asserted, and that the privilege holder wants to provide the privileged information to the CPUC and is unlikely to waive the privilege by doing so, we must decide whether we want to receive and protect the privileged information.

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[62] *See*, *e.g.*, *STD Outdoor v. Superior Court* (2001) 91 Cal.App.4th 334, 341.

[63] See, e.g., McKesson HBOC, Inc. v. Superior Court (McKesson) (2004) 115 Cal.App.4th 1229.

[64] *See*, *e.g.*, *LAUSD, supra,* 187 Cal.App.4th at 630-631: "The holdings in *White*, *DMV*, *Richards*, and *Kleitman* demonstrate that, to qualify for absolute privilege within the meaning of Evidence Code section 1040, a statute must do more than merely make information confidential or limit its disclosure to the public. Rather, the language or structure of the statute must evince a legislative intent to bar disclosure even in the context of litigation. These holdings are consistent with the general rule that privileges are to be "narrowly construed … because they operate to prevent the admission of relevant evidence and impede the correct determination of issues." (*Saeta v. Superior Court* (2004) 117 Cal.App.4th 261, 272 [citation]). Moreover, the Legislature has demonstrated that when it intends to preclude information from discovery, it is capable of saying so…."

[65] *McKesson*, *supra*, 115 Cal.App.4th at 1236.

In *SoCalGas v. CPUC*, *supra*, the California Supreme Court overruled the CPUC's position that, by mentioning the advice of its lawyers, a utility had disclosed sufficient attorney-client communications, or placed the advice of its counsel at issue, in a manner sufficient to result in a waiver its attorney-client privilege. The Court made clear that utilities have the right to assert the attorney-client privilege as a basis for refraining to provide information to the agency, and that a client's reference to the fact that it consulted with and obtained advice from its attorneys did not waive the privilege. It also noted that the privileged legal advice was not essential for the CPUC's evaluation of the issues before it. The case involved a review of the reasonableness of the utility management's actions with regard to certain fuel supply contracts. The CPUC did not need the privileged information, the Court opined, since it had other non-privileged sources of information and the merit of the legal advice was not central. The CPUC could evaluate the reasonableness of the utility management's conduct by considering what management actually knew, and what reasonably competent management should have known, about the contracts at issue, without worrying about what advice the utility lawyers provided. Since the utility prevailed, the records of the proceeding did not include the privileged information.

If the utility and the CPUC had agreed that the agency would accept the privileged material and treat it as confidential, the CPUC's decision might have included redactions that protected privileged information but made the decision less transparent. The Court's ruling that SCG had not waived its privilege and that the CPUC did not need the privileged information may have enhanced the public understanding of the CPUC's decision.

When deciding whether to accept privileged information, we may consider whether our receipt of such information will enhance our work, or obscure our decision-making process and foster the belief that we are in league with those we regulate and make decisions behind closed doors.

SDG&E/SCG's comments that we should modify the Draft Resolution to acknowledge the absolute constitutional privilege against self-incrimination provided by the Fifth Amendment and its California counterpart highlight another reason we need to reserve our right to refuse privilege assertions or privileged information. SDG&E/SCG note that while "Pub. Util. Code sections 1795 and 5258 provide that a "person" is entitled to immunity for any testimony or evidence presented to the Commission, the Commission has found that this protection does not extend to corporations. *See*, *e.g.*, 1976 Cal. PUC LEXIS 44 at *22 ("the privilege against self-incrimination does not apply to corporations.")"[66]

[66] SDG&E/SCG Comments at 12.

Cal. Pub. Util. Code § 1795 provides that no person may be excused from testifying or producing records on the ground that the testimony may tend to incriminate him or her, and that the person may not be punished for act, transaction, matter, or thing subject to such testimony, in the absence of perjury. It also states that: "Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind." Cal. Pub. Util. Code § 5258 provides that:

> "No person shall be excused from attending and testifying or from producing any book, document, paper, or account in any investigation or inquiry by or hearing before the commission … in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of any of the provisions of this chapter, when ordered to do so, upon the ground of that person's privilege against self-incrimination, but if the privilege applies and the person claiming the privilege has properly asserted it, no information disclosed or any evidence derived from that information shall be used against that person in any criminal proceeding. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by that person in his or her testimony.

The Cal. Pub. Util. Code provisions cited by SDG&E/SCG provide that no person is entitled to refuse to testify or provide records to the CPUC, even though the testimony may incriminate the person, but that the person may not be punished for acts subject to the testimony, in the absence of perjury, and that, if a person's privilege against self-incrimination applies, and is properly asserted, then the information disclosed or evidence derived from that testimony cannot be used against the person in a criminal proceeding. Cal. Pub. Util. Code § 1795 also provides that it shall not be construed to grant any utility any immunity. Neither § 1795 nor § 5258 limit disclosure of utility records or information, and neither should serve as a basis for a utility privilege assertion.

Cal. Const. Art. 1, § 15 states that a defendant in a criminal cause has certain rights, and that "[p]ersons may not … be compelled in a criminal cause to be a witness against themselves…." Cal. Const. Art.1 § 24 provides that "[i] criminal cases the rights of a defendant … to not be compelled to be a witness against himself or herself … shall be construed by the courts of this state in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States…."

If we adopted disclosure protection for information that would tend to incriminate individual utility employees in civil matters, or a broader form of protection that would apply to information that is not subject to a viable self-incrimination privilege claim, but that would tend to incriminate the utility as an entity, we would lose both credibility and

effectiveness.[67] We are responsible for enforcing laws, not shielding the entities we regulate from such enforcement.

We don't see our insistence on our right to evaluate and carefully consider privilege claims, or to refuse to accept privileged records in all cases, as indicating our intent to disregard or override privileges. We see it instead as a reflection of our understanding that privilege issues are not always simple, and that we need to respect the interests of privilege holders, the CPUC, and the public.

We hope to develop new procedures that permit privilege claims to be reviewed in advance in a manner respectful of the interests of regulated entities, the CPUC, and the public. The use of standard privilege claim forms that list the elements needed for the assertion of each common privilege may facilitate uniform treatment of privilege assertions. Once accepted by the CPUC through a confidentiality determination in accord with this Resolution, standard privilege claims for routinely filed classes of privileged records or information could be maintained on file so that later privilege claims for specific records or information could be accompanied by a less detailed claim that references the standard privilege claim on file with the agency. If the entity-specific standard public and confidential status resolution approach discussed earlier is found useful and adopted, the standard privilege claim forms or protocols could be one element of the files associated with such resolutions.

**Cal. Gov't. Code § 6254.7**

CALTEL cites Cal. Gov't. Code §6254.7 as providing that trade secrets are not public records under the CPRA. Cal. Gov't. Code § 6254.7 provides that information, analyses, plans, or specifications that disclose the nature, extent, quantity or degree of air contamination or other pollution, pollution monitoring data, and notices or orders regarding certain housing or building code violations are public records, with the exception of trade secret information as defined in § 6254.7(d). Section 6254.7 (d) states that trade secrets, as defined therein, are not public records, except as provided in certain provisions of the Cal. Educ. Code. Section 6254.7(e) provides that emission data which constitute trade secrets as defined in subdivision (d) are public records.

Cal. Gov't. Code § 6254.7 applies only to certain air pollution records; not to all information that falls within any of the several statutory definitions of a "trade secret." Trade secrets, as defined in § 6254.7(d), are not public records unless they are public records under the Cal. Educ. Code, or are emission data. When utilities submit trade secret air pollution records, they should inform us so that we can properly respond to records requests seeking such information.

[67] California courts have yet to recognize a corporate "self-critical analysis" privilege under California privilege law. *See*, *e.g.*, *Cloud v. Superior Court* (1996) 50 Cal.App.4th 1552.

Even though most trade secrets do not fall outside the definition of "public records" by virtue of Cal. Gov't. Code § 6254.7, this has little impact on our ability to protect trade secrets. Records within the CPRA Cal. Gov't. Code § 6253 definition of "public records" are exempt from mandatory disclosure in response to CPRA requests, under Cal. Gov't. Code § 6254(k), if they include trade secrets or other privileged information.

**Pending Legislation**

In its initial comments, CIC recommended that we refrain from revising our records disclosure procedures until after the resolution of pending legislative proposals to amend Cal. Pub. Util. Code § 583 (S.B. 1000 (Yee) and A.B. 1541 (Dickinson). Commenting on the Revised Draft Resolution, CIC again noted A.B. 1541 (Dickinson), which "would clarify section 583 to include exemptions to public disclosure requirements."

Neither bill was enacted. The 2011-2012 legislative session is has ended, and our proposed changes will not conflict with pending legislation.

**"Well-Established Exceptions"**

A number of commenters opine that the CPUC does not need to consider itself limited to withholding only records that fall within a specific CPRA exemption, but is free to create its own exemption categories, such as those in G.O 66-C. A number of commenters assert that the CPRA cannot by itself provide adequate protection against the disclosure of sensitive utility records, noting that, while the CPRA may offer the opportunity to protect trade secrets, it does not include an exemption for records, the disclosure of which would place a business at an unfair competitive disadvantage, as does G.O. 66-C. Some ask us to include in G.O. 66-D an exemption like the G.O. 66-C § 2.2(b) exemption for: "Reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage."[68] SDG&E/SCG ask that we adopt "well-established exemptions" for security-related information, market-sensitive information, utility employee information, and utility customer information.

Although we appreciate the thought that went into suggestions for well-established exceptions, we believe we should not adopt such exemptions without a thorough analysis of potentially conflicting interests for and against disclosure.

[68] SDG&E/SCG propose language to address our concern that § 2.2(b) focuses on the effect of disclosure on the business position of the provider, rather than on potential effects on the public: information would be exempt where disclosure would place the provider at an unfair business disadvantage *and* have the capacity to result in changes to utility rates.

**Security-related information**

SDG&E/SCG propose an exemption for security-related information to prevent disclosure of information that could place utility facilities, systems, operations, employees, and the public, at risk. We share this goal.

Drawing a line that protects information which if disclosed could pose a serious and non-speculative danger to public safety, without limiting access to information already in the public domain or needed for an adequate public understanding of safety issues may not be easy. The public has access to utility infrastructure records through California Environmental Quality Act filings for construction projects, applications for authority to construct or modify highway-rail crossings, documents filed with local planning departments, Google maps and satellite views, utility ads for employment opportunities at specific facility locations, and other resources. An effort to limit access to such publicly available data would be an exercise in futility.

We note that the "critical infrastructure information" exemption in Cal. Gov't. Code § 6254 (ab) applies to a fairly narrow class of records:

> (ab) 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. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

The Cal. Gov't. Code § 6254 (aa) exemption is also limited:

> A document prepared by or for a state or local 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.

This exemption for documents assessing the vulnerability of state or local agencies to terrorist attacks or criminal acts does not directly apply to documents assessing utility vulnerability.[69]

[69] It may, however, provide a basis for our assertion of the "catch-all" exemption in Cal. Gov't. Code 6255, if we can demonstrate that "on the facts of a particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." *Times Mirror, Co. v. Superior Court*, *supra*, 53 Cal.3d at 1338, states: "The Act does not specifically identify

The Cal. Gov't. Code § 6254.19 exemption for information security records is similarly limited:

> Nothing in this chapter shall be construed to require the disclosure of an information security record of a public agency, if, on the facts of the particular case, disclosure of that record would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of a public agency. Nothing in this section shall be construed to limit public disclosure of records stored within an information technology system of a public agency that are not otherwise exempt from disclosure pursuant to this chapter or any other provision of law.

When other agencies have advanced security threat arguments in support of records request response redactions, courts have been sympathetic, but required details, not generalities. In *ACLU v. Superior Court, supra,* 202 Cal.App.4th at 71, for example, the court, in ruling on the question of whether the identities of companies that provided chemicals for use in executions could be withheld because disclosure would threaten their security, noted that:

> Accepting, as we do, that a court may consider potential threats to security when weighing the public interest in withholding information against that supporting disclosure (*see*, *e.g.*, *Times Mirror*, *supra*, 53 Cal.3d at p. 1346; *Connell v. Superior Court*, *supra*, 56 Cal.App.4th at p. 612), the question is the nature of evidence of such a threat that may be used to find a public interest in withholding information."

The Court further explained that:

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the public interests that might legitimately be 'served by not making the record public' under section 6255. The nature of those interests, however, may be fairly inferred, at least in part, from the specific exemptions contained in section 6254. As one commentator put has observed: '[S]ection 6255 was designed to act as a catch-all for those individual records *similar in nature* to the categories of records exempted by section 6254 … [T]he provisions of section 6254 will provide appropriate indicia as to the nature of the public interest in nondisclosure and thus will aid in the courts in determining the disclosability of a document under section 6255.' (Note, *The California Public Records Act*: *The Public's right of Access to Governmental Information* (1976) 7 Pacific L.J. 105, 119-120; italics added; see also *American Civil Liberties Union Foundation v. Deukmejian*, *supra*, 32 Cal.3d at p. 462 (conc. and dis, opn. of Bird, C.J. …"

> Our Supreme Court has on several occasions usefully described the type of evidence that suffices to establish a potential threat to security warranting an exemption from disclosure under the PRA. In *Commission on Peace Officer Standards & Training v. Superior Court*, *supra*, 42 Cal.4th 278, a newspaper sought to compel release by the commission of the names and certain employment data pertaining to peace officers throughout the state. The commission resisted disclosure, arguing "that in light of the 'dangerous and demanding work' performed by peace officers, releasing such information to the public creates a 'potential for mischief.'" (*Id*. at p. 301.) The Supreme Court disagreed: "The safety of peace officers and their families is most certainly a legitimate concern," the court stated, "but the Commission's contention that peace officers in general would be threatened by the release of the information in question is *purely speculative*. 'A *mere assertion of possible endangerment*' is *insufficient to justify nondisclosure.* [Citations.] The Commission has not offered any persuasive illustration of how disclosure of the innocuous information at issue could 'create mischief' for peace officers in general." (*Id*. at p. 302, italics added, fn. omitted.) In reaching this conclusion, the court relied upon *Block*, *supra*, 42 Cal.3d 646, and *Times Mirror*, *supra*, 53 Cal.3d 1325.[70]

Similarly, in *County of Santa Clara v. Superior Court, supra,* 170 Cal.App.4th at 1327, the court addressed a county's safety and security concerns regarding the disclosure of an electronic mapping system it developed which included detailed geospatial information. The court noted that:

> The county also asserts a public safety interest in guarding against terrorist threats, based on its contention that the GIS basemap contains sensitive information that is not publicly available such as the exact location of Hetch Hetchy reservoir components. The County cites the precision of its "georeferenced parcel map" … in arguing that disclosure of the basemap would 'allow anyone to locate the parcels overlaying the Hetch Hetchy water lines. Matching the GIS Basemap with orthophotographs, which are in the public domain, would allow anyone to pinpoint weak spots in the system and quickly and effectively plan a terrorist attack.' By contrast, the County maintains, other publicly available maps 'are not georeferenced, do not contain GPS coordinates, do not include orthophotographs, and are not a continuous representation of the

[70] 202 Cal.App.4th at 72.

> Hetch Hetchy water supply systems-key elements to disclosing precise locations of the critical infrastructure.' "

The Court pointed out that the proponents of disclosure offered the declaration of a member of the Geospatial Working Group, organized by the U.S, Department of Homeland Security, who opined that the maps disclosed easements, rather than precise pipeline locations, and that that "'Restricting public access to the County's GIS basemap data is unlikely to be a major impediment for terrorists in identifying and locating their desired targets'" and noted that data elements could be segregated from the material disclosed to the public.[71]

The Court concluded that:

> Security may be a valid concern supporting nondisclosure. (See, e.g., *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1346 [citation omitted] … But the "mere assertion of possible endangerment does not 'clearly outweigh' the public interest in access to these public records." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652 [citation]; accord, *Commission on Peace Officer Standards and Training v. Superior Court*, *supra*, 42 Cal.4th at p. 302.) While we are sensitive to the County's security concerns, we agree with the trial court that the County failed to support nondisclosure on this ground."[72]

We must also consider the difference between the CPRA and discovery. Even if a statute characterizes information as "confidential" or otherwise limits its disclosure in response to records requests, this would not guarantee we could assert the absolute official information privilege in Cal. Evid. Code § 1040(b)(1) in response to discovery.[73] Unless

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[71] *Id*.

[72] 170 Cal.App.4th at 1329.

[73] *LAUSD*, *supra*, 187 Cal.App.4th at 629: "California courts have repeatedly held that statutes which simply characterize information as "confidential" or otherwise limit its public disclosure do not create an absolute privilege within the meaning of Evidence Code section 1040, subdivision (b)(1). For example, in *DMV*, *supra*, 100 Cal.App.4th 363, the Department of Motor Vehicles argued that Vehicle Code section 1808.5, which states that records pertaining to an individual's mental condition are " 'confidential and not open to public inspection,' " established an absolute privilege to withhold such information. (*DMV*, at p. 366.) The court disagreed, explaining that "[c]haracterizing information as confidential from public inspection is not the equivalent of establishing a privilege in a legal proceeding." (*Id*. at p. 371.) The court went on to rule that "section 1808.5 … is not a statute, within the meaning of Evidence Code section 1040, that 'forbids disclosure.' " (*Id*. at p. 374.) Similarly, in *White v. Superior Court* (2002) 102 Cal.App.4th Supp. 1 [Citation.] (White), the Inspector General claimed privilege over certain materials pursuant to a statute stating that the information was "'deemed confidential for use by the Inspector General … only.'" (*Id*. at p. Supp. 5.) The appellate court ruled that the statute did not establish an absolute privilege within the meaning of Evidence Code section 1040, stating that "[i]nformation that is

the statute expressly forbade any disclosure, we would still need to undertake a balancing of interests for and against disclosure required for an assertion of the conditional official information privilege in Cal. Evid. Code § 1040(b)(2).

There are often many ways to view disclosures of utility infrastructure information. When homeowners or prospective homeowners sought information about nearby natural gas pipeline locations in the aftermath of the San Bruno explosion, at least one utility for a time apparently took the position that while homeowners should have access to such information, prospective homeowners should be denied access to such information because such disclosure could provide sensitive security information to those without a clear and direct interest in the information. Other utilities posted transmission pipeline locations on the internet.

There are also ways to protect truly sensitive security information without restricting disclosure of less sensitive safety-related information. When we engage in triennial audits of rail transit systems, the audit records include substantial information concerning transit system security. We issue decisions approving triennial transit system audits, and post the decisions and audit reports on our internet site. Pursuant to federal and CPUC regulations, we refrain from making public a small subset of our audit records that includes certain system security details.

A relatively nonspecific exemption for security-related information or critical infrastructure information which, if disclosed might jeopardize the safety of utility facilities and operations, and/or public safety, is too general to provide sufficient guidance. We want to protect sensitive utility infrastructure information, but the boundaries of available protection, and public interests for and against disclosure, are not always clear cut. If we find that a class of critical infrastructure or other security-related information is subject a CPRA exemption that would apply information about threats to the CPUC's infrastructure or security, but not to information about threats to utility systems, and we receive such information from utilities in confidence and believe such information warrants protection from public disclosure, we might be able to find that such information is subject to our official information privilege, and thus is exemption from mandatory disclosure in response to records requests pursuant to Cal. Gov't. Code § 6254(k).

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confidential is protected against unrestricted public inspection, but limited disclosure is not the equivalent of a privilege against any disclosure. … [¶] … [¶] … Although inspection of the Inspector General's records is restricted by statute, it is not forbidden … ." (*White*, at pp. Supp. 5–6.)"

Our proposed workshops should help us explore this and other options.

**Market-Sensitive Information**

CALTEL, CIC, and others express concern that disclosure of information that may now be covered by G.O. 66-C § 2.2(b) might reveal market-sensitive information in a competitive marketplace, and thus disrupt the market and disadvantage the company whose information was disclosed. This might increase utility costs, and, potentially customer rates. Others, such as CAC and IEP argue that excessive assertions of market information exemptions reduce information available to the public and may disrupt competitive markets by preventing energy providers and others from understanding energy needs and bottlenecks at specific locations, and thus potentially increase utility and ratepayer costs.

We have no quarrel with the idea that, in competitive markets, the public may be harmed by the disclosure of sensitive information places a company at an unfair competitive disadvantage. Such disclosures may affect the functioning of a market, thus reducing competition, and perhaps resulting in higher costs for utility ratepayers.

The absence of disclosure can also harm markets. CAC and IEP ask the CPUC to ensure that generators have adequate access to information regarding locations where additional energy is needed, and the operational characteristics needed to assess whether to seek to provide such energy. Public access to information may result in more effective competition by those who can use the information to tailor proposed generation projects, which may improve the functioning of a competitive market, and ultimately benefit ratepayers and other members of the public by creating the potential for less wasteful projects and lower rates. If too many records access limits are imposed, the public may lack confidence that markets are serving the public interest.

CAC and others also note that while D.06-06-066 created matrixes that made specified market sensitive information confidential, it limits the duration of such confidential treatment. D.07-05-032, addressed this issue as well:

> D.06-06-066 also recognizes that market sensitive information is not indefinitely confidential and that generally the reasons for withholding such information from public disclosure are no longer relevant after a few years. D.06-06-066 adopted a flexible approach to this issue and generally most market sensitive information will be withheld from public disclosure for a three to five year period; however, should any particular information remain market sensitive after that time, the burden is on the utility claiming confidentiality to establish that it is indeed information that is still market sensitive and entitled to be treated as such. If the information at issue is no

> longer market sensitive, because, pursuant to D.06-06-066, it no longer has the potential to materially affect the market price for electricity, then there is no requirement that the Commission maintain its confidentiality. Not only is such information public, pursuant to the CPRA and the California Constitution, but there is no public policy that would weigh in favor of keeping it confidential. (D.07-05-032, at 5-6.)

D.11-07-028 recently reviewed the disclosure of market sensitive information subject to D.06-06-066, D.07-05-032, and D.08-04-023, and found that:

> The confidential nature of the information, the Legislature's mandate that this Commission ensure its confidentiality, the potential for economic misuse of market sensitive information by market participants and consequential adverse effects on ratepayers justifies the use of Reviewing Representatives, and the procedures adopted in D.06-12-030, as clarified herein.[74]

D.11-07-028 also found, however, that:

> The prohibition of access to market sensitive information by attorneys, consultants or experts who simultaneously represent market and non-market participants is unnecessary and redundant. The intent of the limits on market participant Reviewing Representative is to prohibit the simultaneous engagement in wholesale power contract negotiations with a utility while accessing that utility's confidential procurement data.[75]

Finally, D.11-07-028 found that:

> In no case shall the designation of information as market sensitive information, pursuant to D.06-06-066 as modified by D.07-05-032 and subsequent decisions, exceed three years.[76]

Thus, while the CPUC's obligation to ensure the confidentiality of market sensitive information to avoid the misuse of such information by market participants to the detriment of ratepayers justifies the imposition of conditions on access to such information, the intent of the conditions is to prevent those

[74] D.11-07-028 at 37, Finding of Fact 1.

[75] D.11-07-028 at 38, Finding of Fact 7.

[76] D.11-07-028 at 39, Finding of Fact 10.

negotiating contracts with a utility from taking unfair advantage of the utility's confidential procurement data during the negotiation process, and not to prevent disclosure of procurement information for an indefinite period, or even a period in excess of three years.

The boundaries of any substitute for the G.O. 66-C exemption for information that may place the provider at a competitive disadvantage may be explored further in workshops. We must balance competing interests for and against disclosure, ensure that disclosure limits are tied to CPRA exemptions and/or privileges, and limit the duration of confidential treatment to the period in which disclosure of market sensitive information could have a substantial adverse effect on a competitive market and, consequentially, ratepayers.

Some commenters are concerned that the CPRA may protect trade secrets, but does not have an exemption like the G.O. 66-C exemption for records that would if disclosed place a company at an unfair business disadvantage. One could view the absence of such an exemption in the CPRA as an indication that the Legislature did not find such an exemption necessary and appropriate. We have a different perspective. We believe the CPRA offers sufficient exemptions to protect market-sensitive information and limit the disclosure of information that would place businesses at an unfair disadvantage; it just requires a careful balancing of interests and reliance on different authority for confidential treatment.

Cal. Gov't. Code § 6254(k) permits the protection of information subject to federal or state disclosure prohibitions or exemptions, including information subject to the trade secret privilege and other applicable privileges. Since Cal. Pub. Util. Code § 454.5 requires the CPUC to adopt rules protecting market sensitive information, information subject to CPUC rules limiting disclosure of market sensitive information may be exempt from mandatory disclosure pursuant to § 6254(k). The CPRA offers other potential exemptions as well. For example, Cal. Gov't. Code § 6254(e) exempts 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.

Where the trade secret privilege or other specific statutory limitations may be unavailable, truly sensitive information may be subject to the CPUC's official information privilege. The Cal. Evid. Code § 1040 official information privilege covers certain information acquired by the CPUC in confidence, and allows the agency to protect sensitive information furnished by regulated entities and others where disclosure is barred by law or there is a need for confidentiality that outweighs the necessity for disclosure in the interests of justice.

If we find that a class of market sensitive information of the type of concern to commenters is provided in confidence to the CPUC and warrants protection from public disclosure, but is not necessarily covered by a specific CPRA exemption, we may find that such information is subject to our official information privilege, and thus is exemption from mandatory disclosure in response to records requests pursuant to Cal. Gov't. Code § 6254(k).

We believe that identifying relevant CPRA exemptions, and/or applicable privileges, will allow us to protect information against potentially detrimental disclosure more effectively than would our adoption of the position that we are free to create our own exemptions regardless of the CPRA. Since the CPUC is unquestionably subject to the CPRA, and discovery law, we must abide by these laws and anticipate that those who are unhappy with any denial of access to records may choose to seek access to CPUC records through litigation. We anticipate that not all courts may be inclined to accept the premise that we are empowered by Cal. Pub. Util. Code §§ 701 and 583 to adopt our own exemptions where it may be clear that no CPRA exemption applies.

We believe that, in the long run, our devotion of time to the careful development of industry specific, and document type specific, matrices of public and potentially confidential information will serve us well by making it easier for all stakeholders to know just what is, and may not, be public. By expressly referencing the particular exemptions, and or privileges, applicable to information, we will make it easier for CPUC to defend nondisclosure determinations in response to records requests and discovery.

We caution against excessive assertions of the need for confidentiality based on the proprietary nature of information. In D.86-01-026, we responded to a utility's reluctance to provide access to business information as follows:

> D. Efforts to limit the release or use of PacBell data in rate proceedings because it is proprietary
>
> We think overall comment about one recurring and nagging procedural point is warranted simply because there seems little likelihood, from what we have observed thus far, that its recurrence will diminish without comment on our part. At many turns PacBell has raised concerns and objections to parties, including our staff, having access to and fully using data which it alleges is "proprietary." A good number of the exhibits received which are comprised of PacBell's documents, were originally stamped "proprietary." Our patience with discovery and hearing room issues or squabbles concerning allegedly proprietary data is waning. These issues tend to divert parties' resources and energy from the more pressing goal of our process, which is a full, open, and expeditious airing of facts, unimpeded by procedural roadblocks and obstacles.

> We think PacBell would do well to recall the fable of the boy who cried wolf too often and paid a dear price because when it really mattered nobody took him seriously. PacBell, as a franchised monopoly, exists in a world of regulation. Information about its operations must be freely and openly exchanged in rate proceedings if the regulatory process is to have credibility. Its operations, as any utility's, must be on public view, since it serves the public trust.
>
> Certainly there are times to be concerned about full public disclosure of proprietary data. Classic examples are customer lists, true trade secrets, and prospective marketing strategies where there is full blown - and not peripheral - competition. To make the assertion stick that there are valid reasons to take unusual procedural steps to keep data out of the public record (*e.g.* sealed exhibits, clearing the hearing room, or sealed transcripts), there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental. PacBell must understand that in balancing the public interest of having an open and credible regulatory process against its desires not to have data it deems proprietary disclosed, we give far more weight to having a fully open regulatory process. For purposes of the following phases of these proceedings, and future rate proceedings, we advise PacBell to bear this discussion carefully in mind and not have a quick trigger to raise claims of proprietary harm simply because someone somewhere within its organization at some time considered data proprietary.[77]

Although D.86-01-026 was issued in an era when many utility markets were less competitive, the basic point remains: excessive confidentiality assertions "tend to divert parties' resources and energy from the more pressing goal of our process, which is a full, open, and expeditious airing of facts, unimpeded by procedural roadblocks and obstacles."

Even in competitive markets, disclosure may be in the public interest. The Digital Infrastructure and Video Competition Act (DIVCA) contains two annual public disclosure requirements for video franchise holders. Under Cal. Pub. Util. Code §§ 5960(c) and (d), franchise holders must provide us with certain information, which, in turn, we are required to aggregate (so private and commercially sensitive data is obscured) and report to the Governor and the Legislature. This information includes: the number of broadband subscribers (on a census tract basis), the number of customers who are offered video service, and the number of low-income customers who are offered video service. Similarly, Cal. Pub. Util. Code § 5920(a)(3) requires franchise holders

[77] D.86-01-026, 1986 Cal. PUC LEXIS at ** 10-12.

with more than 750 employees in California to provide us with employment information, including, for example, "types and numbers of jobs by occupational classification held by residents of California ... and the average pay and benefits of those jobs .... " We are required to report this employment information to Legislative committees, and place the information on the internet, by Cal. Pub. Util. Code § 5920(b).

Rather than adopt a specific rule now, we will anticipate the our planned workshops may help us determine the classes of records that may warrant protection in order to prevent harm to competitive markets and preserve level playing fields for similarly situated regulated entities.

**Utility Employee Information**

SDG&E/SCG ask for a utility employee information exemption. DRA states that there is no support for a blanket limitation on the disclosure of certain utility employee information, such as records regarding safety training and certification, and that any limitations should be imposed on a case by case basis.

DRA's position is consistent with the previously cited judicial decision requiring adequate justification for the withholding of police officer information on the basis of perceived security concerns and with other decisions applying a balancing test to CPRA privacy exemptions. Where professional competence is at issue, courts may find that even significant employee privacy interests are outweighed by other considerations.

For example, the Court in *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755 noted that:

> [A] court determining whether personnel records should be disclosed first "must determine whether disclosure of the information would 'compromise substantial privacy interests; if privacy interests in given information are *de minimis* disclosure would not amount to a "clearly unwarranted invasion of personal privacy," [citation], ….'[Citation.]" (*Versaci v. Superior Cour*t (2005) 127 Cal.App.4th 805,818 [citation], original italics.)
>
> Second, the court must determine whether the potential harm to privacy interests outweighs the public interest in disclosure." (*Versaci v. Superior Court*, *supra*, 127 Cal.App.4th at p. 818.) In weighing the competing interests, "we must determine the extent to which disclosure of the requested item of information will shed light on the public agency's performance of its duty.' [Citation.]" (*Id*. at p. 820.)

The Court concluded that:

> Without doubt, the public has a significant interest in the professional competence and conduct of a school district superintendent and high school principal. It also has a significant interest in knowing how the District's Board conducts its business, and in particular, how the Board responds to allegations of misconduct committed by the District's chief administrator. We thus must determine whether the potential harm disclosure of the report could cause Morris's privacy interests outweighs the public interest in disclosure.[78]
>
> The public's interest in judging how the elected board treated this situation far outweighed the Board's or Morris's interest in keeping the matter quiet. Because of Morris's position as a public official and the public nature of the allegations, the public's interest in disclosure outweighed Morris's interest in preventing disclosure of the Davis report. …
>
> We note, however, that the public's interest in viewing the Davis report is not furthered by knowing the identities of any of the students, parents, staff members, or faculty members interviewed or mentioned in the report. Nothing in the record indicates that these persons are public officials such as Morris. Knowing their identities does not help the public understand how the Board responded to the allegations involving Morris. We will thus direct that all names, home addresses, phone numbers, and job titles for such persons be redacted before the report is released.[79]

When we determine whether to disclose, or refrain from disclosing, personal information in our safety-related records, a primary consideration will whether disclosure will shed light on a utility's performance of its safety responsibilities.

**Utility Customer Information**

SDG&E/SCG ask that we adopt an exemption for utility customer information, and provide details as to what customer information they believe should be exempt from disclosure without customer consent, including personal information, as defined in the California Information Practices Act, (Cal. Civ. Code § 1798 *et seq*.), and utility usage information. SDG&E/SCG note that while the law protects information regarding

[78] *Id*., 143 Cal.App.4th at 757.

[79] *Id*., 143 Cal.App.4th at 759.

residential and small commercial customers, information regarding large commercial and industrial customers is less protected.

Our current practice is to disclose utility customer information in formal proceeding files, including files concerning complaints filed by the utility customer. We view the filing of a formal complaint as an indication of consent to disclosure, since formal proceeding files have long been accessible to the public, with the exemption of information filed under seal.

When we receive requests for records that include individual customer information, such as requests for records of informal complaints filed with our Consumer Affairs Branch (CAB), our practice is to provide the requested records only after we redact the customer's name, address, telephone number, email address, account number, names of any family members mentioned in the complaint files, and similar personal information. Most customers who file complaints with CAB are residential or small commercial customers. We generally consider that disclosure of such information, without the customer's consent, may constitute an unwarranted invasion of personal privacy, and that such information is thus exempt from disclosure in response to records requests pursuant to Cal. Gov't. Code § 6254 (c) exemption.[80]

The Information Practices Act does set limits on an agency's disclosure of personal information.[81] It does not, however, bar disclosure of personal information in response to records requests.[82] Information subject to Information Practices Act privacy concerns may be subject to the CPUC's assertion of the Cal. Gov't. Code § 6254(c) personal information exemption or other disclosure limitations. There may be value in expressly clarifying the scope of the information we may withhold pursuant to § 6254(c), or other authority, but little need for a CPUC-created exemption similar to such existing disclosure limitations.

Nor does the Information Practices Act bar disclosure in response to subpoenas, court order, or compulsory legal process as long as an agency first "reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited

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[80] With respect to customer contact information, we may be exercising an over-abundance of caution. *See Pioneer Electronics*, *supra*, 40 Cal.4th at 372: "As previously noted, under *Hill*, *supra*, 7 Cal.4th at page 35, protectable privacy interests generally fall into two categories: "informational privacy," protecting the dissemination and misuse of sensitive and confidential information, and "autonomy privacy," preventing interference with one's personal activities and decisions. The limited disclosure to plaintiff of mere contact information regarding possible class action members would not appear to unduly interfere with either form of privacy, given that the affected persons readily may submit objections if they choose. Pioneer has never suggested that plaintiff threatens to engage in any abusive conduct, or otherwise misuse the information it sought."

[81] Cal. Civ. Code § 1798.24.

[82] Cal. Civ. Code § 1798.24(g).

by law."[83] If a subpoena seeks access to a large number of complaint files that contain personal information as defined in the Information Practices Act, it may not be practical for us to try to contact each individual who may be identified in the subpoenaed files, and for this reason we may choose to simply redact the personal information before providing the records. If a subpoena seeks records containing personal information about a single individual, discovery laws often require that the subpoenaing party also send a notice to the person whose employment or consumer records are subpoenaed.[84] No additional notice by the CPUC is needed.

The Information Practices Act does require the CPUC to, upon request, disclose personal information to the individual to whom the information pertains, or a representative of the individual, absent unusual circumstances. Individuals are to be given an opportunity to review and correct personal information in files containing such information. The Information Practices Act includes a number of other notice, disclosure accounting, and other requirements we intend to clarify in G.O. 66-D. We plan on adding to G.O. 66-D provisions clarifying our procedure for complying with these requirements.

D.09-02-006 pointed out that not all sharing or disclosure of customer usage information is forbidden, when addressing a utility's reluctance to share customer usage data with a water management district that served the same customers:

> Cal-Am's concerns are that customer privacy rights outweigh MPWMD's need for access to individual customer data. While utility customers, like other individual California citizens, have constitutionally-based privacy interests which include an interest in controlling the disclosure of detailed personal information, the extent of a privacy right is dependent on the circumstances. (*Hill v. National Collegiate Athletic Ass'n*. (1994) 7 Cal.4th 1; *Pioneer Electronics v. Superior Court* (2007) 40 Cal.4th 360; D.05-04-030.) The record here provides us the necessary information to balance the need of a public agency charged with promoting and enforcing conservation measures to obtain from Cal-Am individual customer water consumption data with that, individual customer's privacy rights. In doing so, we find that Cal-Am exaggerates the sensitivity of customer water usage information when it argues that inalienable privacy rights will be trammeled by the disclosure at issue here.
>
> First, Cal-Am has shared, in 1992-2000, and again in 2002, detailed confidential customer information with the MPWMD, pursuant to appropriate confidentiality agreements, evidently with no customer

[83] Cal. Civ. Code § 1798.24(k).

[84] Cal. Code Civ. Pro. §§ 1985.3(4)(b); 1985.4, 1985.6(5)(b).

> complaints regarding this practice. Past experience with customer information disclosure to MPWMD reveals little apparent reason for Cal-Am to fear adverse consequences from anticipated similar future disclosures.
>
> Second, to the extent that Cal-Am customers seeking building permits for water using facilities such as second bathrooms signed permit applications authorizing disclosure of specified water usage information, such customers can have no reasonable expectation of privacy in that information.
>
> Third, as MPWMD points out, the California Supreme Court has already addressed the relationship between the California Constitutional right to privacy and the public's right to government information regarding water utility customers who exceed their water allotments, and found that the public's right to information in government records regarding excessive users outweighs customer privacy interests. (*New York Times Company v. Superior Court* (1990) 218 Cal.App.3d 1579 (Goleta Water District.) Thus, customers who disobey water use restrictions do not have an objectively reasonable expectation of privacy regarding such unlawful conduct. [Footnote referencing Cal. Gov't. Code § 6254.16(d) omitted.]"

**D.06-06-066 Matrices as Models**

Many commenters identify the D.06-06-066 energy-procurement matrices as useful models for simplifying disclosure and confidentiality determinations in other industry contexts as well. CAC and others note that matrices may become outdated, or require periodic refinement, and that some who provide records to the CPUC may misinterpret or overzealously reference decisions identifying information as confidential, and ask the CPUC to enforce limited confidentiality periods or automatically disclose documents once confidentiality periods expire.

We believe the potential benefits of our adoption of additional public and confidential status matrices outweigh the potential problems with such matrices. Our experiences, and commenters' experiences, with existing matrices caution us to structure new matrices in a manner that limits their vulnerability to problems like those encountered with the D.06-06-066 matrices. We need to make each matrix category as clear as possible, and establish procedures for refining specific categories if they result in continuing confusion or non-uniform interpretations, for updating them to reflect changes in statutory language or CPUC policy, and for enforcing them rigorously if they become prey to abuse.

CALTEL comments that it believes:

> the Commission should commit to developing templates for common recurring document types which typically contain confidential information. For example, CALTEL members must submit annual reports to the Commission, which contain information generally considered confidential by CALTEL members. The Commission should develop specific forms for this reporting which protects the legitimate confidentiality interests of the affected parties. This should be undertaken as part of future workshops.[85]

We agree with CALTEL. We believe standard forms or templates for recurring reports, which clearly identify and segregate public from confidential information, could help reduce misunderstandings regarding the public or confidential nature of information, and complement our development of additional matrices.

We agree with CAC that we should make sure records identified in a matrix as confidential for a limited period of time are accessible or automatically made public once the confidentiality period ends, and that we should develop procedures for dealing with overzealous and incorrect assertions that information is subject to a confidentiality matrix.

DRA "supports the idea that matrices must reference the legal authority for confidential treatment or disclosure," and "also supports the requirement of a cover pages for all reports filed with the Commission to include a statement as to the public, or confidential, nature of the document (*e.g.*, Form 700, 'this is a Public Document')." The clarification of the legal authority for disclosure or confidentiality, and the standardization of report cover page labeling, coupled with CALTEL's suggestion for standard report forms or templates and CAC's recommendation for enforcement of confidential treatment period limits or automatic disclosure, should further our goals of increasing clarity and common understandings regarding disclosure issues, and streamlining our processing of reports and other records received by the CPUC.

## D.06-06-066 Matrix Revisions

CAC and IEP recommend that the Commission implement existing energy procurement confidentiality matrixes by automatically disclosing records subject to limited term confidential treatment once the period for confidential treatment expires, and refining matrix definitions to try to reduce the number of times utilities mistakenly redact publicly available information on the basis of an improper reference to D.06-06-066. DRA comments that the D.06-06-066 matrices should be updated in view of the revised G.O., but recommends that the revisions be made in rulemaking or other formal proceeding. PG&E and SCE, note that the D.06-06-066 matrixes were adopted after a lengthy

[85] CALTEL Comments on Revised Draft Resolution, at 6.

proceeding that began in 2005 and ended in 2011, involved many parties, hundreds of documents, and 16 CPUC decisions. They recommend that we not revisit those matrices now. SCE comments that if parties wish to revisit those matrixes, they should file a petition for modification, or an application for rehearing.

We already make certain records subject to confidential treatment under the matrixes automatically available to the public once the period for confidential treatment expires. For example, the RPS Project Status Update Table on our website provides access to RPS PPA once the three year confidentiality period expires. We are unable to provide this same level of automatic disclosure of non-RPS PPA because of differences in the types of records associated with such projects, although we do post such information to the extent practical. We will direct staff to consider automatic disclosure in other contexts when confidentiality periods expire.

While we know some parties want greater access to energy procurement records, we respect SCE and PG&E's position that we should not revisit the D.06-06-066 matrixes now, but should instead concentrate on areas where no matrices exist. We propose that our energy-records workshop(s) focus on records not covered by existing matrices. D.06-06-066 matrices may be re-evaluated in accord with the process discussed in R.05-04-030, or in response to petitions for modification, but not in our proposed workshops.

The workshops may consider methods for limiting improper assertions of confidentiality based on CPUC matrices, ways to ensure matrices are as precise and clear as possible, disclosures following the expiration of confidentiality periods, and other matters, since those issues are relevant to any new matrices we may develop, and not just to our existing matrices.

**Delegation**

Several commenters assert that the CPUC cannot lawfully delegate to staff the power to determine whether particular records furnished to the CPUC by a utility or affiliate fall within a class of records the CPUC has determined to available to the public. Others modified similar assertions made during the initial round of comments by conceding the CPUC may have the authority to delegate such responsibility to staff as long as it provides adequate guidance, provides for an appeal of any such determinations, and/or ratifies staff actions at a later date.

In response to similar assertions in the initial round of comments, we noted that staff made such determinations, without challenge, throughout the decades when G.O.s 66 through 66-B were in effect. When staff received requests for records that fell within any of the many broad classes of records identified as public, staff did not request or require specific CPUC authorization before making the requested records available. The Commission's adoption in 1923 of a regulation authorizing public access to broad classes

of records pursuant to § 583's predecessor served as an implicit delegation to staff of responsibility to implement that regulation by making the publicly available records available to the public.

Our proposal to create new matrices of public and confidential documents reflects our belief in the utility of basic concepts embodied in our decades-old G.O.s 66 through 66-B, and our more recent D.06-06-066. CPUC decisions that authorize routine public access to broad classes of records, clearly identify classes of records not automatically open to the public, and give staff the responsibility for making such records available, should reduce our decisional workload and improve public access to our records, without in any way negating our responsibility to determine in the first place whether records furnished by utilities or affiliates are open to the public.

Our confidence in Commission staff's ability to make confidentiality determinations is reflected in G.O.s 66 through 66-B, with their inherent assumption that staff can be trusted to provide the public with records in classes we identify as open to the public, and to withhold other records unless we specifically authorize disclosure. It is also reflected in our D.06-06-066 adoption of the energy procurement matrices we, and several commenters, believe provide useful model for future disclosure determinations. We assume that staff will make records that fall within a matrix class designated as public available to the public, and trust that staff can determine when confidentiality periods expire.

D.06-06-066, as modified by D.07-05-032, supports delegation in other ways as well; Ordering Paragraph 16 states: "We delegate to the Assigned Commissioner and ALJ authority to make changes to the Matrix as we gain experience with its use." In addition, we responded to utility requests that we give them time to disclose information designated as public as follows:

> Information that is public anywhere shall be public everywhere. Nothing in this decision allows any party to withhold information, or parts of information, already revealed, or required to be revealed, elsewhere. The IOUs also ask us to give them a period of time to release information this decision requires be public. We do not believe such a rule is required. Information that is required to be public shall be released in the ordinary course just as any public information is released.[86]

As CAC notes, staff automatically posts on our internet site certain RPS PPA records when the three year confidentiality period for such records expires. This practice is consistent with the D.06-06-066 statement that: "Information that is required to be public shall be released in the ordinary course just as any public information is released." No subsequent individual CPUC decision authorizing disclosure is required prior to

[86] D.06-06-066, as modified by D.07-05-032, at 73.

disclosure of information designated as public in in a matrix, whether the public status resulted from an original designation of that information as public, or from the expiration of the period designated for confidential treatment. We are aware of no controversy regarding this practice.[87]

We agree with commenters who express the opinion that the appropriateness of a delegation of authority to staff depends on the guidance we provide. We must provide fundamental policy decisions, and provide sufficient guidance to render staff's actions essentially "ministerial," as that term is interpreted in Resolution M-4801, D.02-02-049, and G.O. 96-B, General Rule 9.

This is a road we have travelled before, in a somewhat similar context, when we needed to establish a process through which Industry Division staff could reject or suspend advice letters, in accord with guidance we provided, in order to permit us to reject or suspend inappropriate advice letters that would otherwise become effective by default after 30 days, pursuant to Cal. Pub. Util. Code § 455.5. It was necessary for us to delegate such authority to staff, rather than issue a CPUC decision every time rejection or suspension proved necessary, since Cal. Pub. Util. Code § 311(g) requires that most draft decisions be circulated for public comment at least 30 days before the CPUC could take action regarding the draft decisions. It would have been impossible for us to meet both statutory deadlines: a 30-day default effective date, and a 30-day public comment period. We would have had to prepare rejections or suspensions of advice letters before we received them.

Instead, we adopted delegation guidelines in Resolution M-4801. In D.02-02-049 we amended the guidelines and rejected an application for rehearing, pointing out the necessity for agencies such as the CPUC to delegate substantial authority to our staff in order to keep the wheels of government functioning, and that the CPUC may delegate to staff tasks that involve the exercise of judgment and discretion, as long as it retains responsibility for fundamental policy decisions and provides staff with adequate guidance.[88] Staff's exercise of a reasonable degree of common sense and discretion when processing advice letter filings is still essentially ministerial within the context of delegation case law because we have established the underlying policies regarding the rejection or suspension of advice letters, and provided sufficient directions to our staff. D.02-02-049 noted that *California School Employees Association v. Personnel Commission* (1970) 3 Cal.3d 139, 144-145, after reciting the general rule that discretionary powers may not be delegated to subordinates in the absence of statutory authorization, states:

[87] CAC requests that we expand this approach to non-RPS PPA records as well.

[88] D.02-02-049 at 4-8. *See also*, D.02-02-049 at 6: "as noted in Resolution M-4801, *Holley v. County of Orange* (1895) 106 Cal. 420, 424-425, acknowledges that: Judgment must often be exercised by ministerial officers in determining whether or not the facts exist which authorize them to act."

> On the other hand, public agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action … Moreover, an agency's subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself.

D.02-02-049 also noted that:

> In any event, the Legislature has in a number of broad statutory provisions expressly recognized our need to delegate responsibility to perform the duties and exercise the powers conferred upon the Commission. Section 7 states:
>
> > Whenever a power is granted to, or a duty imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.
>
> Section 308(a) states in part:
>
> > The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.
>
> Section 308(b) states in part:
>
> > The executive director shall … issue all necessary process, writs, warrants, and notices, and perform such other duties as the president, or vote of the commission, prescribes. …
>
> And Section 309 states:
>
> > The executive director may employ such officers, administrative law judges, experts, engineers, statisticians, accountants, inspectors, clerks, and employees as the executive director deems necessary to carry out the provisions of this part or to perform the duties and exercise the powers conferred upon the commission by law. …
>
> These provisions clearly authorize delegation of responsibilities that involve the exercise of actual judgment and discretion, and not simply the application of a rubber stamp or mathematical formula. [Footnote omitted.] The Executive Director is responsible for the Commission's "executive and administrative duties" (Section 308(a)), and for issuing all necessary

> process, notices, and performing "such other duties as the president, or vote of the commission, prescribes" (Section 308(b)). In addition, the Executive Director is expressly empowered by Section 309 to employ staff "to perform the duties and exercise the powers conferred upon the commission by law," including, implicitly, the duties and powers associated with the review and processing of advice letters. Staff has ably performed these duties and powers for many years, processing several thousand advice letters annually under the guidance of GO 96-A and other orders of the Commission. Thus, our present delegation to staff of responsibilities for reviewing and processing advice letters falls squarely within our statutory authority.[89]

Resolution M-4801 and D.02-02-049 were appealed on the grounds we had unlawfully delegated authority to staff. Writ of review was denied.[90]

Our Resolution M-4801 and D.02-02-049 advice letter delegation guidelines were modified and eventually incorporated in G. O. 96-B.[91] G.O. 96-B General Rule 9.1 establishes the presumption that "[I]n general, any information submitted in support of or in opposition to the relief requested in an advice letter will either be open to public inspection or will already be subject to confidential treatment pursuant to nondisclosure agreements and a protective order issued in a formal proceeding. … In any event, confidential treatment may be requested only for the kinds of information for which such treatment is authorized by statute, by prior Commission order, or by the provisions of this General Order."

G.O. 96-B General Rule 9.2 provides that "A person requesting confidential treatment under this General Order bears the burden of proving why any particular document, or portion of a document, must or should be withheld from public disclosure…."

G.O. 96-B General Rule 9.3 provides that:

> Whenever a person submitting a document (other than an application for rehearing) under this General Order wants the Commission to keep the entire document under seal, or in redacted and unredacted versions, that person shall submit to the reviewing Industry Division a written request for such confidential treatment. The request shall either (1) attach a copy of the protective order that applies to the information for which confidential treatment is sought, or (2) explain

[89] D.02-02-049 at 8-9.

[90] Writ of Review denied, December 4, 2002 (*Southern California Edison v. Public Utilities Commission* (Ct. App. 2d Dist., Div. 1, Case No. B157507).

[91] G.O. 96-B, most recently amended by Resolution T-17327 (January 12, 2012).

why it is appropriate to accord confidential treatment to the information in the first instance in the advice letter process. In the latter case, the request shall attach a proposed protective order, or reference an effective protective order applicable to advice letter filings previously submitted by the person. In either case, the request shall be narrowly drawn, shall identify the text and the information within the document for which confidential treatment is sought, and shall specify the grounds justifying such treatment.

Consistent with the above requirements, a utility may request confidential treatment for part of an advice letter; however, a utility may request confidential treatment for part of an advice letter that is effective pending disposition only if the utility concurrently provides access to the entire advice letter to those persons on its advice letter service list who have executed a reasonable nondisclosure agreement for purposes of advice letter review.

Whenever a request for confidential treatment of all or part of an advice letter is submitted to an Industry Division, the person desiring confidential treatment of information provided to the Commission shall at a minimum:

> (a) Include the following information in the cover sheet of the advice letter: (i) a statement that the utility is requesting confidential treatment of information filed in the advice letter; (ii) specification of the information for which the utility is seeking confidential treatment; (iii) a statement that the information will be made available to those who execute a nondisclosure agreement; and (iv) a list of the name and contact information of the person or persons who will provide the nondisclosure agreement and access to the confidential information. The cover sheet of an advice letter, any of the information in the cover sheet, and any of the proposed tariff sheets included as part of the advice letter will not be kept confidential.
>
> (b) Specifically indicate the information that the person wishes to be kept confidential, clearly marking each page, or portion of a page, for which confidential treatment is requested.
>
> (c) 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 Commission 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.
>
> (d) Identify any specific provision of state or federal law, or Commission decision, the person believes prohibits disclosure of the information for which it seeks confidential treatment and explain in detail the applicability of the law or decision to that information.
>
> (e) 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.
>
> (f) Identify any specific privilege, if any, the person believes the Commission 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.
>
> (g) State whether the person would object if the information were disclosed in an aggregated format.
>
> (h) State, to the best of one's knowledge, 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 utility or entity or to a non-market participant.

G.O. 96-B General Rule 9.4 specifies the date on which a "confidentiality claim, whether or not specifically acted upon by the Commission or Industry Division, expires" and states that "[t]o reassert the confidentiality claim, the person must again satisfy the requirements of this General Order before the end of the confidentiality period."

G.O. 96-B General Rule 9.5 provides that:

> Any person may object to the requested confidential treatment, and shall meet and confer with the requester to resolve such objections informally whenever possible. When such objections are not so resolved, the Industry Division will refer the request to the Administrative Law Judge Division. Confidential treatment shall be accorded pending a ruling on the request;

> however, the Industry Division, in appropriate circumstances, may issue a notice delaying the effective date of the advice letter pending the ruling.

And G.O. 96-B General Rule 9.6 provides that:

> In the case where a protective order has not yet been issued, if the Industry Division determines that confidential treatment is warranted, review of the advice letter shall proceed in the normal fashion. If the Industry Division determines that confidential treatment is not warranted, then the Industry Division shall (a) proceed with review of the advice letter, and (b) attempt to informally resolve the dispute with the filing party. If the Industry Division and filing party are unsuccessful in resolving the dispute, the filing party shall be given 10 days, following Industry Division notification that confidentiality will not be afforded, to appeal the confidentiality issue to the Administrative Law Judge Division. Confidentiality will continue to be afforded while the appeal is pending.

Thus, we have already firmly established the principles that we can: (1) issue orders addressing in broad contexts the confidential or public nature of information submitted to the CPUC; (2) limit utility authority to request confidential treatment to situations in which such confidential treatment is authorized – in a manner that implicitly negates any assumption that Cal. Pub. Util. Code § 583 provides a basis for such requests[92]; (3) require utilities to provide industry divisions with detailed information explaining why confidential treatment is justified – information similar in detail to that required in Draft G.O. 66-D ; and (4) require Division staff to review requests for confidential treatment, determine whether the requests have merit, seek to informally resolve confidentiality issues, and refer those matters that cannot be informally resolved to another division, *e.g.*, the ALJ Division. These well-established delegation principles support the very similar delegations proposed in Draft G.O. 66-D.

We agree with SDG&E's comment that staff determinations based on matrices are ministerial, and thus represent an appropriate delegation of authority. [93]

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[92] Cal. Pub. Util. Code § 583 applies without limitation to information furnished to the CPUC by utilities, and provides that such information is confidential in the absence of a Cal. Pub. Util. Code provision requiring disclosure, or CPUC authorization for disclosure. If the CPUC viewed § 583 as a sufficient substantive basis for nondisclosure, or as a prohibition on decisions broadly addressing the public or confidential status of information furnished to the agency, there would have been no reason for it to consider a provision limiting the scope of information for which confidentiality can be claimed; any advice letter information would have been presumptively viewed as confidential.

[93] SDG&E Comments on Revised Draft Resolution at 12.

We could provide additional examples of our delegations of authority to staff, but do not feel the need to do so at this time, since this Resolution will not be adopting Draft G.O. 66-D as originally proposed and subsequently revised in response to comments, or the alternative Draft G.O. 66-D accompanying this Resolution. Further workshops and other opportunities to be heard will be provided before staff again presents use with a final proposed G.O.66-D for our consideration.

**Deferral of Confidentiality Determinations**

CWA and IEP comments regarding initial Draft Resolution L-436 complained that Draft General Order 66-D § 3.1.2 permitted the CPUC to defer making confidentiality determinations regarding requests for confidential treatment, and suggest that the General Order be amended to require timely determinations regarding every request for confidential treatment. Section 3.1.2. read, in part, as follows:

> 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.

When responding to the initial comments on Draft Resolution L-436, and amending § 3.1.2 to include the standing PRO resolution proposed by PG&E/SCE, we deleted the deferred determination option in the original Draft Resolution.

In commenting on the Revised Draft Resolution, CWA argued that, at least with respect to confidential records provided to DRA during the course of a formal proceeding, it would more administratively efficient to provide that all such records remain confidential unless disclosure is authorized by a presiding officer or the CPUC during the proceeding, without the need for individual requests for confidential treatment for each data request response or other record. CWA suggests "deferring the consideration of confidentiality issues with respect to documents submitted in the context of formal proceedings until a request for such documents is received from someone not subject to a non-disclosure agreement or a protective order in the subject proceeding. Absent such a request, Commission and parties' resources need not be expended on detailed and potentially contentious confidentiality reviews."[94] CIC suggests something similar.

We see merits to both approaches: determinations regarding every request for confidential treatment could provide consistency and certainty, and deferral of

[94] CWA Comments on Revised Draft Resolution, p. 4.

determinations regarding confidential records routinely provided to DRA and/or others during formal proceedings could avoid interfering with already tight procedural schedules, and wasting parties' and CPUC resources on numerous and burdensome filings that may result in contentious confidentiality reviews. It is our hope that the development of carefully thought out public and confidential records matrices, and the implementation of streamlined procedures for requesting confidential treatment for records that fall within a class designated by the CPUC as confidential, will reduce by 90% any confusion regard what is, and is not, available to the public. We expect this will be an issue for discussion during the workshops we are directing staff to schedule.

Cal. Gov't. Code § 6252.2 provides an option similar to that advanced in the CWA and CIC Comments on the Revised Draft Resolution. The agency responsible for processing pesticide registrations accepts records subject to trade secret claims, and processes those claims either on the Director's initiative or in response to records requests seeking information identified as a trade secret. If the Director determines a privilege claim is not valid, he or she notifies the submitter, who has a given number of days to explain the basis for the privilege claim. The Director then has a given number of days to respond to the submitter's trade secret justification. If no submitter response is received, or the claim is found without merit, the submitter is notified that the agency will release the records within a given period, within which the submitter can seek available legal remedies.

We have developed a new option for consideration during procedural workshops that may provide some of the confidentiality certainty sought by commenters and while at the same time preserving an option for the streamlined processing of records during proceedings involving tight timelines and large volumes of records. This option would require the CPUC to establish new records tracking systems, databases, and matrices, and would require regulated entities to set forth their confidentiality concerns and assertions in a manner conducive to the development of entity-specific resolutions to be adopted by the CPUC and kept on file for future reference in later abbreviated requests for confidential treatment.

The entity-specific resolutions would detail the public and confidential status of records, and discuss specific exemptions and/or privileges applicable to classes of records, in a manner that would facilitate responses to records requests and discovery seeking such records. The reward for this up-front investment of time and resources may be the establishment of a new system in which short-form references to a resolution adopted by the Commission in a manner narrowly tailored to the specific classes of records and information provided by an entity to the CPUC could substitute for the current inadequate and often confusing shorthand references to Cal. Pub. Util. Code § 583 and G.O. 66-C. The use of shorthand references in association with the provision of specific types of records may help preserve the streamlined flow of information between regulated entities

and the CPUC, while providing new benefits in the form of clarity as to what is, or is not, confidential.

Under this option, an entity that wishes to seek confidential treatment for non-routine material not covered in the entity's standard public and confidential status resolution would have to file a more detailed request for confidential treatment. This would presumably be the exception rather than the rule, if the regulated entity-specific resolutions are carefully crafted.

In order to ensure that similarly situated entities had similar options for requesting confidential treatment, and that the CPUC's responses to such requests were uniform, this new option could not be adopted until additional matrices are developed. The matrices would identify classes of records and information that must be confidential, classes that must be public, classes that must be conditionally accessible, and classes of records and information for which a utility may, but is not required, to, seek confidential treatment. Our experience shows there are situations in which one utility may seek confidential treatment for certain records, and choose the option of providing both a redacted and an unredacted version of a required report, while another utility may submit just one unredacted report, with no request for confidential treatment.[95] We do not intend that any matrices we develop prevent entities from favoring transparency over secrecy, where there is no law expressly prohibiting disclosure.

We hope stakeholders can agree that if we develop additional matrices, procedures for adopting utility specific standard public and confidential status resolutions and allowing short-form designations that describe the accompanying records, and provide a link or other reference to applicable standard resolutions, we can rely on staff to review the records associated with such short-form designations, compare the records to the standard resolutions, and determine whether the designations appear appropriate, or appear to conflict with the standard resolutions or matrices.

If we could not rely on staff to review submissions, and exercise a degree of judgment in determining whether requests for confidential treatment or confidentiality designations complied with our resolutions and policies, we might be compelled to require utilities to file detailed requests for confidential treatment requests with every document, for our approval in a formal proceeding decision or ruling, or in a PRO resolution or similar forum. This would limit our current concerns with what often amounts to self-designations of information as confidential, but would not provide a very streamlined option for records processing. However, it might be as least as efficient as a system in which we required requests for confidential treatment for every individual submission, to be subject to an initial industry division determination, and then to pre-disclosure appeals to the full Commission by anyone disagreeing with staff's initial determination, no matter how cut and dried such a determination might be.

[95] *See*, *e.g.*, reports filed in compliance with General Order 77 series.

**Application of G. O. 66-D to records previously filed with the CPUC**

Several commenters express concern regarding the possible application of proposed G.O. 66-D to records submitted to the CPUC before the new proposed G.O. becomes effective. Commenting on the initial Draft Resolution, CCSF specifically requested the we apply the new disclosure principles to previously filed records, especially those where confidential treatment was accorded on the basis of claims that disclosure would place a company at an unfair business disadvantage, and others requested that we clarify the relationship between the proposed G.O. and previous CPUC confidentiality determinations that may be at odds with new policies. Others expressed concern that the proposed G.O. would permit acceptance of new requests for confidential treatment on the basis of old ill-reasoned CPUC decisions or rulings that may be contrary to the new policies.

We appreciate these comments because they highlight our need to be precise in establishing rules for requesting confidential treatment and in explaining the intended relationship between the proposed G.O., previously filed records, and previously issued rulings and decisions. We faced a somewhat similar issue in R.05-06-040, when we adopted the energy procurement public and confidential information matrices. Prior to that Rulemaking, requests for confidential treatment for sensitive information in Power Purchase Agreements (PPAs) were processed in Energy Division resolutions regarding the Advice Letter filings seeking approval of the PPAs. Different resolutions granted different degrees of confidential treatment, for various periods of time.

In adopting the new matrices, the CPUC dealt with the potential inconsistency between new matrix confidentiality rules and past CPUC confidentiality determinations regarding records now subject to the matrices by declaring that the new matrixes were controlling, and superseded certain past conflicting PPA confidentiality determinations. This simplification created certainty regarding whether or not specific PPAs could be disclosed, by standardizing the period for confidential treatment. Under the new system, staff can, and does, automatically post on our internet site Renewal Portfolio Standard (RPS) PPAs once the matrix confidentiality period expires.

On the other hand, we do not think it would be wise for us to implement new rules in a manner that rides roughshod over specific confidentiality determinations already made in formal proceedings, or in resolutions regarding advice letters, since this would both interfere with established expectations and create the potential for contentions that we were modifying our own prior decisions without appropriate due process. In R.05-06-040, parties with PPAs affected by the standardization of confidential treatment had ample opportunity to express their views before the CPUC consciously and thoughtfully changed the rules.

However, regulated entities have filed many records accompanied by requests for confidential treatment in contexts other than formal proceedings or advice letter

proceeding; contexts in which the CPUC neither granted nor rejected the assertion of confidentiality or request for confidential treatment. In cases where there has been no CPUC confidential determination, due process concerns regarding inappropriate changes of prior decisions are lessened, although those who submitted the records and asserted the need for confidential treatment may have expected the records to be treated as confidential indefinitely.

In those situations, a nuanced approach may be needed. We are aware that, in a number of situations, regulated entities routinely assert confidentiality for records not truly entitled to confidential treatment. If a regulated entity identifies a document it files with the CPUC as confidential, yet the filing is in response to a statute or order that provides that the document be available to the public, the fact that the entity may desire or expect confidential treatment does not suggest that we should defer to such prior, though sometimes ill-founded, expectations or confidentiality designations.

Regulated entities routinely label such documents as confidential pursuant to Cal. Pub. Util. Code § 583 and G.O. 66-C, using these references as a shorthand way of expressing their desire for confidential treatment. Often, such shorthand references are unaccompanied by further explanation. Even where such references are perfectly appropriate, the applicability of § 583 and/or G. O. 66-C does not create a vested right in confidentiality, create any objectively reasonable expectations of permanent confidentiality, or prevent the CPUC from authorizing disclosure in appropriate circumstances. As we note in numerous resolutions authorizing disclosure of CPUC investigation records, neither the statute nor the G.O. present a substantive barrier to disclosure: both offer the CPUC the opportunity to determine that records subject to those provisions shall be disclosed.

Filing something "subject to § 583 and G.O. 66-C" requires the regulated entity to accept all elements of these provisions; *e.g.*, both any initial expectation of confidentiality based on past experience, *and* the understanding that the CPUC may decide to authorize disclosure. An expectation that we are bound by a regulated entity's identification of a document as subject to § 583 and G.O. 66-C is not objectively reasonable, given the actual language of the statute and G.O.

We hope the above discussion provides some assurance that we do not intend to make public every document previously filed with the CPUC that may not be subject to confidential treatment under new matrices or policies, without providing some notice of our intentions. At the same time, we hope it demonstrates our understanding that the relationship between new rules and old records is not susceptible to an easy one size fits all approach. We anticipate that our planned workshops will result in thoughtful consideration of these issues.

If staff holds a sufficient number of workshops to permit all stakeholders to adequately raise their concerns, drafts and circulates for public comment and further discussion a series of industry and/or subject-specific matrices describing the classes of records that must be public, the classes that must be confidential, and the classes where confidential treatment is an option, but not required, we should be able to provide stakeholders ample opportunity to be heard before we adopt any such matrices. We anticipate that some stakeholders may continue to advocate that certain matrices require disclosure of certain information previously submitted under claims of confidentiality, while others may favor a blanket prohibition on any CPUC action to authorize disclosure of any information previously identified by the filer as confidential.

**Pre-Disclosure Notice**

A number of commenters ask that we provide them with notice and an opportunity to object to disclosure every time we receive a records request or subpoena seeking disclosure of records they provided to the CPUC. As we noted in response to the initial round of comments, while we could provide some degree of notice by posting records requests and subpoenas on our internet site, it is not practical for us to provide individual notice in every case; nor is it necessary or desirable. When we receive records request and subpoenas, we determine whether we have responsive records, and whether such records are available to the public or the subpoenaing party. If the records are subject to a statute prohibiting disclosure, a CPUC privilege or CPRA exemption the CPUC chooses to assert, or a CPUC decision, order, or ruling prohibiting or limiting disclosure, we do not provide the requested records; no input from regulated entities is required.

Given our need to respond to CPRA requests within ten days, absent unusual circumstances, and to subpoenas within the time periods set forth in the Cal. Code of Civ. Pro., there is generally no time to locate records, send notices, wait for replies, respond to such replies, and still respond to requests in a timely fashion.[96] In the Rulemaking resulting in the energy procurement matrices, we rejected a request that the CPUC notify parties if it receives CPRA requests by deleting a provision of a proposed model protective order. D.08-04-023 states:

> Paragraph 13. California Public Records Act (CPRA) Requests. This paragraph contains requirements that the Commission notify parties if it receives Public Records Act requests. We delete this provision in its entirety. The Commission will abide by its ordinary practice, consistent with the CPRA, but should not assume any additional burdens, or impose such burdens on third parties who exercise their rights to access information under the CPRA.[97]

[96] Cal. Gov't. Code § 6253(c); Cal. Code Civ. Pro. § 2020.410(c.)

[97] D.08-04-032 at 10.

D.08-04-023 provides that when a person seeks access to records designated as confidential in a party's response to a data request in a separate proceeding, the person and the party should meet and confer to seek to resolve issues regarding access to such records.[98] This approach may be practical in formal proceedings, and we may explore whether it could also be used when confidential status is requested mainly on the basis of a claim that disclosure would reveal proprietary or commercially-sensitive information and thus place the entity at an unfair business disadvantage.

The burden placed on the requester is a potential problem with a broader use of this approach, however. Any member of the public can make a CPRA request, orally, or in writing. No special language or format is required, and requests are received in person, by phone, by fax, by mail, and by electronic mail. The level of contact information provided by records requesters varies, and we have no authority to require requesters to engage in any type of meet and confer process, although we can certainly offer the option of doing so. The procedural workshop will provide a forum for further discussion of this issue.

We note that in *Marken*, *supra*, the Court addressed the interplay between the desirability of providing a procedural avenue for affected parties to object to an agency's proposed disclosure of information allegedly subject to a statutory prohibition against disclosure and the time limits on an agency's responses to CPRA requests.[99] Noting that the CPRA requires responses within 24 days, at most [adding to the initial 10 day response period the additional 14 days available in specified circumstances], the Court recognized that the agency had provided additional time for the private real party in interest to file reverse-CPRA litigation intended to prevent the agency from disclosure information subject to a statutory prohibition against disclosure, and that this extension may not have been consistent with the CPRA. In such cases, the Court stated, the person seeking the records should at least be given an opportunity to participate to object to the objections to the agency's proposed disclosure.

Although we anticipate that our proposed new matrices and procedures will reduce the likelihood of protracted disputes regarding whether records submitted to the CPUC are subject to a statutory prohibition against disclosure, we would certainly prefer to resolve such disputes in-house, rather than through reverse-CPRA litigation in the courts, especially given the Cal. Pub. Util. Code § 1759 restriction on lower-court actions overruling our decisions or interfering with our activities. We intend to explore whether we can provide options for resolving such disputes through CPUC decisions or resolutions, if necessary through the use of Cal. Pub. Util. Code § 583 as a basis for deferring disclosure until we have resolved disputes based on claims that a statute prohibits our disclosure of specific records.

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[98] D.08-04-023 at 8.

[99] 202 Cal.App.4th at 1267-1269.

**Burdensome Nature of Procedures Outlined in Proposed G.O. 66-D**

Perhaps the clearest message we received in both the initial comments and the comments regarding the Revised Draft Resolution and G.O. 66-D is that many entities are concerned that the procedures outlined in G.O. 66-D are excessively complicated and burdensome, are likely to overwhelm the resources of both regulated entities and CPUC staff, and are likely to interfere with the current streamlined flow of information between regulated entities and DRA and other CPUC staff by upending longstanding assumptions regarding the confidentiality of documents submitted outside the scope of CPUC and identified by the submitter as "Confidential pursuant to Cal. Pub. Util. Code § 583 and G.O. 66-C," and/or as subject to the commonly referenced exemptions in G.O. 66-C. Commenters fear that the filing of requests for confidential treatment for every document submitted to the CPUC that are subject to interpretation uncertainties may encourage defensive appeals or challenges.

Upon further consideration, and our review of the many helpful suggestions included in the comments, we believe we may be able to develop procedures that allow us to establish more detailed and rigorous analyses of the necessity and appropriateness of confidential treatment for various classes of documents routinely filed with or otherwise submitted to the CPUC, while at the same time preserving many of the streamlined information transfer benefits of the current system.

**New Option for Consideration**

We have proposed the adoption of new industry, division, or subject matter matrices, and the establishment of indexes and databases that will allow the public to more easily identify and locate CPUC records, and to determine which records are public, and which are confidential and, if so the reasons for confidential treatment.

We also propose the consideration of another option for clarifying public access to non-confidential records submitted to the CPUC, and for preserving the streamlined routine flow of information from regulated entities to the CPUC without relying on utility self-designations of information as confidential. We will, of course, not adopt the standard public and confidential status resolution option until further workshops have been held and ample opportunities to comment or otherwise be heard have been provided.

The new approach presumes that it should be possible to create a number of resource libraries, databases, and records tracking systems that do not currently exist, in order to create an integrated and accessible system for processing requests for confidential treatment that: (1) includes a series of new industry, division or subject matter matrices of public and confidential records; (2) provides an opportunity for regulated entities to request that we adopt entity-specific standard public and confidential status resolutions that that would clearly spell out what was, or was not, confidential, and cite the appropriate CPRA exemption, privilege, or other CPUC-accepted basis for confidential treatment; (3) permits the use of short-form references to entity-specific standard public

and confidential status resolutions and matrices adopted in accord with G.O. 66-D and maintained in a publicly accessible on-line library, when the entity submits records subject to such resolutions [with the short-form references being similar to the current shorthand references to records being confidential pursuant to Cal. Pub. Util. Code § 583 and G.O. 66-C," but far less uncertain, since they would be linked to the standard resolution that would clearly explain what was, or was not, confidential, and why]; (4) provides that requests for confidential treatment of records that fell outside an established matrix would require a more detailed request and subsequent analysis; and (5) requires regulated entities to file monthly reports that include information regarding requests for confidential treatment and public and confidential status designations.

We intend to allow parties such as TURN to request access to records previously designated confidential in a context outside a formal CPUC proceeding, in appropriate circumstances. The standard confidential treatment resolutions would include language similar to that in G.O. 66-C § 3.4., which provides that a person may appeal to the full Commission for access to records to which access was initially denied, or which fall within a class of records generally designated as confidential.

We contemplate entity-specific public and confidential status resolutions because we are aware that some confidentiality concerns may be entity-specific. In our experience, similarly situated entities may not share identical concerns regarding public access to information. We do not wish to limit public access by establishing matrices that mandate that certain classes of information be confidential even though some entities that provide such information do not request or desire confidential treatment. At the same time, we accept that sometimes more than one entity will come to together with a joint proposal or approach, as is the case with a number of those commenting on this Resolution. We propose offering a joint filing option as well.

We think it reasonable to clarify that an entity that wants records or information kept from the public must request such confidential treatment and meet their burden of proving such treatment is lawful and appropriate. This basic principle was incorporated into the predecessors of G.O. 66-C, beginning with G.O. 66 in 1923. We will, of course, reserve our right to independently determine that records or information are confidential even in the absence of such a request. The standing PRO resolution process suggested by PG&E and SCE could serve to identify requests for confidential treatment, and the status of such requests, and to expressly authorize disclosure of any records for which confidential treatment was not requested, but would not be essential. We will, of course, reserve our right to independently determine that records or information are confidential even in the absence of such a request.

We are considering a refinement or supplement to the routine PRO resolution process, however, one triggered by comments expressing concern over the burden some of our proposed procedures may impose on our staff and others. Rather than require our PRO to develop resolutions identifying all requests for confidential treatment received during a given period, and their status, we may require regulated entities to submit monthly

reports identifying each request for confidential treatment and public and confidential status designation submitted pursuant to G.O. 66-D during a given period. The reports could also include references to requests for confidential treatment made in association with advice letter filings, and formal proceeding motions to file documents under seal.[100]

PRO resolutions could then incorporate these monthly reports by reference, and provide any additional status information. This would not only assist the PRO in the preparation of PRO resolutions, it would also offer a convenient opportunity for us to offer the public an opportunity to comment on or protest requests for confidential treatment and public and confidential status designations. By centralizing reports the requests and designations, and requiring them to be submitted on a periodic basis, we could also centralize the timing of opportunities to protest, and perhaps use the monthly reports as a basis for division or PRO proposals that the CPUC reject inappropriate requests and designations, modify those that may be acceptable with minor changes, and/or ratify noncontroversial requests for confidential treatment and public and confidential status designations.

The quarterly procurement transaction compliance filings utilities are already required to submit may serve as a useful model for the type of monthly reports we contemplate.[101] These reports, filed through an advice letter process, demonstrate that procurement-related transactions during a given period are in compliance with procurement plans approved by the CPUC. The reports summarize transactions, and the confidential information associated with such transactions. The reports include a declaration by a utility employee responsible for filing the reports and for requesting confidential treatment, in accord with D.08-04-023 and the August 22, 2006 Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with D.06-06-066. The level of detail in such reports varies substantially. PG&E's reports include a table identifying confidential information as follows: Redaction reference; whether request is subject to a matrix; which matrix category or categories apply; whether the utility is complying with any matrix limits on confidentiality; confirmation that the information is not already public; whether that data can be aggregated, redacted, summarized, or masked, in a way that allows partial disclosure; the utility's justification for confidential treatment, and the length of time for which confidential treatment has been approved or is requested.[102] Other reports are less detailed.[103]

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[100] As DRA suggests, hyperlinks to actual documents should be incorporated into our databases of requests for confidential treatment. Electronically filed monthly reports could also include hyperlinks, wherever practical.

[101] *See*, *e.g*. PG&E A.L. 4132-E.

[102] Id.

[103] *See*, *e.g*., SCE A.L. 2801-E.

Since these reports are submitted as advice letters, the cover letters for such filings use standard language regarding proposed effective dates and protest opportunities, and provide appropriate contact information. Provisional confidential treatment is provided while the advice letters remain pending.

If G.O. 66-D monthly reports were required in an advice letter format, the G.O. 96-B rules for advice letter filings would apply, at least where there are applicable Industry Division Rules for processing the advice letters. In other contexts, such as where a report is filed by a regulated entity other than a utility subject to G.O. 96-B, the General Rules, and supplemental rules adopted in G.O. 66-D or elsewhere would be necessary.[104] As with the quarterly procurement records reports, confidential treatment would be provided while the requests for confidential treatment and public or confidential status designations remained pending.

We view the monthly report concept as a possible supplement to, and not a replacement for, the staff review procedures outlined in Draft G.O. 66-D. We see value in retaining requirements that regulated entities adequately justify requests for confidential treatment, and that staff review such requests to ensure they meet procedural and substantive requirements, and do not seek confidential treatment for records and information we have previously designated as public.

We know it will take time and effort to flesh out these procedures, hold the workshops, adopt new matrices, create the necessary new databases and other resources, review and adopt entity specific requests for standard confidential treatment resolutions, and so on. However, we believe that this process may result in a new system that provides much needed clarity and legal analysis, opportunities for the creation of systems for notifying entities regarding requests or subpoenas seeking records subject to a matrix and standard public and confidential status resolutions, in appropriate circumstances, and for informing members of the public and others who they may contact to discuss possible access to such records through nondisclosure agreements or other arrangements, and the use of a shorthand system for requesting confidential treatment for individual records or filings where the CPUC has already reviewed and issued resolutions approving confidential treatment for specific classes of records.

We have in the Draft G.O. 66-D attached to this Resolution, set forth a rough proposal in line with this discussion of alternatives to the previously proposed Draft G.O. 66-D. As previously stated, we are not adopting this draft resolution at this time, but simply offering it as something to consider during future workshops and other efforts to develop a new system acceptable to as many stakeholders as reasonably practical.

[104] G.O. 96-B does not, for example, include Industry Rules for entities subject to oversight by our Consumer Protection and Safety Division.

**Rulemaking or Resolutions**

Several commenters, including CALTEL, DRA, and TURN, recommend that we abandon the current proceeding initiated through this Resolution L-436 in favor of a rulemaking proceeding in which hearings may be held and a formal evidentiary record developed.

Certainly, this is one option to be considered. It is not clear, however, that a switch to a Rulemaking would result in a more useful or acceptable final product. As SCE noted in its comments recommending that the planned workshop on energy-related records not include reconsideration of the energy procurement matrices developed in R.05-04-030, that Rulemaking, which primarily addressed only records associated with energy procurement, was initiated in 2005, finally closed in late 2011, and involved hundreds of documents and 16 final Commission decisions.

While rulemaking proceedings may involve hearings, they often primarily involve primarily involve the circulation of proposals, and the provision of notices and opportunities to comment that can also be provided outside the context of a formal Rulemaking through a series of Commission resolutions. It may be possible to record or have a reporter present at future workshops, so that a formal record of the workshops could be created, if this process is considered desirable.

**Safety First**

Several parties, including CWA, CIC, and SDG&E/SCG, comment that this Resolution appears to focus on the disclosure of safety-related records, and suggest that we address the disclosure of safety-related records before making broader changes to its records disclosure procedures. In their initial Comments on Draft Resolution L-436, SDG&E/SCG state that:

> The Draft Resolution appears designed to primarily address concerns with respect to requests for the Commission's safety-related reports, investigation records and audits, SDG&E and SoCalGas support the Commission's efforts to increase public access to these particular Commission documents. Recognizing that the public release of these Commission reports, records and audits is the foremost priority for the Commission, SDG&E and SoCalGas recommend that the final Resolution L-436 focus on this principal issue.[105]

SDG&E/SCG's Comments then state that the ultimate resolution of the complex matters raised in Draft Resolution L-436 require more time and dialogue than two rounds of comments, and suggest that we divide the matter into two parts:

[105] SDG&E/SoCalGas Comments at 1-2.

> The first phase …would focus on achieving the Commission's first goal: eliminating barriers that impede the Commission's ability to share its final and complete audits, investigation records and safety-related reports…SDG&E and SoCalGas propose that a second phase consisting of workshops should be scheduled, which would provide a valuable forum for all interested parties and Staff to analyze the possible consequences of releasing sensitive information, discuss what particular types of documents deserve confidential treatment, and determine how confidentiality requests and public disclosure should be handled. A similar process resulted in D.06-06-066, which governs the confidential treatment and public disclosure of electric-procurement-related documents, and provides a helpful matrix to guide related confidentiality determinations.[106]

SDG&E/SCG note that they "support the Draft Resolution's efforts to streamline the process for publicly disclosing final and complete Commission safety-related reports, Commission records of completed safety-related investigations, and Commission-conducted audits." SDG&E/SCG distinguish between CPUC safety–related reports and utility safety-related reports, but this distinction is not relevant to this recognition of SDG&E/SCG recommendation that the CPUC focus on safety records first, before trying to resolve the remaining complex issues associated with the disclosure and confidential treatment of CPUC records.[107]

We agree that we should focus on safety-related records first. Safety-related records provided by regulated entities, and generated by the CPUC, represent a substantial but relatively distinct subset of the Commission's overall records, and have been the subject of great public interest, and numerous records requests and subpoenas. Further, regulated entities and CPUC staff have both spent substantial time considering various issues related to the disclosure or confidential treatment of safety-related records, and a number of commenters, including PG&E, SCE, SD&E, and SCG, have expressed support for our proposal for a safety portal that would make it much easier for the public to access Commission safety records.

While there are many details to be worked out regarding the scope of disclosures, the basic concept of providing greater increased access to safety records appears to have broad support. We will direct staff to hold one or more workshops to discuss the types of safety-related records that should be made available to the public, the types of records that should be withheld from the public, the rational for any confidential treatment of safety-related records, the timing of disclosures, the provision of opportunities to respond to initial CPUC audit reports prior to disclosure of CPUC conducted audit records, and similar issues.

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[106] *Id*., at 3.

[107] SDG&E/SCG Comments at 3-4.; PG&E/SCE Comments at 5 also distinguishing between CPUC safety-related reports and utility safety-related records.

Safety-related records workshops should address, among other things, the extent to which critical infrastructure security information should be kept confidential because disclosure could create risks to the utility infrastructure, employees, and the public, and the extent to which CPUC-imposed restrictions on the disclosure of infrastructure information would be absurd because such information is already available to the public through the internet, CEQA records, and other sources.

They should also attempt to balance the desirability of limiting public disclosure of personally-identifiable information regarding utility employees whose information may appear in safety records, and personally-identifiable information regarding non-utility individuals identified in incident investigation records, where disclosure may affect privacy interests, against the usefulness of such information in understanding safety-related issues or events. DRA comments that these disclosure issues should be addressed on a case-by-case, rather than a generic, basis. We have discussed safety-related records privacy issues at some depth in a number of resolutions authorizing disclosure of safety-related records, including Resolutions L-257; L-265, L-272, and L-332. We will make those Resolutions readily available prior to the safety-related records workshops, so that the parties may better understand how we have responded to such issues in the past.

**Moving Forward**

We delegate to our Legal Division responsibility for holding workshops and continuing the process of developing and recommending changes to our policies for records disclosure and confidential treatment.

Based on comments received and our own experience, we believe the following issues should be considered, and the following actions taken:

1. Additional matrices that identify specific classes of documents and information associated with a specific industry, division, subject matter, or context; state whether such specific classes are public, or confidential; and identify the period for any confidential treatment should be developed. Such matrices have the potential to facilitate more uniform treatment of similar records, and greater public access to CPUC records, if the definition of the classes of records are clear, and time limits for confidential treatment are clear and enforced.
2. The public or confidential status of specific types of reports regulated entities submit to the CPUC on an annual or other periodic basis, or in response to specific triggering events, in response to G.O.s adopted by the CPUC through resolutions or other decisions, or in response to specific CPUC decisions or rulings should be determined. Many G.O.s or other CPUC directives requiring regulated entities to file reports with the CPUC were adopted during a time period when the CPUC's G.O.s governing public access to CPUC records expressly stated that such records would be available

to the public. The Legal Division workshops should explore whether there have been any fundamental changes in the regulated entity marketplace that would suggest why we should not re-affirm the public status of such reports.

By identifying the specific reports we require utilities to file, the G.O., statute, decision, or other authority requiring the filing of such reports, and any information in the order, decision, or statute requiring the filing of the reports that expressly or implicitly requires the reports to be public, or confidential, the CPUC can clarify whether those reports are available to the public. The CPUC can eliminate uncertainty regarding the public's ability to review such routinely filed reports, and reduce or limit the need for regulated entities to file individual requests for confidential treatment regarding such routinely filed reports.

4. It is worth exploring whether it may be possible to create a system through a regulated entity, or group of entities, could request that the CPUC adopt a standard public and confidential status resolution that would address in a comprehensive manner the public or confidential status of classes of records routinely submitted to the CPUC by the entity, which could then serve as basis for future short-form designations of routinely submitted information as public, or as confidential.

   Standard public and confidential status resolutions would include detailed references to specific statutes, regulations, decisions, resolutions, and matrices developed in accord with the principles of this Resolution, and similar authority, and be structured to provide uniform treatment for similar information wherever practical. Because similarly situated entities may not always share identical confidentiality concerns, the concept of an entity-specific or group of entity specific resolution would create a format for individualized determinations regarding the treatment of information that may fall within class for which confidential treatment is not mandated by law or otherwise required, but is an option if an entity justifies the need for such treatment. For example, G.O. 77-M offers utilities the option of filing a public version and a confidential version. Some file both versions, others file one non-confidential version.

   If a regulated entity had a standard public and confidential status resolution on file with the Commission, adopted after notice and an opportunity for public comment, the entity could request confidential treatment for, or designate as confidential, individual documents or information submitted to the CPUC by referencing the standard

confidential treatment resolution in a short-form confidentiality request or designation accompanying the submission to the CPUC, whether the submission is electronic, or otherwise.

Short-form confidentiality designations tied to detailed matrices and/or standard public and confidential status resolutions may serve as an improved substitute for the current informal process whereby utilities indicate their desire that information remain confidential by including the phrase "Confidential pursuant to Cal. Pub. Util. Code § 583 and G.O. 66-C" that provides clarity regarding the legal basis for confidential treatment.

Similarly, short-form designations of records as public would provide clarity regarding routinely submitted records that are unquestionably public pursuant to a specific statute or regulation, or a CPUC decision, resolution, order, or ruling. Such designations would reduce the likelihood that someone may assume a routinely filed report or other document was confidential pursuant to Cal. Pub. Util. Code § 583, in the absence of a CPUC order authorizing disclosure of that individual document.

A short-form designation of a document as public would be the functional equivalent of the statement on the Form 700 statements of economic interest that: "This is a public document." If a document explicitly labeled as public, pursuant to a CPUC decision, resolution, order, or ruling requiring such labeling, there would be no need to consult an index of records or matrix, since the public status of the document would be immediately obvious.

The short-form public access or confidentiality designation would need to include, at a minimum, the following information: (1) name of entity and contact information that would permit CPUC staff, or anyone else, to contact the provider of the information; (2) date; (3) title of, or brief description of, the records accompanying the short form request or designation (*e.g*, response to DRA data request concerning headquarters staffing levels); (4) a link to a redacted version of the document (if the CPUC has authorized the filing of two versions of the document, one redacted, and one not); (5) a reference to the standard public and confidential status resolution or matrix on file with the CPUC, with, where practical, a hyperlink to that resolution or matrix, or an equivalent electronic address; and (6) a unique tracking number or identifier for the short form designation, with a hyperlink that will allow the short-form designation to be entered into the proposed request for confidential treatment/confidential designation database.

The goal of this proposal is to facilitate the free flow of information from regulated entities to the CPUC in a manner that makes it easy for the public CPUC staff, and regulated entities to determine whether information is public or confidential, and to identify the specific legal basis for any confidential treatment, without imposing a burdensome requirement that every filing or submission, however routine, be accompanied by a detailed legal justification for any requested confidential treatment, and that staff provide a similarly detailed document responding to every routine request, subject to extensive procedural options for challenging denials of confidential treatment.

5. It is worth exploring whether monthly reports identifying requests for confidential treatment and public and confidential status designations submitted to the CPUC in a given period could be productively submitted in a compliance advice letter filing that would provide an efficient framework for offering the public an opportunity to review, comment on, or protest requests for confidential treatment and status designations on a periodic, rather than case by case, basis. The use of an advice letter filing as a vehicle for submitting reports may also permit staff to process the compliance reports in a familiar procedural framework

6. Staff should develop a database in which standard public and confidential status treatment resolutions on file with the Commission, requests for confidential treatment, public and confidential status designations, and related documents, could be made accessible to the public, thus allowing the public to swiftly determine whether particular routine submitted documents or information is available to the public, or is confidential.

   Since the proposed standard public and confidential status resolutions could primarily address only routinely submitted information, separate requests for confidential treatment of information that does not fall within the scope of a standard resolution would still be required. Such requests for confidential treatment, and the CPUC's responses to the requests, should also be included in the accessible database.

   In order to ensure the database provides a comprehensive source of information regarding the public or confidential status of documents or information submitted to the CPUC, individual short-form designations of the public, or confidential, status of specific documents should also be included in the database.

As a practical matter, the CPUC PRO could not serve as a clerical resource for receiving all confidentiality requests, CPUC responses, and short-form public or confidential status designations, and entering all such documents into a centralized database. For this reason, it will be necessary to consider, in conjunction with the overall consideration of the standard public access and confidential treatment resolution option, whether it would be possible to create a coded electronic filing system through which entities could log in, and post their own requests for confidential treatment and short-form designations, and/or monthly compliance advice letter reports.

This log-in approach would reduce burdens on CPUC staff, allow those submitting information identified as confidential to make sure their claims were entered into the proper tracking system; ensure that entities submitting information as confidential enter confidentiality requests or designations in an appropriate format; that such entities could be held accountable for their claims; and that allow the entity to be contacted by: (1) those questioning or opposing confidential treatment; (2) those seeking access to publicly documents or information; (3) those seeking access to conditionally available information; and (4) those seeking to inform the entity that the CPUC has received a records request or subpoena seeking records that may include information designated as confidential by that entity.

We understand that an electronic filing system might not be practical for every single entity we regulate. At the same time, we have had positive experiences with various electronic filing systems. Recently, we initiated a mandatory electronic filing system for insurance information for the many thousands of passenger stage corporations, charter party carriers, and other transportation companies overseen by our Consumer Protection and Safety Division Licensing Branch, and have thus far experienced few problems. The electronic filing system allows easy tracking of certificates of insurance, notices of cancellations and reinstatement of insurance, suspensions of authority based on the absence of the required insurance documentation, and reduces the burdens, costs, and possibilities for inadvertent error associated with the former physical transmission of the immense numbers of insurance documents.

7. The practicality and desirability of the following proposed standard public and confidential status resolution, short-form public and confidential designation, database, and staff review procedures should be considered in future workshops.

**Future Workshops**

We are accepting the recommendation of a number of commenters who suggested we hold workshops to explore more thoroughly procedural and substantive issues raised by Draft Resolution L-436. We found our initial workshop fruitful, and expect future workshops will also be productive.

We plan to hold at least one additional workshop on procedural issues to discuss potential further revisions to the proposed General Order 66-D in detail and circulate that revised version for a final round of comments and replies. We also plan to hold at least three other workshops to address confidentiality and disclosure issues on a subject matter or industry-specific basis.

Our effort to develop additional matrixes identifying public and confidential information may proceed faster if we encourage the following workshop preparation:

1) We will require staff to provide the public and workshop attendees with a small resource library of statutes, regulations, Commission decisions, resolutions and other reference material that can be used to provide a common source of information regarding what should be included in specific matrix categories. This library should include a list of our G.O.s with references to the reports or other records associated with each G.O., and the explicit or implicit basis for public or confidential treatment of such reports and other records. We believe this may help stakeholders avoid indulging in broad philosophic discussions rather than discussions based on specific statutory language, and/or tightly focused policy considerations.
2) Utilities and other stakeholders are encouraged to use the Workshop Preparation Questionnaire as a template for describing confidentiality concerns associated with the specific types of reports and records the stakeholders commonly submits to the CPUC on a routine basis. The more detailed the lists of documents or specific types of records for which confidential treatment is requested, the more likely it is that a carefully crafted matrix could accommodate legitimate confidentiality concerns while permitting maximum public access to our records.

We will order staff to schedule the following workshops, with the safety-related records workshop to be scheduled as soon as practical:

1) Procedural Issues workshop: Possible topics include, but are not limited to, the following: (1) communications flow between utilities and DRA prior to, and during the course of, CPUC proceedings; (2) utility responses to information requests, records, request, and data requests from CPUC staff; and the CPUC's responses to records requests, discovery, and data requests seeking access to records of such utility responses; (3) CPUC responses to records requests, discovery, and data

requests seeking information subject to a utility request for confidential treatment that has been granted by the CPUC, or remains pending; (4) Public Records Office Resolution refinements; and (5) modification of the proposed procedure for processing of requests for confidential treatment.

2) Safety-related records: Possible topics include, but are not limited to, the following: (1) routine disclosure of safety-related reports utilities are required to provide to other state or federal agencies pursuant to laws and regulations of those agencies; (2) disclosure of safety-related reports utilities routinely provide to the CPUC (*e.g.*, G.O. 165 Reports and G.O. 112-E Reports); (3) disclosure of records of completed CPUC safety-related audits or inspections; (4) routine disclosure of records of completed CPUC safety-related investigations; (5) the disclosure/confidential treatment policies that should apply to records of transit agency incident investigations audited or otherwise reviewed by the CPUC; (6) utility facility information that should be disclosed in order to inform the public regarding the safety of utility facilities and operations; (7) utility facility information that should be withheld from the public because it is unavailable from other sources and disclosure might pose a serious and non-speculative threat to the safety of utility facilities and the public; and (8) the best way to craft disclosure matrixes or policies to ensure that they do not prevent the disclosure of information regarding existing or proposed utility facilities that is currently routinely made public.

3) Communications provider records: Possible topics include, but are not limited to, the following: (1) public/confidential status of reports filed pursuant to the Cal. Pub. Util. Code, CPUC G.O.s; CPUC decisions; FCC regulations; and similar authority; (2) records associated with programs subsidized by the public; (3) CASF records; 4) DIVCA records; and market sensitive information.

4) Energy-related records: Possible topics include, but are not limited to, the following: (1) issues related to disclosure of records not included in D.06-06-066 matrices; (2) disclosure of additional resource adequacy information; (3) disclosure of location of corporate solar and other renewable projects subsidized by ratepayers or the public; and (4) the definition of "market sensitive information," and similar terms, in energy-related contexts other than procurement records subject to existing matrixes.

## FINDINGS OF FACT

1. The CPUC's guidelines for access to public records, set forth in General Order 66-C, include provisions that are in need of recalibration 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 are more consistent with current law, current technologies and markets, and with the public records disclosure policies set forth in Article 1, § 3 of the California Constitution, the California Information Practices Act, 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 creation of industry, division, or subject matter matrices that list specific classes of documents and information that will be accessible to the public, and specific classes of documents and information that will receive confidential treatment for specified periods of time, would be in the public interest. These matrices would guide submitters and reviewers of requests for confidential treatment, as do the matrices developed through D.06-06-066.
5. 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, proposed non-disclosure agreements, 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.
6. 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 or regulation limiting disclosure.
7. While CPUC investigations of safety-related incidents remain open, the public disclosure of all records in the CPUC's investigation file could compromise the CPUC's investigation.

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

9. 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.

10. The public interest would be served by the provision of public access to highway-rail crossing inventory data that lists the following information for each of the roughly 10,000 crossings in California: United Stated Department of Transportation crossing identification numbers; CPUC crossing identification numbers; street name or other identifying name; status of crossing; category of rail crossing warning devices installed at the crossing; city, if any; county; railroad, based on Federal Railroad Administration Code; CPUC name for line, subdivision, or branch; latitude; longitude; latitude/longitude review date, if any; 10 year accident history based on CPUC crossing inventory database; CPUC railroad identification number; CPUC branch identifier; CPUC milepost number; public/private crossing status; rail grade status; spur or other non-main track status; pedestrian pathway, other pathway, or alley status; track across track status [in contrast to vehicular or pathway crossing status]; and similar information.

11. The public interest would be served by the provision of internet public access to CPUC safety and reliability-related records in the possession of the CPUC, including, but not limited to: (1) letters or other correspondence regarding safety and/or reliability-related audits or inspections (including attached CPUC audit reports, summaries, or other documents), letters or other correspondence from regulated entities responding to CPUC audit or inspection letters or other correspondence (including corrective action plans, notices of corrective action taken, compliance filings required by the CPUC, and similar documents), follow-up letters or other correspondence regarding safety audits or inspections, once the audit or inspection has been completed, and the period for initial regulated entity responses to the CPUC audit or inspection letters has ended, [Note: the public interest may be best served by the provision of public versions, with any CPUC initiated or approved redaction of exempt and/or privileged information, in appropriate circumstances. and such public versions may be provided, as appropriate]; (2) annual gas operator reports filed with the United States Department of Transportation Pipeline and Hazardous Materials Administration (PHMSA) pursuant to 49 C.F.R. Part 191; (3) gas operator gas incident reports filed with PHMSA pursuant to 49 C.F.R.§ 191.11 and 191.17; (4) applications for new highway-rail crossings or General Order 88 crossing modification requests, and related records [with the exception of Section 130 records to which access is

restricted pursuant to 23 U.S.C. § 409]; (5) completed rail safety inspection reports; (6) triennial rail transit safety and security reviews (with the exception of sensitive security information withheld or redacted as required by law or regulation); (7) completed Electric Generation Safety and Reliability Section G.O. 167 compliance reports and audits; (8) completed incident investigation reports generated by the CPUC [Note: the public interest may be best served by the provision of public versions, with any CPUC initiated or approved redaction of exempt and/or privileged information, in appropriate circumstances]; (9) correspondence regarding investigations of consumer safety and reliability-related complaints [Note: the public interest may be best served by the provision of public versions, with any CPUC initiated or approved redaction of exempt and/or privileged information, in appropriate circumstances]; (10) Consumer Protection and Safety Branch outage investigation reports; (11) reports filed with the CPUC in compliance with G.O.165; (12) mobilehome park natural gas system annual safety reports and CPUC safety inspection records; and 13) propane operator propane system annual safety reports and CPUC inspection records.

12. 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.

13. Once a CPUC investigation of a safety-related incident is complete, the investigation is complete, the public interest will generally favor disclosure of the investigation 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; information subject to disclosure restrictions set forth in an industry, division, or topic-specific matrix adopted by the CPUC in accord with the principles set forth in this Resolution; and information subject to a Commission-held privilege or other limitation on disclosure.

14. 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.

15. 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 or limiting disclosure; personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy; information subject to disclosure restrictions set forth in an industry, division, or topic-specific matrix adopted by the CPUC in accord with the principles set forth in this Resolution; information subject to a CPUC-held privilege or limitation on

disclosure; and detailed information regarding utility facilities, systems, 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.

16. Once the CPUC has completed an investigation or review of a safety investigation conducted by a governmental entity subject to CPUC safety oversight, the public interest will generally favor disclosure of CPUC generated reports and records, with appropriate redactions. The public interest would generally be served by the CPUC's disclosure of CPUC generated records of any independent CPUC investigation of an incident involving a governmental entity subject to the CPUC's safety oversight, and checklists and summary reports concerning CPUC oversight of incidents not independently investigated by the CPUC, recognizing that CPUC reports may include information derived from a regulated governmental entity.

17. In some circumstances, the public interest may be served by the CPUC's execution of confidentiality agreements, pursuant to Cal. Gov't. Code § 6254.5(e) and other authority, with governmental entities subject to CPUC safety oversight, where such agreements provide the CPUC with the opportunity to review information a regulated governmental entity asserts is subject to a privilege or other limitation on disclosure, and the opportunity to direct records requests and subpoenas to the regulated governmental entity for responses in accord with the CPRA and discovery laws. The public interest in the CPUC's maintenance of effective working relationships with governmental entities subject to CPUC safety oversight may create a necessity for confidentiality that outweighs the necessity for CPUC disclosure of such records in the interest of justice. The CPUC's ability to effectively perform its own safety oversight responsibilities may be impaired if access to records and information is limited by privilege assertions or similar confidentiality concerns expressed by a regulated governmental entity. Since other state and local governmental entities are also subject to CPRA and discovery obligations, it is not essential for the CPUC to serve as a conduit for public access to records and information generated by and in the custody of such entities.

18. 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 and enforcement activities.

19. 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 blanket decision regarding the disclosure of such investigations records once the investigation is closed would be inappropriate.

20. 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.

21. 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.

22. The public interest would be served by the adoption of a presumption that records and information furnished to the CPUC by regulated entities are public unless the regulated entity requests confidential treatment at the time the records or information are submitted to the CPUC.

## 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. Cal. Const. Article 1, § 15 provides that, in criminal proceedings, a defendant has a right to not be compelled to be a witness against himself or herself.

3. Cal. Const. Article 1, § 24 provides that a criminal defendant's right to not be compelled to testify against himself or herself shall be construed in a manner consistent with, and providing no greater rights than, the Constitution of the United States.

4. 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.

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

6. The CPUC cannot allow an entity other than itself to control the disclosure of information that is otherwise subject to disclosure pursuant to the CPRA. Cal. Gov't. Code § 6253.3.

7. Cal. Gov't. Code § 6253.31 provides that, notwithstanding any contract term to the contrary, a contract entered into by a state agency subject to the CPRA that requires a private entity to review, audit, or report on any aspect to the agency shall be public to the extent the contract is otherwise subject to disclosure under the CPRA.

8. Cal. Gov't. Code § 6253.9 provides that, unless prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure that is an electronic format shall make the information available in an electronic format is so requested, and shall: (1) make the information available in any electronic format in which it holds the information; (2) provide a copy in the electronic format requested if the format is one the agency uses to create copies for its own use or for provision to other agencies; and (3) limit the cost of duplication to the direct cost of producing the record in the electronic format, unless the request would require the agency to create a report otherwise only available at scheduled intervals, or engage in data compilation, extraction, or programming in order to produce the requested record, in which case the requester must pay the costs of programming and computer services. Agencies are not required to reconstruct a record in an electronic format if it no longer maintains the record in an electronic format, or provide records in an electronic format if such disclosure would jeopardize or compromise the integrity or security of the original record or any proprietary software in which it is maintained; and are not permitted to provide in an electronic format records that are subject to a statutory restriction on disclosure. If an agency maintains records in both non-electronic and electronic formats, the agency may inform requesters that the information is available in an electronic format, but § 6253.9 shall not be construed to permit an agency to only provide records in an electronic format.

9. 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.

10. 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.

11. 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."

12. 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."

13. 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."

14. Cal. Gov't. Code § 6254(d) exempts from mandatory disclosure, in response to records requests, applications filed with any state agency responsible for the regulation or supervision of the issuance of securities; examination, operating, or condition reports prepared by, on behalf of, or for the use of, any such state agency; preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, and such state agency; and information received in confidence by any such state agency.

15. 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."

16. 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.

17. The Cal. Gov't. Code § 6254(f) exemption for records 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.

18. 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.

19. There is no statute forbidding disclosure of the CPUC reports or other records concerning CPUC review of safety investigations conducted by regulated entities subject to CPUC oversight, although portions of such records may be 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.

20. Although there is no statute forbidding disclosure of the CPUC reports or other records concerning CPUC review of safety investigations conducted by regulated entities subject to CPUC oversight, Cal. Gov't. Code § 6254.5(e) and other authority may permit the CPUC to enter into confidentiality agreements with governmental entities subject to CPUC safety oversight that provide the CPUC the opportunity to review information a regulated governmental entity asserts is subject to a privilege or other limitation on disclosure, and to direct records requests and subpoenas to the regulated governmental entity for responses in accord with the CPRA and discovery laws.

21. There is no statute forbidding disclosure of the records of safety audit or inspections 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.

22. 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."

23. 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."

24. 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."

25. 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."

26. 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."

27. Cal. Gov't. Code § 6254(z) exempts from disclosure, in response to records requests, records obtained pursuant to Cal. Pub. Util. Code § 2891.1(f)(2), which applies to the provision of telephone numbers to specified state and local agencies for the purposes of responding to 911 calls or communicating imminent threats to life or property.

28. Cal. Gov't. Code § 6254(aa) exempts from disclosure, in response to records requests, 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.

29. Cal. Gov't. Code § 6254(ab) exempts from disclosure, in response to records requests, "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."

30. Cal. Gov't. Code § 6254.3 provides that home addresses and telephone numbers of state employees are not public records for the purposes of the CPRA, and shall not be disclosed except for specified purposes.

31. 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.

32. Cal. Gov't. Code § 6254.7 provides that a wide variety of information, analyses, plans, or specifications that disclose the nature, extent, quantity or degree of air contamination or other pollution, pollution monitoring data, and notices or orders regarding certain housing or building code violations, are public records, with the exception of trade secret information as defined in § 6254.7(d). Section 6254.7 (d) states that trade secrets, as defined therein, are not public records, except as otherwise provided in certain provisions of the Cal. Educ. Code. Section 6254.7(e) provides that, notwithstanding any other provision of law, emission data which constitute trade secrets as defined in subdivision (d) are public records.

33. 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.

34. Cal. Gov't. Code § 6254.11 provides that nothing in the CPRA requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officers pursuant to Cal. Health and Safety Code § 42303.2.

35. Cal. Gov't. Code § 6254.15 exempts from disclosure, in response to records requests, corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California. Section 61254.15 requires disclosure of incentives offered by state or local governments, when a company communicates to the agency a decision to stay, locate, relocate, or expand, or applies for a general plan amendment, rezone, use permit, or building permit, after appropriate redactions.

36. Cal. Gov't. Code § 6254.16 provides that the CPRA shall not be construed to require disclosure, in response to records requests, the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies, with limited exceptions.

37. Cal. Gov't. Code § 6254.19 provides that the CPRA shall not be construed to require disclosure, in response to records requests exempts from disclosure, in response to records requests, an information security record of a public agency, if, on the facts of the particular case, disclosure of the record would reveal vulnerabilities of, or otherwise increase the potential for an attack on, an information technology system of a public agency. This section shall not be construed to limit public disclosure of information stored within such an information technology system that is not otherwise exempt from disclosure under the CPRA or other provision of law.

38. Cal. Gov't. Code § 6254.20 provides that the CPRA shall not be construed to require disclosure, in response to records requests exempts from disclosure, in response to records requests, records that relate to electronically collected personal information, as defined by § 11015.5, received, collected, or compiled by a state agency.

39. Cal. Gov't. Code § 6254.21(a) provides that no state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining written permission.

40. 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."

41. Cal. Gov't. Code § 6254.23 provides that nothing in the CPRA or any other provision of law shall require the disclosure of a memorandum submitted to a state body by its legal counsel pursuant to Cal. Gov't. Code §§ 11126(g) or 54956.9 until the pending litigation has finally been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.
42. Cal. Gov't. Code § 6255 provides that: a) an agency shall justify withholding any record by demonstrating that the record in question is exempt under the 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 served by disclosure, and b) a response to a written records request that determines that the request is denied, in whole or in part, must be in writing.
43. 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.
44. Cal. Gov't. Code § 6262 provides that the exemption of records of complaints to, or investigations by, a state agency for licensing purposes under Cal. Gov't. Code § 6254(f) shall not apply when a request to inspect such records is made by a district attorney.
45. 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.
46. 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.
47. 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.

48. Cal. Gov't. Code § 6275 states the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act by requiring that each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to Cal. Gov't. Code § 6254(k) be listed and described in Cal. Gov't. Code Chapter 3.5, Article 2. Section 6275 further states that: "The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure."

49. Cal. Gov't. Code § 6276.04 lists Cal. Evid. Code §§ 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962 [attorney-client confidential communications], Cal. Code Civ. Pro. § 2018.010 et seq. [attorney work product, discovery], and Cal. Bus. & Prof. Code §§ 6068 [attorney-client confidential communications] and 6202 [attorney work product, confidentiality of], and Cal. Gov't. Code § 11507.6 [attorney work product confidentiality in administrative adjudication] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

50. Cal. Gov't. Code § 6276.06 lists Cal. Pub. Contracts Code § 10304 [bids, confidentiality of] as a statute that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

51. Cal. Pub. Util. Code § 5412.5 [Charter-Party Carriers, unauthorized disclosure by Commission] may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

52. Cal. Gov't. Code § 6276.12 lists Cal. Pub. Contracts Code § 10370 [contractor, evaluations and contractor responses, confidentiality of] as a statute that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

53. Cal. Gov't. Code § 6276.16 lists Cal. Gov't. Code §§ 11771 and 11772 [electronic data processing, data security and confidentiality] and Cal. Labor Code § 1198.5 [employee personnel file, confidential pre-employment information] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

54. Cal. Gov't. Code § 6276.22 lists Cal. Gov't. Code § 6254(l) [Governor, correspondence of and to the Governor and Governor's office] as a statute that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

55. Cal. Gov't. Code § 6276.26 lists Cal. Gov't. Code § 8547.5 [improper governmental activities reporting, confidentiality of person providing information], Labor Code § 129 [industrial accident reports, confidentiality of information], and Cal. Pub. Util. Code § 1804 [intervention in regulatory or ratemaking proceedings, audit of customer seeking award] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

56. Cal. Gov't. Code § 6276.28 lists Cal. Gov't. Code § 68513 [litigation, confidentiality of settlement information] and Labor Code § 65 [labor dispute, investigation and mediation records] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

57. Cal. Gov't. Code § 6276.30 lists Cal. Gov't. Code §§ 6254(e) [market reports, obtained in confidence] and 11125.1 [meetings of state agencies, disclosure of agenda] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

58. Cal. Gov't. Code § 6276.46 lists Cal. Gov't. Code § 6254(e) [utility systems development, confidential information] and Labor Code § 6309 [unsafe working conditions, confidentiality of complainant] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

59. Cal. Gov't. Code § 6276.32 lists Cal. Gov't. Code § 6254(r) [Native American graves, cemeteries, and sacred places], and Cal. Evid. Code § 1040 [official information acquired in confidence by public employee, disclosure of] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

60. Cal. Gov't. Code § 6276.36 lists Cal. Pub. Util. Code § 583 [public utilities, confidentiality of information], and Cal. Gov't. Code § 6254.3 [public employees' home addresses and telephone numbers, confidentiality of] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

61. Cal. Gov't. Code § 6276.42 lists Cal. Pub. Contracts Code §§ 10304 [bids, confidentiality of] and 10165 [State Contract Act, bids questionnaires and financial statements] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

62. Cal. Gov't. Code § 6276.44 lists Cal. Evid. Code § 1060 [trade secret privilege], Cal. Civil Code § 3426.7 [trade secrets], and Cal. Labor Code § 6322 [trade secrets, confidentiality of, occupational safety and health inspections] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

63. Cal. Gov't. Code § 6276.46 lists Cal. Gov't. Code § 6254(e) [utility systems development, confidential information] and Labor Code § 6309 [unsafe working conditions, confidentiality of complainant] as statutes that may provide a basis for a state agency's assertion of the Cal. Gov't. Code § 6254(k) exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law.

64. 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, or Cal. Pub. Util. Code § 583.

65. Confidential communications between Commissioners or CPUC staff and CPUC lawyers 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).

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

67. 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).

68. Cal. Evid. Code § 1040(b)(2) provides state agencies a conditional 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).

69. 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], from disclosing such an informer's identity 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).

70. 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).

71. 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.

72. 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).

73. 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).

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

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

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

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

78. Cal. Pub. Util. Code § 583 authorizes the CPUC to order that records or information furnished to the CPUC by public utilities are presumed to be public unless at the time the records or information are submitted to the CPUC the utilities requests confidential treatment.

79. 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 other 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 not 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.

80. 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.

81. 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."

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

83. Cal. Pub. Util. Code § 353.15(a) requires that customers who install distributed energy resources with a capacity greater than 10 kilowatts must report to the CPUC, on an annual basis, as recorded on a monthly basis: (1) 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.

84. Cal. Pub. Util. Code § 392.1(a) requires the CPUC to compile and regularly update the following information regarding energy service providers: 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.

85. 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.

86. 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.

87. The CPUC has authority under Cal. Pub. Util. Code §§ 583 and 701 to adopt a presumption that records or information submitted to the CPUC are public unless at the time of submission the submitter requests that the CPUC treat the record or information as confidential, in whole or in part, and the CPUC has authorized such confidential treatment.

88. 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 limitations. The CPUC can order staff to provide access to 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.

89. Cal. Pub. Util. Code § 1795 provides that no person may be excused from testifying or producing records on the ground that the testimony may tend to incriminate him or her, but that the person may not be punished for act, transaction, matter, or thing subject to such testimony, in the absence of perjury. It also states that: "Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind."

90. Cal. Pub. Util. Code § 5258 provides that no person shall be excused from attending and testifying or from producing any book, document, paper, or account in any investigation or inquiry by or hearing before the CPUC in any cause or proceeding, criminal or otherwise, upon the ground of that person's privilege against self-incrimination, but if the privilege applies and the person claiming the privilege has properly asserted it, no information disclosed or any evidence derived from that information shall be used against that person in any criminal proceeding. It also provides that no person testifying before the CPUC shall be exempt from prosecution or punishment for any perjury committed by that person in his or her testimony.

91. The Digital Infrastructure and Video Competition Act contains two annual, public disclosure requirements for franchise holders. Under Cal. Pub. Util. Code § 5960(c) and (d), franchise holders must provide the CPUC with certain information, which, in turn, we are required to aggregate (so private and commercially sensitive data is obscured) and report to the Governor and the Legislature. This information includes: the number of broadband subscribers (on a census tract basis), the number

of customers who are offered video service, and the number of low-income customers who are offered video service. No individually identifiable customer or subscriber information is subject to public disclosure. (Pub. Util. Code § 5960(d).) Franchise holders with more than 750 employees in California must also provide us with employment information, including, for example, "types and numbers of jobs by occupational classification held by residents of California ... and the average pay and benefits of those jobs ... " (Pub. Util. Code, § 5920(a)(3).) The CPUC must report this employment information to Legislative committees, and place the information on the internet. (Pub. Util. Code § 5920(b).)

92. 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 the 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 obtains such information from the consultant or contractors, and 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.

93. 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.

94. 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.

95. 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.

96. 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 projects 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).

97. The California Information Practices Act (IPA), Cal. Civ. Code § 1798 *et seq*., establishes limits on public access to personal information; and gives an individual the right to: inquire and be notified as to whether the agency maintains a record about himself or herself; inspect all the personal information in any record containing personal information and maintained by reference to an identifying particular assigned to the individual within 30 days of the agency's receipt of the request for active records, with certain exceptions; have an exact copy made of all or any portion thereof within 15 days of the inspection; have an opportunity to propose corrections to the records containing personal information, and request a review of any refusal to amend the records, by the head of the CPUC or a designated official. (Cal. Civ. Code §§ 1798.32, 1798.34, 1798.35, and 1798.36.)

98. Cal. Civ. Code § 1798.14 provides that a state agency shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.

99. Cal. Civ. Code § 1798.15 provides that a state agency shall collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.

100. Cal. Civ. Code § 1798.16 provides that whenever a state agency collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or he or she has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity, and shall maintain the source information in a manner that can be accessed by the data subject if the data subject seeks access to records pertaining to themselves.

101. Cal. Civ. Code § 1798.17 provides that a state agency shall provide on or with any form used to collect personal information from individuals the notice specified in this section. When contact with the individual is of a regularly recurring nature, an initial notice followed by a periodic notice of not more than one-year intervals shall satisfy this requirement.

102. Cal. Civ. Code § 1798.18 provides that a state agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness. Such standard need not be met except when such records are used to make any determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.

103. Cal. Civ. Code § 1798.19 provides that a state agency, when it provides by contract for the operation or maintenance of records containing personal information to accomplish an agency function, shall cause the requirements of this chapter to be applied to those records. Any contractor and any employee of the contractor, if the contract is agreed to on or after July 1, 1978, shall be considered to be an employee of the agency.

104. Cal. Civ. Code § 1798.20 provides that a state agency shall establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing personal information and instruct each such person with respect to such rules and the requirements of the Information Practices Act, including any other rules and procedures adopted pursuant to this chapter and the remedies and penalties for noncompliance.

105. Cal. Civ. Code § 1798.21 provides that a state agency establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of this chapter, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.

106. Cal. Cov. Code § 1798.22 provides that a state agency shall designate an agency employee to be responsible for ensuring that the agency complies with all of the provisions of this chapter.

107. Cal. Civ. Code § 1798.24 provides that a state agency may not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows: (a) To the individual to whom the information pertains; (b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent; (c) To the duly appointed guardian or conservator of the individual or a person representing he individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains; (d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired; (e) To a person, or to another agency where the

transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Cal. Civ. Code § 1798.25; (f) To a governmental entity when required by state or federal law; (g) Pursuant to the California Public Records Act; (h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual; (i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address; (k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law; (l) To any person pursuant to a search warrant; (o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law; (p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing; (s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.

108. Cal. Civ. Code § 1798.25 provides that a state agency shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to subdivision (i), (k), (l), (o), or (p) of Section 1798.24. This accounting shall also be required for disclosures made pursuant to subdivision (e) or (f) of Cal. Civ. Code § 1798.24 unless notice of the type of disclosure has been provided pursuant to Cal. Civ. Code § § 1798.9 and 1798.10. The accounting shall also include the name, title, and business address of the person or agency to whom the disclosure was made. For the purpose of an accounting of a disclosure made under subdivision (o) of Cal. Civ. Code § 1798.24, it shall be sufficient for a law enforcement or regulatory agency to record the date of disclosure, the law enforcement or regulatory agency requesting the disclosure, and whether the purpose of the disclosure is for an investigation of unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or regulatory purposes by that agency. Routine disclosures of information pertaining to crimes, offenders, and suspected offenders to law enforcement or regulatory agencies of federal, state, and local government shall be deemed to be disclosures pursuant to

subdivision (e) of Cal. Civ. Code § 1798.24 for the purpose of meeting this requirement.

109. Cal. Civ. Code § 1798.27 provides that a state agency shall retain the accounting made pursuant to Cal. Civ. Code § 1798.25 for at least three years after the disclosure for which the accounting is made, or until the record is destroyed, whichever is shorter. Nothing in this section shall be construed to require retention of the original documents for a three-year period, providing that the agency can otherwise comply with the requirements of this section.

110. Cal. Civ. Code § 1798.28 provides that a state agency shall inform any person or agency to whom a record containing personal information has been disclosed during the preceding three years of any correction of an error or notation of dispute made pursuant to Cal. Civ. Code § § 1798.35 and 1798.36 if (1) an accounting of the disclosure is required by Cal. Civ. Code § 1798.25 or 1798.26, and the accounting has not been destroyed pursuant to Cal. Civ. Code § 1798.27, or (2) the information provides the name of the person or agency to whom the disclosure was made, or (3) the person who is the subject of the disclosed record provides the name of the person or agency to whom the information was disclosed.

111. Cal. Civ. Code § 1798.29 provides that, to the extent a state agency owns or licenses computerized data that includes personal information, the CPUC shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Cal. Civ. Code § 1798.29 provides other notice requirements as well.

112. Cal Civ. Code § 1798.30 provides that a state agency shall either adopt regulations and publish guidelines specifying procedures to be followed in order fully to implement each of the rights of individuals set forth in this article.

113. Cal Civ. Code § 1798.32 provides that each individual shall have the right to inquire and be notified as to whether a state agency maintains a record about himself or herself. The agency shall take reasonable steps to assist individuals in making their requests sufficiently specific. Any notice sent to an individual which in any way indicates that the agency maintains any record concerning that individual shall include the title and business address of the agency official responsible for maintaining the records, the procedures to be followed to gain access to the records, and the procedures to be followed for an individual to contest the contents of these records unless the individual has received this notice from the agency during the past year. In implementing the right conferred by this

section, the agency may specify in its rules or regulations reasonable times, places, and requirements for identifying an individual who requests access to a record, and for disclosing the contents of a record.

114. Cal. Civ. Code § 1798.33 provides that a state agency may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and shall not exceed ten cents ($0.10) per page, unless the agency fee for copying is established by statute.

115. Cal. Civ. Code § 1798.34 provides that, except as otherwise provided in the Information Practices Act, a state agency shall permit any individual upon request and proper identification to inspect all the personal information in any record containing personal information and maintained by reference to an identifying particular assigned to the individual within 30 days of the agency's receipt of the request for active records, and within 60 days of the agency's receipt of the request for records that are geographically dispersed or which are inactive and in central storage. Failure to respond within these time limits shall be deemed denial. In addition, the individual shall be permitted to inspect any personal information about himself or herself where it is maintained by reference to an identifying particular other than that of the individual, if the agency knows or should know that the information exists. The individual also shall be permitted to inspect the accounting made pursuant to Article 7 (commencing with Section 1798.25), and to obtain an exact copy of the personal information in the records within 15 days of the inspection. The agency shall present the information in the record in a form reasonably comprehensible to the general public. When an individual is entitled under this chapter to gain access to the information in a record containing personal information, the information or a true copy thereof shall be made available to the individual at a location near the residence of the individual or by mail, whenever reasonable.

116. Cal. Civ. Code § 1798.35 provides that a state agency shall permit an individual to request in writing an amendment of a record and, shall within 30 days of the date of receipt of such request: (a) Make each correction in accordance with the individual's request of any portion of a record which the individual believes is not accurate, relevant, timely, or complete and inform the individual of the corrections made in accordance with their request; or (b) Inform the individual of its refusal to amend the record in accordance with such individual's request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the head of the agency or an official specifically designated by the head of the agency of the refusal to amend, and the name, title, and business address of the reviewing official.

117. Cal. Civ. Code § 1798.36 provides that a state agency shall permit any individual who disagrees with the refusal of the agency to amend a record to request a review of such refusal by the head of the agency or an official specifically designated by the head of the agency, and, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such review period by 30 days. If, after such review, the reviewing official refuses to amend the record in accordance with the request, the agency shall permit the individual to file with the agency a statement of reasonable length setting forth the reasons for the individual's disagreement.

118. Cal. Civ. Code § 1798.37 provides that a state agency, with respect to any disclosure containing information about which the individual has filed a statement of disagreement, shall clearly note any portion of the record which is disputed and make available copies of such individual's statement and copies of a concise statement of the reasons of the agency for not making the amendment to any person or agency to whom the disputed record has been or is disclosed.

119. Cal. Civ. Code § 1798.38 provides that if information, including letters of recommendation, compiled for the purpose of determining suitability, eligibility, or qualifications for employment, advancement, renewal of appointment or promotion, status as adoptive parents, or for the receipt of state contracts, or for licensing purposes, was received with the promise or, prior to July 1, 1978, with the understanding that the identity of the source of the information would be held in confidence and the source is not in a supervisory position with respect to the individual to whom the record pertains, the agency shall fully inform the individual of all personal information about that individual without identification of the source. Whichever method is used, the agency shall insure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications, or be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications. In institutions of higher education, "supervisory positions" shall not be deemed to include chairpersons of academic departments.

120. Cal. Civ. Code § 1798.40 provides that the Information Practices Act shall not be construed to require the CPUC to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria: (a) Is compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) Is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual; (c) Is

contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws; (d) Is maintained for the purpose of an investigation of an individual's fitness for licensure or public employment, or of a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation, or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Cal. Civ. Code §1798.38; (e) Would compromise the objectivity or fairness of a competitive examination for appointment or promotion in public service, or to determine fitness for licensure, or to determine scholastic aptitude; (f) Pertains to the physical or psychological condition of the individual, if the agency determines that disclosure would be detrimental to the individual. The information shall, upon the individual's written authorization, be disclosed to a licensed medical practitioner or psychologist designated by the individual; (g) Relates to the settlement of claims for work related illnesses or injuries and is maintained exclusively by the State Compensation Insurance Fund; (h) Is required by statute to be withheld from the individual to whom it pertains. This section shall not be construed to deny an individual access to information relating to him or her if access is allowed by another statute or decisional law of this state.

121. Cal. Civ. Code § 1798.41 provides that (a) Except as provided in subdivision (c), if a state agency determines that information requested pursuant to Cal. Civ. Code § 1798.34 is exempt from access, it shall inform the individual in writing of the agency's finding that disclosure is not required by law; (b) Except as provided in subdivision (c), the agency shall conduct a review of its determination that particular information is exempt from access pursuant to Cal. Civ. Code § 798.40, within 30 days from the receipt of a request by an individual directly affected by the determination, and inform the individual in writing of the findings of the review. The review shall be conducted by the head of the agency or an official specifically designated by the head of the agency; (c) If the agency believes that compliance with subdivision (a) would seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the record, it may petition the presiding judge of the superior court of the county in which the record is maintained to issue an ex parte order authorizing the agency to respond to the individual that no record is maintained.

122. Cal. Civ. Code § 1798.42 provides that, in disclosing information contained in a record to an individual, a state agency shall not disclose any personal information relating to another individual which may be contained in the record. To comply with this section, an agency shall, in disclosing information, delete from disclosure such information as may be necessary. This section shall not be construed to

authorize withholding the identities of sources except as provided in Cal. Civ. Code §§ 1798.38 and 1798.40.

123. Cal. Civ. Code § 1798.43 provides that, in disclosing information contained in a record to an individual, a state agency need not disclose any information pertaining to that individual which is exempt under Cal. Civ. Code 1798.40. To comply with this section, an agency may, in disclosing personal information contained in a record, delete from the disclosure any exempt information.

124. Cal. Civ. Code § 1798.44 provides that the Information Practices Act applies to the rights of an individual to whom personal information pertains and not to the authority or right of any other person, agency, other state governmental entity, or governmental entity to obtain this information.

**ORDER**

1. Approval of Draft General Order 66-D, set forth in Attachment 1 to this Resolution, awaits further refinement in workshops and comments of its modified procedures for access to CPUC records and for processing 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 (when adopted), 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. 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) an index or database explaining 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.

3. CPUC staff shall develop a publicly accessible index or database of requests for confidential treatment of records 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. Staff shall engage interested stakeholders, and allow parties to

contribute to the development of such resources, through participation in workshops and filing comments or suggestions. The index or database shall, at a minimum, include the following: (a) an index of all requests for confidential treatment, and all required reports concerning such requests, with a hyperlink to the actual request or report; (b) a hyperlink to all protests submitted; (c) an explanation of the purpose of the information provided (*e.g.*, for a formal proceeding, advice letter filing, compliance report, or response to CPUC staff request); and d) the CPUC's disposition of each request.

4. CPUC staff shall develop a publicly accessible "Docket Card" system for tracking advice letter filings and associated documents, in a manner similar to the existing Docket Card system for tracking documents filed or issued in formal Commission proceedings. The advice letter tracking system shall provide a centralized database that will permit tracking of advice letters, protests, responses, associated correspondence, CPUC actions regarding advice letters and the timing of such actions, regardless of the industry division with which they were filed. Hyperlinks to specific documents should be provided wherever practical.

5. CPUC staff shall hold and report on workshops regarding the development of new procedures for processing records requests and requests for confidential treatment, and the development of industry or division matrices regarding public and confidential records, and shall recommend appropriate procedures and matrices. Staff shall consider whether the CPUC's Rules of Practice and Procedure, any other applicable procedural guidelines, or General Orders that require reports or include references to the public or confidential status of records, should be amended to improve our implementation of the policies set forth in this Resolution and in the new General Order when approved.

6. CPUC staff shall develop a safety information portal for the CPUC's internet site, on which staff will post information regarding our safety jurisdiction, and our implementation of the CPUC's safety jurisdiction and its safety inspection and enforcement activities. Staff shall develop a publicly accessible index or database of safety-related records and information in the custody of the CPUC, and, to the maximum extent practical, 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. Where it is not practical or desirable to post entire safety-related files, staff may limit posted information to relevant correspondence and reports, with appropriate redactions.

7. Staff shall provide internet public access to CPUC safety and reliability-related records in the possession of the CPUC, including, but not limited to: (1) letters or other correspondence informing regulated entities of the CPUC's intent to conduct a safety and/or reliability-related audits or inspections; (2) letters or other correspondence regarding CPUC safety and/or reliability-related audits or

inspections (including attached CPUC audit reports, summaries, or other documents), letters or other correspondence from regulated entities responding to CPUC audit or inspection letters or other correspondence (including corrective action plans, notices of corrective action taken, compliance filings required by the CPUC, and similar documents), follow-up letters or other correspondence regarding safety audits or inspections, once the audit or inspection has been completed, and the period for initial regulated entity responses to the CPUC audit or inspection letters has ended, [public versions, with any CPUC initiated or approved redaction of exempt and/or privileged information, may be provided, as appropriate]; (3) annual gas operator reports filed with the United States Department of Transportation Pipeline and Hazardous Materials Administration (PHMSA) pursuant to 49 C.F.R. Part 191; (4) gas operator gas incident reports filed with PHMSA pursuant to 49 C.F.R.§ 191.11 and 191.17; (5) applications for new highway-rail crossings or General Order 88 crossing modification requests, and related records [with the exception of Section 130 records to which access is restricted pursuant to 23 U.S.C. § 409]; (6) completed rail safety inspection reports; (7) triennial rail transit safety and security reviews [public versions, with certain sensitive security information redacted, as required by law or regulation]; (8) completed Electric Generation Safety and Reliability Section G.O. 167 compliance reports and audits; (9) completed incident investigation reports generated by the CPUC [public versions, with any CPUC initiated or approved redaction of exempt and/or privileged information, may be provided, as appropriate]; (10) correspondence regarding investigations of consumer safety and reliability-related complaints [Note: public versions, with any CPUC initiated or approved redaction of personal information concerning the consumer, and other exempt and/or privileged information, may be provided, as appropriate]; (11) Consumer Protection and Safety Branch outage investigation reports; (12) reports filed with the CPUC in compliance with G.O.165; (13) mobilehome park natural gas system annual safety reports and CPUC safety inspection records; and (14) propane operator propane system annual safety reports and CPUC inspection records.

8. CPUC staff may consider the option of entering into confidentiality agreements, pursuant to Cal. Gov't. Code § 6254.5(e) and other authority, with governmental agencies with safety and/or law enforcement responsibilities, where appropriate.

9. CPUC staff shall hold workshops regarding the following topics, as described earlier in this Draft Resolution: (1) safety-related records; (2) procedures; (3) communications-related records; (4) energy-related records. Staff may choose to hold additional workshops to obtain further input regarding the procedural and substantive changes discussed in this Resolution and proposed General Order 66-D. The first workshop, regarding safety-related records, shall be scheduled within 30 days, so that we may consider additional modifications to safety-related records posted on our internet site.

10. Utilities and other entities that routinely submit records to the CPUC are strongly encouraged to provide detailed information regarding the types of records they routinely submit to the Commission, and to use the Workshop Preparation Questionnaire attached to Resolution L-436 as a standardized tool for explaining in detail the types of information they wish withheld from the public, the legal basis for such withholding, and the rationale for the requested confidential treatment. Such information may be incorporated in draft matrixes categorizing what should or should not be disclosed to the public. We encourage parties to submit Workshop Preparation Questionnaires as soon as practical, so that staff may take responses into account when developing reports outlining issues for discussion during workshops.
11. Staff shall post on the CPUC internet site, within 30 days, a library of documents relevant to public access to, and confidential treatment of, CPUC records, to serve as a resource during workshops and to the development of industry or division specific matrices regarding public and confidential records.
12. Prior to each workshop, staff shall post on the CPUC internet site a report outlining issues for discussion during the workshop. Such reports need not be comprehensive, but should reflect staff experience with disclosures and, where practical, propose classes of records it believes are required to be public, or required to remain confidential.
13. 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 January 10, 2013, and that the following Commissioners approved it:

PAUL CLANON
Executive Director

# ATTACHMENT 1

**GENERAL ORDER 66-D, HELD IN ABEYANCE PENDING FURTHER REFINEMENTS**

**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. Access to Commission Records

### 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, such law 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.)

**1.2.6**. The CPUC shall, in response to a CPRA request, refrain from providing an opportunity to inspect any records, or portions of records, where disclosure is expressly prohibited by federal or state law.

**1.2.7**. If an individual, or a representative of an individual, requests access to CPUC records that include personal information pertaining to the individual, the CPUC may respond to the request in accord with the provisions of the California Information Practices Act (Cal. Civ. Code § 1798 *et seq*.). See Section 5 of this General Order.

**1.2.8** During the course of a hearing or proceeding before the Commission, the Commission, or a Commissioner or an Administrative Law Judge may, for good cause

shown, authorize or direct a Commission employee to produce or divulge information or public records not open to public inspection, or to make it available for inspection.

### 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** If a request submitted by an individual, or a representative of an individual, seeks copies of CPUC records that include personal information pertaining to the individual, the CPUC may respond to the request in accord with the provisions of the California Information Practices Act (Cal. Civ. Code § 1798 *et seq*.). See Section 5 of this General Order.

**1.3.5** 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: public records office@cpuc.ca.gov. Requesters may contact the Public Records Office by calling: (415) 703-2015.

**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.

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 shall be in writing, shall explain the basis for any denial of access to or copies of CPUC records, and identify the person responsible for the denial.

**1.3.7** The CPUC may, in response to a CPRA request, 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, in response to a CPRA request, 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 shall, in response to a CPRA request, refrain from providing copies of any records, or portions of records, where disclosure is expressly prohibited by federal or state law.

**1.3.9** 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.

**1.3.10** 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.

**1.3.11** 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.

**1.3.12** During the course of a hearing or proceeding before the Commission, the Commission, or a Commissioner or an Administrative Law Judge may, for good cause shown, authorize or direct a Commission employee to produce or divulge information or public records not open to public inspection, or to make it available for inspection, or to

furnish, and certify, if requested, a copy or copies thereof to the person making such request, or to testify with respect the matter described the request.

### 1.4 Appeals of Denials of Access to Records

#### 1.4.1 Formal Commission Proceedings, 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 may 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. The PRO may include more than one request for review of initial denial of access in a single resolution, and may choose to prepare resolutions addressing all requests for review of initial denials of access, requests for review of initial denials of confidential treatment, and other matters, in a single resolution for a given period. Parties will be given an opportunity to provide comments in accord with the CPUC's Rules of Practice and Procedure. 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. Records to which access is initially denied will generally not be publicly disclosed prior to the issuance of a CPUC resolution authorizing disclosure of the records, absent a CPUC order or ruling to the contrary.

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. Fees for transcripts shall take into account the provisions of contracts with bargaining units that include Commission reporters.

## 2. Requests for Confidential Treatment

### 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 Requests 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. The CPUC itself is, however, required to justify any confidential treatment when responding to records requests for subpoenas seeking CPUC records.

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, 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. If the motion is based on the CPUC's receipt of records subject to a request for confidential treatment made by a party to a Commission proceeding that was granted in accord with the provisions of this General Order, the CPUC employee may meet the burden through reference to, and attachment of, the request for confidential treatment.

#### 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.

#### 2.2.1.4 Secondary Users in Commission Proceedings

If a party receives access to records for which confidential treatment was requested, and granted, pursuant to this General Order, and wishes to file the records under seal in a Commission proceeding, the party may identify the records as being subject to the granted request for confidential treatment, without independently bearing the burden of proving the need for confidential treatment, and attach the initial request for confidential treatment.

### 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 such 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 generally 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. Requests for confidential treatment of records or information designated as public must include an explanation as to why such treatment can and should granted, given the facts of the particular case.

Once the CPUC has established a comprehensive index of CPUC records and a database of requests for confidential treatment and responses to such requests, and/or has adopted matrices identifying records or information as public or confidential, 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 and belief, that no CPUC General Order, decision, order, ruling, or matrix 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, in accord with statutes and case law regarding waiver; 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 interest would be served by the CPUC's assertion of the CPUC-held privilege.

Privilege holders who wish to provide privileged information to the CPUC, and want the CPUC to keep the privileged information confidential, may wish to refrain from providing the privileged information until the CPUC has determined that: 1) the information is privileged; 2) the CPUC has an interest in receiving the privileged information, despite the privileged status of the information and the associated limitations on subsequent disclosure; 3) the CPUC believes that the privilege holder's provision of the privileged information to the CPUC is unlikely to result in a potential waiver of the privilege; and 4) the CPUC agrees to receive the privileged information and to accord it confidential treatment to the extent permitted by law.

Where practical, if the CPUC receives a records request or subpoena seeking records subject to a privilege assertion accepted by the CPUC, the CPUC will notify the privilege holder of the request or subpoena.

### 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); *see also*, *e.g*., *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 earlier 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 (c) in the event no expiration date is specified either in the request or determination, then 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, order or ruling, or applicable law, 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 submitter shall not be required to provide the privileged information at issue at the time the request for confidential treatment is made. 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 to the best of the submitter's knowledge and belief whether and how the person keeps the information confidential and whether the information has ever been disclosed to a person other than an employee or contractor of the individual or entity.

**2.2.4.9** Provide, and update, contact information sufficient to allow the CPUC to: 1) contact the person to provide a copy of any subpoena or records request in which a party seeks records or information subject to a request for confidential treatment based on an assertion of a privilege against disclosure; 2) inform any person seeking access to records or information subject to a pending or approved request for confidential 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 appropriate notifications, including notifications of inadvertent or unauthorized disclosure, and 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.

**2.2.4.10** 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.

**2.2.4.10** If the CPUC has authorized confidential treatment for a specific class of records or information, and designated a procedure for identifying such records or information in a clear and uniform manner, requests for confidential treatment or confidential status designations for individual records falling within such a class of records or information may be made in accord with such procedures.

## 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. In formal proceedings, the assigned Administrative Law Judge has the discretion to order protections for certain type of information that may be disclosed in discovery rather than addressing requests for confidential treatment on an item-by-item basis. 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 responses, and shall, upon request, provide a copy each to the Public Records Office for inclusion in public databases, and for use in the preparation of Public Records Office Resolutions.

#### 3.1.2 Other Contexts

##### 3.1.2.1 Requests for Confidential Treatment pursuant to this General Order

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 this General Order. The requester may use one of the model forms attached to this General Order.

### 3.1.2.2 Standard Public and Confidential Status Resolutions

A regulated entity, or a group of regulated entities within the same class of entities, may submit a request for the adoption of a standard public and confidential status resolution that addresses in a comprehensive manner confidentiality issues associated with the specific types of records and information the entity or entities routinely provide to the CPUC.

**Standard Public and Confidential Status Resolutions**

A standard public and confidential status resolution is a resolution, adopted by the CPUC, after the provision of public notice and an opportunity to comment, that identifies, in a standardized format, the classes of records a regulated entity routinely files with or otherwise submits to the CPUC, the reason each class of records is filed or submitted, the classes of records that are required to be public, the classes of records that are required to be confidential pursuant to federal or state law, the classes of records subject to optional requests for confidential treatment for which the entity has chosen to request confidential treatment, the specific legal basis for the public or confidential status of each class of records, with citations to applicable CPRA exemptions, privileges, and similar limitations on confidential treatment or disclosure, the time period for confidential treatment for records within each class of records designated as confidential, and contact information identifying the person or persons to be contacted regarding access to records.

Requests for standard public and confidential status resolutions will be reviewed by the PRO, which will draft and circulate for public comment a Draft Resolution for consideration by the CPUC. A standard public and confidential status resolution adopted by the CPUC may authorize a regulated entity to use short-form designations approved by the CPUC to identify the public or confidential status of specific records subsequently submitted to the CPUC.

Public and confidential status resolutions adopted by the CPUC will serve as a tool for identifying in detail the following:

1. The types of reports and other documents routinely submitted by that entity to the Commission on a periodic basis; *e.g*., annual, quarterly, monthly, or weekly reports.
2. The basis for the submission of such documents: *e.g*. statute; federal or state regulation; CPUC General Order; CPUC Rule of Practice and Procedure; or CPUC decision, order, or ruling.
3. The public or confidential status of such documents, based on explicit statements: in the statutes or other authority requiring submission of the documents; in CPUC

matrices addressing the public or confidential nature of such routinely submitted documents; or in other CPUC decisions, orders, or rulings, including the resolution itself;

4. The types of reports and other documents routinely submitted to the CPUC by the entity on a non-periodic but essentially predictable or event-triggered basis: *e.g*., data requests; data request responses; *ex parte* meeting notices; informational updates submitted to Commissioners and advisors, and other CPUC staff, but not involving ex parte communications for which *ex parte* notices are required; electric or gas incident reports; notices of intent to file rate case filings, and rate case filings; incident reports; and applications triggered by infrastructure modifications: *e.g*. highway-rail grade crossing modification applications.

5. The classes of documents for which the entity has requested optional confidential treatment, with optional confidential treatment meaning confidential treatment for information that falls within a class or classes of records for which the CPUC has determined that confidential treatment is not mandated by law, but may be available to those who request confidential treatment and make the required showing that, based on the facts of a particular case, confidential treatment is authorized by law and appropriate.

   This element of the Resolution serves to provide a standardized method of tracking those within a class of regulated entities that have chosen to request confidential treatment for specific types of records or information, and those within the same class of entities which have chosen not to request confidential treatment for such records or information.

6. The identity and contact information of the corporate officer who executed the declaration under penalty of perjury accompanying the request for the resolution and attesting to the truth of all statements in the application, and acknowledging responsibility for ensuring that subsequent requests for confidential treatment seek confidential treatment only as authorized by the CPUC.

7. The identity and contact information of the corporate officer or employee responsible for responding to inquiries from the CPUC or others regarding access to information designated as confidential, for responding to or acknowledging the receipt of notices that a request or subpoena for records identified as confidential has been received by the CPUC, or that staff has made a provisional determination regarding the public or confidential status of records or information; and for responding to or acknowledging the receipt of any notices of the unauthorized disclosure of any records identified as confidential.

8. The period for which confidential treatment is authorized, for each class of records for which confidential treatment is authorized, with clear statements identifying the definitive dates confidential treatment will begin, and expire, *e.g*. confidential treatment period runs for three years from the date the contract is executed.

Confidential treatment period shall not be identified with reference to a conditional date such as the date delivery under a contract is scheduled to begin or end, since such dates do not provide adequate certainty.

9. Standard public and confidential status resolutions will reflect the CPUC's review of the application for the resolution, and will identify the records or information subject to CPUC approved confidential treatment, with citations to the CPRA exemptions and privileges, if any, that would be asserted by the CPUC in response to records requests or discovery seeking access to such designated confidential records. Resolutions may authorize the use of short-form public or confidential status designations tied to the resolution or an applicable matrix adopted in accord with this General Order.

**Short-form public and confidential status designations subject to a standard confidential treatment resolution**

A short-form public or confidential status designation is a short-form public or confidential status designation in a standard CPUC-approved format, that can be attached to, or included within, specific records filed with or otherwise submitted to the CPUC that include records or information subject to an entity-specific standard public and confidential status resolution, or division matrix, on file with the CPUC.

Once a regulated entity has applied for and obtained a standard public and confidential status resolution, the entity may use a short-form public or confidential status designation when subsequently submitting to the CPUC records that fall within a class of records subject to prior CPUC approval of confidential treatment information in the resolution.

Short-form designations must accompany each record or set of records submitted to the CPUC with a request for confidential treatment tied to a standard public and confidential status resolution or matrix adopted in accord with this General Order.

Short-form designations attached to or incorporated with documents electronically filed or otherwise submitted to the CPUC must include an electronic link to the standard public and confidential resolution or matrix; a brief title or description of the records; a date of filing or submission; a unique identifying alphanumeric designation in a format approved by the CPUC that can be entered into a publicly accessible electronic database of requests for confidential treatment; and contact information for the regulated entity employee responsible for submitting the records to the CPUC: such information must include telephone number, address [electronic address is acceptable;]; name or designation of submitting employee.

Short-form designations are intended to replace previous short-form assertions that records are "Confidential pursuant to Cal. Pub. Util. Code § 583 and G.O. 66-C" with short-form references to standard public and confidential status resolutions or matrices that identify the types of records, or portions of records, the entity may routinely identify

as being subject to a detailed CPUC confidentiality determination, with clear references to the legal authority for confidential treatment.

**Contact Information Caveat:**

Contact information must be kept up to date. If CPUC staff or others attempt to contact a regulated entity using the contact information on file with the CPUC, and do not receive a response within a specified period of time, the non-responses may be tracked and, in appropriate circumstances, be considered to reflect the entity's absence of concern regarding confidential treatment.

### 3.1.2.3 Monthly Reports

Each regulated entity that submits a request for confidential treatment or public or confidential status designation shall file a monthly compliance advice letter reporting each request for confidential treatment and public or confidential status designation submitted during the period covered by the report. Monthly reports shall include entries regarding request for confidential treatment made in the context of a formal proceeding or other advice letter filing, in an information-only section of the report. Monthly compliance advice letter reports are subject to G.O. 96-B and will be processed accordingly. The public will be provided an opportunity to comment on or protest requests for confidential treatment and public and confidential status designations.

Requests for confidential treatment and public and confidential status designations submitted to staff in accord with this General Order provide a mechanism for obtaining provisional determinations regarding the status of records, and for review of such provisional determinations. The monthly report advice letter compliance filings provide an opportunity for public notice and comment regarding such requests and designations, and a procedure for disposition of requests and designations through rules set forth in a well-established General Order.

### 3.1.2.4 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 in the same manner as regulated entities. However, such requesters will 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. If a whistleblower submits or proposes to submit information obtained from a utility, the utility will generally be offered an opportunity to request confidential treatment for any utility-generated information.

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.[108]

### 3.2. CPUC Responses to Requests for Confidential Treatment and Public and Confidential Status Designations

The division or Public Records Office shall review requests for confidential treatment and public and confidential status designations to determine whether they seek 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. Divisions shall consult with the Public Records Office as necessary.

The division, and/or the Public Records Office, may ask the person seeking confidential treatment to provide additional information if necessary to permit the CPUC to determine independently whether confidential treatment is permitted and warranted.

Requests for confidential treatment and public and confidential status designations will be processed as follows:

1. Requests associated with formal proceedings or advice letter filings will be processed in accord with current practices.

2. Requests for adoption of standard public and confidential status resolutions will reviewed by Division staff, and PRO staff. Staff will prepare and circulate for public comment a draft resolution responding to the request. Parties may request

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

that the CPUC hold a workshop regarding such requests, during a transition period in which stakeholders adapt to this new procedural option.

3. If a standard public and confidential status resolution or new matrix is approved, the resolution or matrix will be maintained in a public database, and may serve as a basis for short-form public and confidential status designations in accord with this General Order, and as a basis for evaluating submitted short-form designations.

4. Industry, division, or subject matter matrices adopted in accord with this General Order may serve as a basis for public and confidential status designations. CPUC divisions are authorized to propose matrices and associated procedural rules, in a manner similar to the G.O. 96-B process for adopted Industry Rules regarding advice letter filings.

5. If a request for confidential treatment or public or confidential status designation is submitted to division staff, the reviewing division staff will proceed as follows:

    a. Staff will determine whether the request complies with applicable procedural requirements for requests for confidential treatment or public or confidential status designations. If a request does not provide sufficient information, or otherwise fails to comply with procedural requirements, staff will notify the submitting party that the request or designation will be rejected, without prejudice, unless the defects are cured within 10 days.

    b. If staff determines that a request or designation meets procedural requirements, staff shall review the request or designation to determine whether it seeks confidential treatment for records or information for which the CPUC has authorized confidential treatment:

        1. If staff determines that a request for confidential treatment, or a confidential status designation, submitted in accord with this G.O. 66-D, properly identifies the records or information as falling within a class of records or information the CPUC has expressly designated as confidential in a matrix, standard public and confidential status resolution, general order, decision, resolution, order, or ruling, staff may notify the requester that the request for confidential treatment or confidential status designation is provisionally accepted.

        2. If staff determines that a request for confidential treatment, or a confidential status designation, submitted in accord with this G.O. 66-D, improperly identifies the records or information as falling within a class of records or information the CPUC has expressly

designated as confidential in a matrix, standard public and confidential status resolution, general order, decision, resolution, order, or ruling, staff may notify the requester that the request for confidential treatment or confidential status designation is provisionally rejected, and that the requester may within 10 days submit a request for Commission review of the provisional rejection.

a. If no response is received, staff shall reject the request for confidential treatment.

b. If a response adequately explains why the records or information fall within a class of records or information the CPUC has expressly designated as confidential in a matrix, standard public and confidential status resolution, general order, decision, resolution, order, or ruling, staff may notify the requester that the request for confidential treatment or confidential status designation is provisionally accepted.

3. If a response does not adequately explain why the records or information fall within a class of records or information the CPUC has expressly designated as confidential in a matrix, standard public and confidential status resolution, general order, decision, resolution, order, or ruling, or why the records or information do not fall within a class of records or information identified as public in staff's initial notice of provisional rejection, staff shall notify the requester that the request for confidential treatment is again provisionally rejected, and that the entity may request CPUC review of the second provisional rejection by filing a request for such review with the PRO within 10 days. If staff determines that a request seeks confidential treatment for records or information expressly identified as public in a statute, matrix, standard public and confidential status resolution, general order, or other CPUC decision, order, or ruling, staff shall notify the requester that the request will be rejected unless the requester within 5 days submits a response that explains why the records or information do not fall within the public category of records identified by staff:

   a. If no response is received, staff shall reject the request for confidential treatment.

   b. If a response adequately explains why the records or information do not fall within the public category of records identified by staff, and why the records or information fall within a class of records or information the CPUC has designated as confidential, staff may

notify the requester that the request for confidential treatment is provisionally accepted.

c. If a response does not adequately explain why the records or information do not fall within the public category of records identified by staff, staff shall notify the requester that the request for confidential treatment is rejected. If a records request or subpoena seeks such records, or CPUC protocol requires they be posted or otherwise made available, the records or information will be made available with no further delay. Regulated entities may request additional review by the Commission by filing a request for CPUC review with the PRO within 10 days; this review process will not automatically further stay disclosure of records a statute and/or the CPUC clearly and expressly require to be public.

4. If staff determines that a request for confidential treatment submitted in accord with this G.O. 66-D, identifies the records or information that do not fall within a class of records or information the CPUC has expressly designated either as public, or as confidential, staff will proceed as follows:

   a. If staff determines that a request for confidential treatment submitted in accord with this G.O. properly demonstrates that the records or information fall within a class of records or information for which confidential treatment appears warranted on the basis of the authority cited in the request for confidential treatment, or for other reasons, staff may notify the requester that the request for confidential treatment is provisionally accepted.

   b. If staff determines that a request for confidential treatment submitted in accord with this G.O. fails to properly demonstrate that the records or information fall within a class of records or information for which confidential treatment appears warranted on the basis of the authority cited in the request for confidential treatment, or for other reasons, staff may notify the requester that the request for confidential treatment is provisionally rejected, and that the requester may within 10 days submit a request for Commission review of the provisional rejection.

5. Records or information subject to a requester's assertion of a privilege require special treatment. While such records may fall within a class designated as confidential, staff must review the request to determine whether each element necessary for an assertion of the privilege has been met, and whether the CPUC has determined that it wishes to

accept records and information subject to that type of privilege assertions. If staff determines that the request for confidential treatment and associated privilege assertion meet procedural requirements, staff shall review the request and assertion to determine whether it appears that all elements necessary for an assertion of the privilege have been met, and whether the records or information fall within a class the CPUC has expressed willingness to accept, and willingness to maintain the confidential status of such records or information to the extent practical.

a. If staff determines that a request for confidential treatment and privilege assertion meet all procedural and substantive requirements, and properly identifies the records or information as falling within a class of privileged records or information the CPUC has expressed willingness to accept and treat as confidential, staff may notify the requester that the request for confidential treatment and associated privilege assertion have been provisionally accepted.

b. If staff determines that a request for confidential treatment and privilege assertion meet all procedural and content requirements for such requests and assertions, but fails to demonstrate that all elements necessary for the assertion of the privilege have been met, that other authority requires rejection of a privilege assertion, and/or that the records or information do not fall within a class of privileged records or information class the CPUC has expressed a willingness to accept and treat as confidential, staff may notify the requester that the request for confidential treatment and privilege assertion have been provisionally rejected, and that the privilege holder may request review by the Commission within 10 days of the date the notice of provisional rejection was sent by staff. If the Public Records Office receives such a request, a draft resolution will be prepared for the Commission's consideration.

c. If the person asserting a privilege has not yet submitted the records or information subject to the privilege assertion, no transfer of records is necessary. If a person asserting a privilege has submitted the records or information subject to the privilege assertion, staff shall return the records subject to the rejected privilege assertion, in the absence of a Commission order or ruling to the contrary.

6. If the CPUC has expressly determined that certain classes of records or information, are confidential, but that the records or information are submitted in a

physical or electronic format that cannot practically include a confidential status designation, the absence of such a status designation will not preclude confidential treatment. The CPUC retains its independent right to determine that there is a legal basis and necessity for treating such information as confidential, in accord with the CPRA and other authority.

7. The confidential status of records or information submitted with a request for confidential treatment or confidential status designation in accord with this G.O. will be maintained while CPUC review of the request or designation is pending, absent a CPUC order or ruling to the contrary. If staff provisionally rejects a request for confidential treatment or confidential status designation, the records or information may be disclosed unless a request for Commission review is received within 10 days of the notice of provisional rejection.

   The filing of a request for CPUC review will stay disclosure of the records or information, in the absence of a CPUC order or ruling authorizing disclosure, unless the request seeks review of a provisional rejection based on a determination that the request for confidential treatment seeks confidential treatment for records or information clearly and expressly identified as public in a statute, matrix, standard public and confidential status resolution, general order, or other CPUC decision, order, or ruling.

8. It is necessary to provide the pubic with an opportunity to review, comment on, or protest requests for confidential treatment and confidential status designations. Therefore, each regulated entity that submits records or information to the CPUC with a request for confidential treatment or confidential status designation must submit monthly compliance reports that identify each request for confidential treatment, each public and confidential status designation, and any staff response to such requests and designations, during a specified period. Reports shall also reference motions for confidential treatment filed in formal proceedings, and requests associated with other advice letters, but these shall not be subject to comment or protest. The monthly reports shall be submitted as a compliance advice letter filing in accord with the G.O. 96-B.

   Monthly reports submitted in advice letter filings will be processed in accord with the requirements of G.O. 96-B. Sections of such advice letter filings that refer to formal proceeding motions or requests for confidential treatment in associated with other advice letter filings will be treated as information-only filings. Sections of such filings that reference public and confidential status designations submitted in accord with this general order may be treated as requests subject to division disposition. Reviewing divisions may consult with the Public Records Office. As appropriate, Public Records Office resolutions may serve to ratify, reject, or modify staff provisional determinations.

9. If records or information are submitted without a request for confidential treatment or confidential status designation in accord with this General Order, such records or information are presumed to be public.

10. PRO resolutions may serve as a vehicle for Commission ratification of staff determinations subject to this G.O. Such determinations include, but are not limited to, notices that requests for confidential treatment are rejected, provisionally accepted, or provisionally rejected. Initial staff determinations are optional, not required, with regard to requests for confidential treatment and status designations submitted pursuant to this G.O., since the monthly compliance advice letter filing will provide a default forum for staff review.

11. Provisional notices sent by staff to a regulated entity shall be made available to the public in the request for confidential treatment database.

12. Draft Public Records Office resolutions, other than standing resolutions, will be circulated for public comment, in accord with Cal. Pub. Util. Code § 311(g), and for subsequent Commission action at one of its regular business meetings. Resolutions may address a single request for disclosure and/or confidential treatment, or multiple requests.

13. 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.

14. 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.

15. The division of the CPUC that receives and/or responds to any request for confidential treatment or public or confidential status designations shall maintain a file of such requests and response, and provide the Public Records Office with copies of each request and response. These requests for confidential treatment and the CPUC's responses to such requests will be included in any public database of such records developed by the CPUC.

### 3.2.1 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.

### 3.2.2 Public Records Office Resolutions

The Public Records Office will prepare and place on the agenda of each CPUC business meeting agenda a proposed Public Records Office resolution identifying requests for confidential treatment that identifies requests for confidential treatment received during a given period, and the status of the requests. This Public Records Office resolution will authorize public access to all information provided by regulated entities to the Commission during the period covered by the Public Records Office resolution where confidential treatment was not requested, and may authorize public access to information furnished by regulated entities where a request for confidential treatment was rejected or denied.

Public Records Office resolutions may serve as a vehicle to place requests for confidential treatment, and any protests of such treatment, directly before the Commission for appropriate action. The Public Records Office may prepare and place on CPUC business meeting agendas proposed Public Records Office resolutions regarding requests for disclosure or confidential treatment that: 1) ratify staff determinations regarding requests for confidential treatment, as appropriate; 2) respond to requests for access to records to which access was initially denied by the Public Records Office; 2) respond to requests for confidential treatment, where standard procedures are not available or definitive; 3) respond to appeals for confidential treatment, where an initial request for confidential treatment was rejected or denied in accord with procedures established in this General Order; 4) respond to protests of requests for confidential treatment; 5) respond to protests or objections to records requests or discovery seeking access to CPUC records, or portions of records, that include information subject to a privilege asserted by a regulated entity in accord with the provisions of this General Order, where the privilege assertion is under review by, or has been accepted by, the CPUC in accord with this General Order; 6) respond to requests by a regulated entity or entities for the adoption of a standard public and confidential status resolution; 7) request approval of new matrices, or of modifications of existing matrices, that establish public, confidential, conditional access, or similar designations for classes of records on an industry, division, or subject-specific basis; 8) respond to requests from CPUC staff (including DRA) for a determination that certain records, or classes of records, be made available to the public, or be identified as confidential; or 9) address other issues concerning access to, or confidential treatment of, CPUC records.

Public Records Office resolutions may also serve as a vehicle to place requests for confidential treatment, and any protests of such treatment, directly before the Commission for appropriate action.

### 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. DISCOVERY

### 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.

### 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.

In forums such as federal courts, where the witness fee provisions of Cal. Gov't. Code § 68097.2 may not apply, witness fees must be paid in accord with the rules of such forums.

### 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.

## 5. INFORMATION PRACTICES ACT

**5.1** The CPUC shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government. (Cal. Civ. Code § 1798.14.)

**5.2** The CPUC shall collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source. (Cal. Civ. Code § 1798.15.)

**5.3** (a) Whenever the CPUC collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or he or she has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity. If the source is an agency, governmental entity or other organization, such as a corporation or association, this requirement can be met by maintaining the name of the agency, governmental entity, or organization, as long as the smallest reasonably identifiable unit of that agency, governmental entity, or organization is named.

(b) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, whenever the CPUC electronically collects personal information, as defined by Section 11015.5 of the Government Code, the agency shall retain the source or sources or any intermediate form of the information, if either are created or possessed by the agency, unless the source is the data subject that has requested that the information be discarded or the data subject has received a copy of the source document.

(c) The CPUC shall maintain the source or sources of the information in a readily accessible form so as to be able to provide it to the data subject when they inspect any record pursuant to Section 1798.34. This section shall not apply if the source or sources are exempt from disclosure under the provisions of this chapter. (Cal. Civ. Code § 1798.16.)

5.4 The CPUC shall provide on or with any form used to collect personal information from individuals the notice specified in this section. When contact with the individual is of a regularly recurring nature, an initial notice followed by a periodic notice of not more than one-year intervals shall satisfy this requirement. This requirement is also satisfied by notification to individuals of the availability of the notice in annual tax-related pamphlets or booklets provided for them. The notice shall include all of the following:

(a) The name of the agency and the division within the agency that is requesting the information.

(b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.

(c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.

(d) With respect to each item of information, whether submission of such information is mandatory or voluntary.

(e) The consequences, if any, of not providing all or any part of the requested information.

(f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Cal. Civ. Code § 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency. This section does not apply to any enforcement document issued by an employee of a law enforcement agency in the performance of his or her duties wherein the violator is provided an exact copy of the document. The notice required by this section does not apply to agency requirements for an individual to provide his or her name, identifying number, photograph, address, or similar identifying information, if this information is used only for the purpose of identification and communication with the individual by the agency, except that requirements for an individual's social security number shall conform with the provisions of the Federal Privacy Act of 1974 (Public Law 93-579). (Cal. Civ. Code § 1798.17.)

5.5 The CPUC shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness. Such standard need not be met except when such records are used to make any determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely. (Cal. Civ. Code § 1798.18.)

5.6 The CPUC, when it provides by contract for the operation or maintenance of records containing personal information to accomplish an agency function, shall cause, consistent with its authority, the requirements of this chapter to be applied to those records. For purposes of Article 10 (commencing with Cal. Civ. Code § 1798.55), any contractor and any employee of the contractor, if the contract is agreed to on or after July 1, 1978, shall be considered to be an employee of the agency. (Cal. Civ. Code § 1798.19.)

5.7 The CPUC shall establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing personal information and instruct each such person with respect to such rules and the requirements of the Information Practices Act, including any other rules and procedures adopted pursuant to this chapter and the remedies and penalties for noncompliance. (Cal. Civ. Code § 1798.20.)

5.8 The CPUC shall establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of this chapter, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury. (Cal. Civ. Code § 1798.21.)

5.9 The CPUC shall designate an agency employee to be responsible for ensuring that the agency complies with all of the provisions of this chapter. (Cal. Civ. Code § 1798.22.)

5.10 The CPUC may not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing he individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Cal. Civ. Code § 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

(f) To a governmental entity when required by state or federal law.

(g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.

(i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.

(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(l) To any person pursuant to a search warrant.

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing.

(q) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has

permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual. (Cal. Civ. Code § 1798.24.)

5.11 The CPUC shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to subdivision (i), (k), (l), (o), or (p) of Section 1798.24. This accounting shall also be required for disclosures made pursuant to subdivision (e) or (f) of Cal. Civ. Code § 1798.24 unless notice of the type of disclosure has been provided pursuant to Cal. Civ. Code § § 1798.9 and 1798.10. The accounting shall also include the name, title, and business address of the person or agency to whom the disclosure was made. For the purpose of an accounting of a disclosure made under subdivision (o) of Cal. Civ. Code § 1798.24, it shall be sufficient for a law enforcement or regulatory agency to record the date of disclosure, the law enforcement or regulatory agency requesting the disclosure, and whether the purpose of the disclosure is for an investigation of unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or regulatory purposes by that agency. Routine disclosures of information pertaining to crimes, offenders, and suspected offenders to law enforcement or regulatory agencies of federal, state, and local government shall be deemed to be disclosures pursuant to subdivision (e) of Cal. Civ. Code § 1798.24 for the purpose of meeting this requirement. (Cal. Civ. Code § 1798.25.)

5.12 The CPUC shall retain the accounting made pursuant to Cal. Civ. Code § 1798.25 for at least three years after the disclosure for which the accounting is made, or until the record is destroyed, whichever is shorter. Nothing in this section shall be construed to require retention of the original documents for a three-year period, providing that the agency can otherwise comply with the requirements of this section. (Cal. Civ. Code § 1798.27.)

5.13 The CPUC shall inform any person or agency to whom a record containing personal information has been disclosed during the preceding three years of any correction of an error or notation of dispute made pursuant to Cal. Civ. Code § § 1798.35 and 1798.36 if (1) an accounting of the disclosure is required by Cal. Civ. Code § 1798.25 or 1798.26, and the accounting has not been destroyed pursuant to Cal. Civ. Code § 1798.27, or (2) the information provides the name of the person or agency to whom the disclosure was made, or (3) the person who is the subject of the disclosed record provides the name of the person or agency to whom the information was disclosed. (Cal. Civ. Code § 1798.28.)

5.14 a) To the extent the CPUC owns or licenses computerized data that includes personal information, the CPUC shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without

unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) To the extent the CPUC maintains computerized data that includes personal information that the agency does not own, the CPUC shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) The CPUC shall issue a security breach notification pursuant to this section shall meet all of the following requirements:

(1) The security breach notification shall be written in plain language.

(2) The security breach notification shall include, at a minimum, the following information:

(A) The name and contact information of the reporting agency subject to this section.

(B) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.

(C) If the information is possible to determine at the time the notice is provided, then any of the following: (i) the date of the breach, (ii) the estimated date of the breach, or (iii) the date range within which the breach occurred. The notification shall also include the date of the notice.

(D) Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.

(E) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

(F) The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a social security number or a driver's license or California identification card number.

(3) At the discretion of the CPUC, the security breach notification may also include any of the following:

(A) Information about what the CPUC has done to protect individuals whose information has been breached.

(B) Advice on steps that the person whose information has been breached may take to protect himself or herself.

(e) If the CPUC is required to issue a security breach notification pursuant to this section to more than 500 California residents as a result of a single breach of the security system, it shall electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the Attorney General. A single sample copy of a security breach notification shall not be deemed to be within subdivision (f) of Section 6254 of the Government Code.

(f) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(g) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(4) Medical information.

(5) Health insurance information.

(h) (1) For purposes of this section, "personal information" does not include publicly available information that is lawfully made

available to the general public from federal, state, or local government records.

(2) For purposes of this section, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

(3) For purposes of this section, "health insurance information" means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's

application and claims history, including any appeals records.

(i) For purposes of this section, "notice" may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars

($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the agency has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the CPUC's Internet Web site page, if the agency maintains one.

(C) Notification to major statewide media and the Office of Information Security within the California Technology Agency.

(j) Notwithstanding subdivision (i), if the CPUC maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system. (Cal. Civ. Code § 1798.29.)

5.15 The CPUC shall either adopt regulations and publish guidelines specifying procedures to be followed in order fully to implement each of the rights of individuals set forth in this article. (Cal Civ. Code § 1798.30)

5.16 Each individual shall have the right to inquire and be notified as to whether the CPUC maintains a record about himself or herself. The CPUC shall take reasonable steps to assist individuals in making their requests sufficiently specific. Any notice sent to an individual which in any way indicates that the CPUC maintains any record concerning that individual shall include the title and business address of the agency official responsible for maintaining the records, the procedures to be followed to gain access to the records, and the procedures to be followed for an individual to contest the contents of these records unless the individual has received this notice from the agency during the past year. In implementing the right conferred by this section, the CPUC may specify in its rules or regulations reasonable times, places, and requirements for identifying an individual who requests access to a record, and for disclosing the contents of a record. (Cal Civ. Code § 1798.32.)

5.17 The CPUC may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and shall not exceed ten cents ($0.10) per page, unless the agency fee for copying is established by statute. (Cal. Civ. Code § 1798.33.)

5.18 a) Except as otherwise provided in this chapter, the CPUC shall permit any individual upon request and proper identification to inspect all the personal information in any record containing personal information and maintained by reference to an identifying particular assigned to the individual within 30 days of the CPUC's receipt of the request for active records, and within 60 days of the CPUC's receipt of the request for records that are geographically dispersed or which are inactive and in central storage. Failure to respond within these time limits shall be deemed denial. In addition, the individual shall be permitted to inspect any personal information about himself or herself where it is maintained by reference to an identifying particular other than that of the individual, if the agency knows or should know that the information exists. The individual also shall be permitted to inspect the accounting made pursuant to Article 7 (commencing with Section 1798.25).

(b) The CPUC shall permit the individual, and, upon the individual's request, another person of the individual's own choosing to inspect all the personal information in the record and have an exact copy made of all or any portion thereof within 15 days of the inspection. It may require the individual to furnish a written statement authorizing disclosure of the individual's record to another person of the individual's choosing.

(c) The CPUC shall present the information in the record in a form reasonably comprehensible to the general public.

(d) Whenever the CPUC is unable to access a record by reference to name only, or when access by name only would impose an unreasonable administrative burden, it may require the individual to submit such other identifying information as will facilitate access to the record.

(e) When an individual is entitled under this chapter to gain access to the information in a record containing personal information, the information or a true copy thereof shall be made available to the individual at a location near the residence of the individual or by mail, whenever reasonable. (Cal. Civ. Code § 1798.34.)

5.19 The CPUC shall permit an individual to request in writing an amendment of a record and, shall within 30 days of the date of receipt of such request:

(a) Make each correction in accordance with the individual's request of any portion of a record which the individual believes is not accurate, relevant, timely, or complete and inform the individual of the corrections made in accordance with their request; or

(b) Inform the individual of its refusal to amend the record in accordance with such individual's request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the Executive Director or an official specifically designated by the Executive Director of the refusal to amend, and the name, title, and business address of the reviewing official. (Cal. Civ. Code § 1798.35.)

5.20 The CPUC shall permit any individual who disagrees with the refusal of the CPUC to amend a record to request a review of such refusal by the Executive Director or an official specifically designated by Executive Director, and, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Executive Director of the agency extends such review period by 30 days. If, after such review, the reviewing official refuses to amend the record in accordance with the request, the agency shall permit the individual to file with the CPUC a statement of reasonable length setting forth the reasons for the individual's disagreement. (Cal. Civ. Code § 1798.36.)

5.21 The CPUC, with respect to any disclosure containing information about which the individual has filed a statement of disagreement, shall clearly note any portion of the record which is disputed and make available copies of such individual's statement and copies of a concise statement of the reasons of the agency for not making the amendment to any person or agency to whom the disputed record has been or is disclosed. (Cal. Civ. Code § 1798.37.)

5.22 If information, including letters of recommendation, compiled for the purpose of determining suitability, eligibility, or qualifications for employment, advancement, renewal of appointment or promotion, status as adoptive parents, or for the receipt of state contracts, or for licensing purposes, was received with the promise or, prior to July 1, 1978, with the understanding that the identity of the source of the information would be held in confidence and the source is not in a supervisory position with respect to the individual to whom the record pertains, the agency shall fully inform the individual of all personal information about that individual without identification of the source. This may be done by providing a copy of the text of the material with only such deletions as are necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the agency shall insure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications, or be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications. In institutions of higher education, "supervisory positions" shall not be deemed to include chairpersons of academic departments. (Cal. Civ. Code § 1798.38.)

5.23 The Information Practices Act shall not be construed to require the CPUC to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

(a) Is compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status.

(b) Is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual.

(c) Is contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.

(d) Is maintained for the purpose of an investigation of an individual's fitness for licensure or public employment, or of a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation, or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Cal. Civ. Code §1798.38.

(e) Would compromise the objectivity or fairness of a competitive examination for appointment or promotion in public service, or to determine fitness for licensure, or to determine scholastic aptitude.

(f) Pertains to the physical or psychological condition of the individual, if the agency determines that disclosure would be detrimental to the individual. The information shall, upon the individual's written authorization, be disclosed to a licensed medical practitioner or psychologist designated by the individual.

(g) Relates to the settlement of claims for work related illnesses or injuries and is maintained exclusively by the State Compensation Insurance Fund.

(h) Is required by statute to be withheld from the individual to whom it pertains.

This section shall not be construed to deny an individual access to information relating to him or her if access is allowed by another statute or decisional law of this state. (Cal. Civ. Code § 1798.40.)

5.24 (a) Except as provided in subdivision (c), if the CPUC determines that information requested pursuant to Cal. Civ. Code § 1798.34 is exempt from access, it shall inform the individual in writing of the agency's finding that disclosure is not required by law.

(b) Except as provided in subdivision (c), the CPUC shall conduct a review of its determination that particular information is exempt from access pursuant to Cal. Civ. Code § 798.40, within 30 days from the receipt of a request by an individual directly affected by the determination, and inform the individual in writing of the findings of the review. The review shall be conducted by the Executive Director or an official specifically designated by the Executive Director.

(c) If the agency believes that compliance with subdivision (a) would seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the record, it may petition the presiding judge of the superior court of the county in which the record is maintained to issue an ex parte order authorizing the agency to respond to the individual that no record is maintained. All proceedings before the court shall be *in camera*. If the presiding judge finds that there are reasonable grounds to believe that compliance with subdivision (a) will seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or will endanger the life of an informant or other person submitting information contained in the record, the judge shall issue an order authorizing the agency to respond to the individual that no record is maintained by the agency. The order shall not be issued for longer than 30 days but can be renewed at 30-day intervals. If a request pursuant to this section is received after the expiration of the order, the agency must either respond pursuant to subdivision (a) or seek a new order pursuant to this subdivision. (Cal. Civ. Code § 1798.41.)

5.25 In disclosing information contained in a record to an individual, the CPUC shall not disclose any personal information relating to another individual which may be contained in the record. To comply with this section, an agency shall, in disclosing information, delete from disclosure such information as may be necessary. This section shall not be construed to authorize withholding the identities of sources except as provided in Cal. Civ. Code §§ 1798.38 and 1798.40. (Cal. Civ. Code § 1798.42.)

5.26 In disclosing information contained in a record to an individual, the CPUC need not disclose any information pertaining to that individual which is exempt under Cal. Civ. Code 1798.40. To comply with this section, an agency may, in disclosing personal information contained in a record, delete from the disclosure any exempt information. (Cal. Civ. Code § 1798.43.)

5.27 The Information Practices Act applies to the rights of an individual to whom personal information pertains and not to the authority or right of any other person, agency, other state governmental entity, or governmental entity to obtain this information. (Cal. Civ. Code § 1798.44.)

**Workshop Preparation Questionnnaire**

**REQUEST FOR CONFIDENTIAL TREATMENT OF A CLASS OF RECORDS**

Name: _____ Today's Date: _____

Address: _____

_____

Telephone No: _____ Email: _____

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

_____

_____

_____

_____

Identification of the context in which the records are submitted to the CPUC:

1. In response to a statute requiring the filing of a periodic report (e.g., annual, monthly), specifically:

_____

2. In response to a statute requiring the filing of other types of records, specifically:

_____

2. In response to a regulation requiring the filing of a periodic report, specifically:

_____

2. In response to a regulation requiring the filing of other types of records, specifically:

_____

3. In response to a Commission General Order requiring the filing of a periodic report, specifically:

_____

5. In response to a Commission General Order requiring the filing of a record upon the occurrence of an event, specifically: _____

4. In response to a Commission Rule of Practice and Procedure, specifically:

_____

5. In response to a routine class of CPUC data requests, specifically:

_____

6 Other context, specifically:

_____

Specific portions of reports or records, for which confidential treatment is requested: _____

_____

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)[109]**:** _____

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): _____

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

_____ _____

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 the privilege is 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

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

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.

3. If the 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 must explain in detail how all conditions for the privilege assertion have been met..

4. If the exemption cited is Cal. Gov't. Code § 6254(ab), the requester must attest that the class of infrastructure information is routinely 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.

**FORM 1: Request for Confidential Treatment - Regulated Entity (RCT RE)**

**REQUEST FOR CONFIDENTIAL TREATMENT OF RECORDS (REGULATED ENTITY)**

Name: _____ Today's Date: _____

Address: _____

_____

Telephone No: _____ Email: _____

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

_____

_____

_____

_____

Identification of the context in which the records are submitted to the CPUC:

1. In response to a statute requiring the filing of a periodic report (e.g., annual, monthly), specifically:

_____

2. In response to a statute requiring the filing of other types of records, specifically:

_____

2. In response to a regulation requiring the filing of a periodic report, specifically:

_____

2. In response to a regulation requiring the filing of other types of records, specifically:

_____

3. In response to a Commission General Order requiring the filing of a periodic report, specifically:

_____

5. In response to a Commission General Order requiring the filing of a record upon the occurrence of an event, specifically: _____

4. In response to a Commission Rule of Practice and Procedure, specifically:

_____

5. In response to a routine class of CPUC data requests, specifically:

_____

6 Other context, specifically:

_____

Specific portions of reports or records, for which confidential treatment is requested: _____

_____

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)[110]**:** _____

_____

_____

_____

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): _____

_____

_____

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

_____ _____

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.

3. If the 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 must explain in detail how all conditions for the privilege assertion have been met.

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

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

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.

**Form 2: Request for Standard Pubic and Confidential Status Resolution – Regulated Entity (RCT RSR – RE)**

**REQUEST FOR STANDARD PUBLIC AND CONFIDENTIAL STATUS RESOLUTION**

Name: _____ Today's Date: _____

Address:_____

Telephone No: _____ Email: _____

Clarification of the public or confidential status of reports and other records routinely submitted to the CPUC is requested as follows:

Public Status Acknowledged

Public status is acknowledged for the following classes of records: _____

_____

Description of each class of records for which public status is acknowledged: _____

_____

_____

Identification of the context in which each such class of records is submitted to the CPUC:

1. In response to a statute requiring the filing of a periodic report (*e.g.*, annual, monthly), specifically:

_____

2. In response to a statute requiring the filing of other types of records, specifically: _____

2. In response to a regulation requiring the filing of a periodic report, specifically: _____

2. In response to a regulation requiring the filing of other types of records, specifically: _____

3. In response to a Commission General Order requiring the filing of a periodic report, specifically: _____

5. In response to a Commission General Order requiring the filing of a record upon the occurrence of an event, specifically: _____

4. In response to a Commission Rule of Practice and Procedure, specifically: _____

5. In response to a routine class of CPUC data requests, specifically: _____

6. Other context, specifically: _____

Specific portions of reports or records, for which confidential status is requested, if remainder of the report or records is acknowledged to be public: _____

Confidential Status Requested

Confidential status is requested for the following classes of records, or portions of records:_____

_____

Description of each class of records for which confidential treatment is requested: _____

_____

_____

For each such class of records, Identification of the context in which the records are submitted to the CPUC:

1. In response to a statute requiring the filing of a periodic report (*e.g.*, annual, monthly), specifically: _____

2. In response to a statute requiring the filing of other types of records, specifically: _____

2. In response to a regulation requiring the filing of a periodic report, specifically: _____

2. In response to a regulation requiring the filing of other types of records, specifically: _____

3. In response to a Commission General Order requiring the filing of a periodic report, specifically: _____

5. In response to a Commission General Order requiring the filing of a record upon the occurrence of an event, specifically: _____

4. In response to a Commission Rule of Practice and Procedure, specifically: _____

5. In response to a routine class of CPUC data requests, specifically: _____

6 Other context, specifically: _____

Specific portions of reports or records, for which confidential treatment is requested: _____

_____

Specific portions of reports or records, for which public status is acknowledged, if remainder of the report or records is subject to a 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)[111]**:** _____

_____

_____

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): _____

_____

_____

[111] 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

_____ _____

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.

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 must explain in detail how all conditions for the privilege assertion have been met.

4. If the exemption cited is Cal. Gov't. Code § 6254(ab), the requester must attest that the class of infrastructure information is routinely 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.

**FORM 2.1 Short Form Designation of Records as Confidential Pursuant to Standard Public and Confidential Status Resolution – Regulated Entity (SFD: SPCSR – RE)**

**SHORT-FORM DESIGNATION OF RECORDS AS CONFIDENTIAL PURSUANT TO STANDARD PUBLIC AND CONFIDENTIAL STATUS RESOLUTION**

**SHORT-FORM ID NO: _____ Date: _____**
**Description of Records Designated as Confidential Pursuant to Standard Public and Confidential Status Resolution:**
_____
_____

**Standard Public and Confidential Status Resolution No. _____.**
Link to Standard Confidential Treatment Resolution: _____

If you have questions regarding this Short Form Designation of Records as Confidential, please contact: _____

**RCT FORM 3: Request for Confidential Treatment-Government Entity (RCT-GE)**

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

**RCT FORM 4 .1 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

**RCT FORM 4.2. (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 10 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

**RCT FORM 4. 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

**FORM 4.4 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 5 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

**RCT FORM 4.5. 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

## 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) 703-2015
  Facsimile: (415) 703-2262

  public.records@cpuc.ca.gov

- **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. Fees for transcripts will reflect costs incorporated within reporter compensation provisions of relevant employee bargaining unit agreements.
- **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.[1] 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) 703-2015 during CPUC regular business hours, 8:30 a.m. to 4:30 p.m.

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

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.[2]

• 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)].

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

• 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)].

• 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)].