

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

Legal Division

San Francisco, California

Date: February 16, 2012

Resolution No.: L-430

**RESOLUTION**

**RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION CONSUMER PROTECTION AND SAFETY DIVISION'S INVESTIGATION OR AUDITS RELATING TO PACIFIC GAS & ELECTRIC COMPANY (PG&E) LEAK SURVEYS AND/OR THE EFFECTIVENESS OF PG&E'S EXTERNAL CORROSION DIRECT ASSESSMENT PROGRAM**

**BACKGROUND**

The California Public Utilities Commission (Commission) received a request seeking disclosure of the Commission Consumer Protection and Safety Division's investigation or audits relating to Pacific Gas & Electric Company (PG&E) leak surveys and/or the effectiveness of PG&E's external corrosion direct assessment program. The Commission's staff made available a number of responsive records; however, some records regarding the Commission's investigation of PG&E leak surveys and audits could not make the investigation records public without the formal approval of the full Commission. The request is treated as an appeal to the full Commission for release of the requested records pursuant to Commission General Order 66-C § 3.4.

**DISCUSSION**

The requested records are "public records" as defined by the California Public Records Act ("CPRA").<sup>1</sup> The California Constitution, the CPRA, and discovery law favor disclosure of public records. The public has a constitutional right to access most government information.<sup>2</sup> Statutes, court rules, and other authority limiting access to information must be broadly construed if they further the

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<sup>1</sup> Cal. Gov't. Code § 6250, *et seq.*

<sup>2</sup> Cal. Const. Article I, § 3(b)(1).

people's right of access, and narrowly construed if they limit the right of access.<sup>3</sup> New statutes, court rules, or other authority that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest.<sup>4</sup>

The CPRA provides that 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.<sup>5</sup>

The Commission has exercised its discretion under Cal. Pub. Util. Code § 583, and implemented its responsibility under Cal. Gov't. Code § 6253.4(a), by adopting guidelines for public access to Commission records. These guidelines are embodied in General Order 66-C. General Order 66-C § 1.1 provides that Commission records are public, except "as otherwise excluded by this General Order, statute, or other order, decision, or rule." General Order 66-C § 2.2 precludes Commission staff's disclosure of "[r]ecords or information of a confidential nature furnished to or obtained by the Commission ... including: (a) Records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action." General Order 66-C § 2.2(a) covers both records provided by utilities in the course of a Commission investigation and investigation records generated by Commission staff.

Because General Order 66-C § 2.2(a) limits Commission staff's ability to disclose Commission investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, Commission staff denies most initial requests and subpoenas for investigation records. Commission staff usually informs requestors that their subpoena or public records request will be treated as an appeal under General Order 66-C § 3.4 for disclosure of the records.

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<sup>3</sup> Cal. Const. Article I, § 3(b)(2).

<sup>4</sup> *Id.*

<sup>5</sup> The fact that records may fall within a CPRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records subject to a law prohibiting disclosure, CPRA exemptions are discretionary, rather than mandatory, and the Commission is free to refrain from asserting such exemptions when it finds that disclosure is appropriate. *See* Cal. Gov't. Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App. 3d 645, 656.

There is no statute forbidding disclosure of the Commission's safety investigation records. With certain exceptions for incident reports filed with the Commission, we generally refrain from making most safety-related investigation records public until Commission staff's investigation of the incident is complete. Commission staff and management need to be able to engage in confidential deliberations regarding a safety-related investigation without concern for the litigation interests of plaintiffs or regulated entities.

The Commission has ordered disclosure of records concerning completed safety-related investigations on numerous occasions.<sup>6</sup> Disclosure of such records does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident or incident under investigation.<sup>7</sup> Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility accidents or incidents, the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident or incident.

Portions of safety-related investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act of 1977 ("IPA").<sup>8</sup> The IPA authorizes disclosure of personal information "[p]ursuant to the [CPRA]."<sup>9</sup> The CPRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy.<sup>10</sup> Incident investigation records may include information subject to the lawyer-client privilege, official information privilege, or similar disclosure limitations. The CPRA exempts such information from disclosure.<sup>11</sup>

The Commission has often stated that Cal. Pub. Util. Code § 315, which expressly 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

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<sup>6</sup> Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of privacy, and other exempt or privileged information.

<sup>7</sup> See, e.g., Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in Decision 93-05-020, (1993) 49 P.U.C. 2d 241; L-309 *Re Corona* (December 18, 2003); L-320 *Re Knutson* (August 25, 2005).

<sup>8</sup> Cal. Civ. Code § 1798, *et seq.*

<sup>9</sup> Cal. Civ. Code § 1798.24(g).

<sup>10</sup> Cal. Gov't. Code § 6254(c).

<sup>11</sup> Cal. Gov't. Code § 6254(k).

property,” offers utilities sufficient protection against injury caused by the release of requested investigation records.

The Commission investigation relating to PG&E leak surveys was completed in April 2010, with the completion of PG&E’s Accelerated Gas Leak Resurvey Project, which was instituted following a series of internal PG&E audits concerning the utility’s leak survey and facilities maintenance practices. The public interest favors disclosure of these records, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission’s lawyer-client, official information, or other privilege.

The Commission’s audits of PG&E’s integrity management programs include information regarding the effectiveness of PG&E’s external corrosion direct assessment program. Many documents relating to these audits are already available to the public on the Commission’s internet site, under the links for Information on Natural Gas Pipeline Safety, All Posted Pipeline Safety Documents, and 2010 Audit of PG&E Integrity Management Program. Additional records relating to the 2010 Integrity Management Program Audit may be made available to the public and posted on the Commission’s internet site in the future. The public interest favors disclosure of these records, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission’s lawyer-client or other privilege.

Information we will refrain from making available to the public includes: maps and schematic diagrams showing the location of specific utility regulator stations, valves, and similar facilities; the numerical element of street addresses included in workpapers and other documents associated with the Commission’s investigation and the utility’s internal audits; employee-specific training and certification records that may be considered employee personnel records. Disclosure of specific schematic diagrams and location information may create a risk of harm to utility facilities; utility employees, and the public, without providing significant additional insight into the operations of the utility and the Commission, while disclosure of what could be considered a subset of utility employee personnel records may result in an unwarranted invasion of personal privacy. Such records, or portions of records, are exempt from disclosure in response to Public Records Act requests, pursuant to Government Code §§ 6264 (c ) and 6254 (k).

**COMMENTS ON DRAFT RESOLUTION**

The Draft Resolution of the Commission's Legal Division in this matter was mailed to the parties in interest on January 17, 2012, in accordance with Cal. Pub. Util. Code § 311(g). Comments were filed on \_\_\_\_\_. Reply comments were filed on \_\_\_\_\_.

**FINDINGS OF FACT**

1. The Commission received a records request which seeks disclosure of the Commission's investigation or audits relating to PG&E's leak surveys and/or the effectiveness of PG&E's external corrosion direct assessment program.
2. Access to the records in the Commission's investigation files related to PG&E's leak surveys and maintenance practices was denied in the absence of a Commission order authorizing disclosure.
3. The Commission investigation relating to PG&E leak surveys and maintenance practices was completed in April 2010. Therefore, the public interest favors disclosure of the requested Commission's investigation records, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission's lawyer-client, official information, or other privilege.
4. The Commission's audits of PG&E's integrity management programs include information regarding the effectiveness of PG&E's external corrosion direct assessment program. Many documents relating to these audits are already available to the public on the Commission's internet site, under the links for Information on Natural Gas Pipeline Safety, All Posted Pipeline Safety Documents, and 2010 Audit of PG&E Integrity Management Program. The public interest favors disclosure of the additional Integrity Management Program audit records, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission's lawyer-client, official information, or other privilege.

**CONCLUSIONS OF LAW**

1. The documents in the requested Commission's investigation files are public records as defined by Cal. Gov't. Code § 6250, *et seq.*
2. 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. Furthermore, 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).

3. The general policy of the CPRA favors disclosure of records.
4. 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.
5. Cal. Gov't Code § 6254(c) exempts from mandatory disclosure personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy.
6. Cal. Gov't Code § 6254(k) exempts from disclosure 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.
7. The Commission has exercised its discretion under Cal. Pub. Util. Code § 583 to limit Commission staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. General Order 66-C § 2.2 (a).
8. Cal. Pub. Util. Code § 583 does not limit the Commission's ability to order disclosure of records.
9. 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."

### **ORDER**

1. The request for disclosure of the Commission's records concerning its investigations relating to Pacific Gas & Electric Company (PG&E) leak surveys and maintenance practices is granted, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission's lawyer-client, official information, or other privilege.

2. The request for disclosure of the Commission's records concerning records relating to the effectiveness of PG&E's external corrosion direct assessment program, which are included within the records of the Commission's audits relating to PG&E's Integrity Management Program, is granted, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission's lawyer-client, official information, or other privilege.
3. 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 February 16, 2012 and that the following Commissioners approved it:

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PAUL CLANON  
Executive Director