

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-3505
OCTOBER 9, 1997**

RESOLUTION E-3505. PACIFIC GAS AND ELECTRIC COMPANY (PG&E) AND SOUTHERN CALIFORNIA EDISON COMPANY (EDISON) REQUEST APPROVAL OF NON-DISCLOSURE AGREEMENTS TO CONTROL THE RELEASE OF INFORMATION CONTAINED IN DISCOUNT PRICING CONTRACTS. APPROVED AS MODIFIED.

BY PG&E ADVICE LETTER 1596-E, FILED ON AUGUST 15, 1996, AND BY EDISON ADVICE LETTER 1215-E, FILED ON JANUARY 17, 1997.

SUMMARY

1. PG&E requests to add to its tariffs Form No. 79-860 - Non-Disclosure and Confidentiality Agreement for Pacific Gas and Electric Company's Generic Business Attraction, Business Retention, and Cogeneration Deferral Agreements. Decision (D.) 95-10-033 required the filing of a non-disclosure agreement as part of the adopted program.
2. Edison requests to add to its tariffs Form 41-346 - Non-disclosure and Confidentiality Agreement for Edison's Flexible Pricing Option Contracts and Information. D. 96-08-025 required the filing of a non-disclosure agreement as part of the adopted program.
3. No protests were filed on either advice letter.
4. This Resolution approves a modified non-disclosure form for both PG&E and Edison and requires both utilities to file advice letter supplements adopting the revised forms to their tariffs.

BACKGROUND

1. Ordering Paragraphs 7, 8, and 9 of D. 95-10-033 require that customer specific contracts shall be available for inspection by persons other than competitors of PG&E, upon signing a confidentiality and non-disclosure agreement. They require PG&E to submit a standard form of the agreement for approval by resolution. The agreement should protect confidential customer information.
2. PG&E filed Advice Letter 1596-E, on August 15, 1996, to add a non-disclosure form to

its tariffs. The proposed form protects the release of confidential information to PG&E's competitors or the competitors of PG&E's customers, and:

- limits the use of the information to decision compliance;
- does not require customer approval to release information;
- allows PG&E to dispute the release of information;
- does not specify a procedure to resolve disputes over who may receive information;
- requires that all information, copies, materials, and records developed from the information be returned to PG&E within one year;
- states that disputes over extension of time for the return of the items shall be decided by the administrative law judge assigned to PG&E's rate design window.

3. Order Paragraphs 10, 11 and 12 of D.96-08-025 are essentially the same as Ordering Paragraphs 7, 8 and 9 of D. 95-10-033. They require that customer specific contracts shall be available for inspection by persons other than competitors of Edison, upon signing a confidentiality and non-disclosure agreement. In addition, they require Edison to submit a standard form of the agreement for approval by resolution. The agreement should protect confidential customer information.

4. Edison filed advice letter 1215-E, on January 17, 1997, to add a non-disclosure form to its tariffs. The proposed form protects the release of confidential information to Edison's competitors or the competitors of Edison's customers, and:

- limits the use of the information to decision compliance;
- requires written customer approval to release information;
- allows Edison to dispute the release of information;
- states that disputes over who may receive information are resolved by the Commission law and Motion docket;
- requires that all information, copies, materials, and records developed from the information be returned to Edison within one year;
- states that disputes over extension of time for the return of the items shall be decided by order of the Commission.

5. General Order 66 contains procedures for obtaining information and records in the possession of the Commission. Requests to examine or copy records which are not open to public inspection are made to the Secretary of the Commission stating the reasons why the records should be disclosed. In current practice the title of Executive Director has replaced Secretary of the Commission.

NOTICE

1. PG&E Advice Letter 1596-E was served on interested parties, and was noticed in the Commission's Daily Calendar on August 29, 1996.
2. Edison Advice Letter 1215-E was served on parties to Edison's 1995 General Rate Case, interested parties, and was noticed in the Commission's Daily Calendar.

PROTESTS

1. No protests were received for Advice Letters 1596-E or 1215-E

DISCUSSION

1. D. 95-10-033 and D.96-08-025 adopted discount rate programs and required that sensitive information contained in the contracts filed under the programs be kept confidential and released only pursuant to a non-disclosure agreement. Fairness and consistency dictate that, because of the similarities between the two programs and the language in the ordering paragraphs, the two confidentiality and non-disclosure agreements should be similar if not identical.
2. The proposed agreements filed by Edison and PG&E differ in several respects, and, unfortunately, do not appear to be completely in compliance with the ordering decision. Four points deserve discussion:
 - a) Limits on the use of the information;
 - b) Customer approval to release information;
 - c) Procedure to resolve disputes over who may receive information;
 - d) Procedure to resolve disputes over extension of the time to return items.
3. a) Limits on the use of the information. Both the Edison and the PG&E agreements limit the release of information. They state the purpose of releasing the information is solely to ensure compliance with the terms of the respective decision. The decision's ordering paragraphs, on the other hand, state "customer specific contracts authorized by this decision shall be available for inspection by persons other than competitors of (the utility) upon signing of a confidentiality and non-disclosure agreement." 'Solely to ensure compliance' is not the same as 'shall be available'. PG&E and Edison must modify their agreements to bring them into compliance with the decisions.

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4. b) Customer approval to release information. The decisions limit the release of information to competitors of the utility and state the agreement should protect confidential customer information. The utilities should be able to identify their competitors, but may be less qualified to identify persons who are competitors of the utility's customer and, therefore, should not receive customer information. When a request for information is made under Edison's proposal, the customer is notified and must give written approval before the information is released. PG&E does not have a similar provision in its proposal.

5. Several options are available to address this issue. 1) Obtaining the customer's written approval is one way of protecting the customer's confidentiality, but it can add delays and litigation if the customer does not give written approval in a timely manner. 2) Notifying customers and giving them a reasonable period to object before information is released would produce a more streamlined system, but puts the burden on the customer to protect confidential information. This could result in some information being released because of customer inattention. 3) Relying on the utility to identify persons who should not have access to customer information would be very quick, but has a significant risk that the utility would not be qualified to identify all persons who should not have access to the information. The stricter course appears the most desirable. PG&E and Edison should notify the customer when a request is made, if the customer objects, or does not respond, no information will be released. The added cost of this system is outweighed by the added protection it affords customers. This procedure should be set out in the agreements.

6. c) Procedure to resolve disputes over who may receive information. When a utility or a customer objects to the release of information, or the customer does not act on the request, the person requesting the information needs an impartial arbiter to resolve the dispute. Edison proposes the dispute be filed in the Commission's Law and Motion docket. This is inappropriate because the Law and Motion docket is not designed to resolve this type of dispute. PG&E does not address this issue.

7. General Order 66 contains a procedure for obtaining the release of confidential information from the Commission's files. A similar procedure should be appropriate in this case. When a person requests and is refused access to the information, the requestor, utility and customer should meet and confer within 30 days. If a resolution can not be reached, or the utility and customer refuse to meet, the person requesting access to the information may file a request for information with the Commission's Executive Director. The request should include notes of the meeting with the utility and customer, if it occurred, reasons why the information should be released, and descriptions of the precautions to be taken to ensure the information is not released to competitors. Copies of the request shall be sent to the utility and the customer on the same day the request is made. The utility and the customer may make comments on the request, within 30 days, by filing them with the Executive Director. The Executive Director will rule on

the request.

8. d) Procedure to resolve disputes over extension of the time to the return items. Both PG&E's and Edison's proposals state that any documents, copies of documents and all information and materials developed from the released documents shall be returned to the utility no later than one year from the date of the agreement. Both proposals say extensions of time for the return of the materials shall be by mutual consent of the receiving party and the utility. PG&E's proposal states if the parties are unable to come to an agreement then extensions shall only be granted by order of the administrative law judge assigned to PG&E's 1995 Rate Design window or his successor. Edison's proposal states if unable to reach a mutual agreement, extensions of time will be granted only by order of the Commission. Neither of these proposals is optimal. PG&E's places the dispute before an administrative law judge without concern to workload constraints or available expertise. Edison's proposal requires the filing of a formal complaint. The formal complaint procedure may be excessive for the nature of the dispute.

9. Return of sensitive information raises several concerns. First, the utility has an interest in ensuring confidential information is protected when no longer in use. The receiver is legally obligated to protect the information, but caution dictates the information should be returned or destroyed. Second, the receiver has a burden to determine how long the information is needed and to return it if no longer needed. The one year limits proposed by the utilities do not appear to be based on need or practice. A fairer limit would require the receiver to state in the non-disclosure agreement how long it will need to review the information, but no longer than 18 months. Presumably many requests will be considerably shorter. Written requests to extend time limits should be submitted to the utility. If the utility and the requester can not agree, after a meet and confer, the requester may ask for a ruling from the Executive Director. The same procedure described in paragraph 7 above should be used.

FINDINGS

1. D. 95-10-033 and D.96-08-025 adopted discount rate programs, generally referred to as flexible pricing programs, and required that sensitive information contained in the contracts filed under the programs be kept confidential and released only pursuant to a non-disclosure agreement.
2. Fairness and consistency dictate that, because of the similarities between the two programs and the language in the ordering paragraphs, the two confidentiality and non-disclosure agreements should be similar if not identical.
3. PG&E filed Advice Letter 1596-E, on August 15, 1996 to add a non-disclosure form to its tariffs.

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4. Edison filed Advice Letter 1215-E, on January 17, 1997, to add a non-disclosure form to its tariffs.
5. Both the Edison and the PG&E agreements limit the release of information to enforcement of the program, and that limit is stricter than is permitted by the authorizing decisions.
6. Edison and PG&E should modify their non-disclosure agreements limits on release of information to bring them into compliance with the authorizing decisions
7. PG&E's and Edison's proposals differ on whether customers should be consulted on the release of information.
8. Requiring written permission from the customer before releasing information would protect consumer interests.
9. Edison's and PG&E's proposals disagree on the procedure to resolve disputes over who may sign a non-disclosure agreement and receive access to information.
10. The Executive Director answers public information requests for the Commission and is qualified to resolve disputes over who should receive access to confidential information.
11. PG&E's and Edison's proposals to resolve disputes over when documents should be returned do not agree and could be burdensome to the Commission.
12. The Executive Director answers public information requests for the Commission and is qualified to resolve disputes over the return of confidential information.

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THEREFORE, IT IS ORDERED that:

1. PG&E Advice Letter 1596-E and Edison Advice Letter 1215-E are approved as modified. Within 30 days of the effective date of this order, PG&E and Edison shall file advice letter supplements, making the revisions described in Discussion paragraphs 7 and 9, and in the last sentence of Discussion paragraphs 3 and 5.
2. The advice letter supplements shall be served on the same parties as the original advice letters, shall be subject to a 20 day protest period and shall become effective 40 days after filing if staff determines they are in compliance. Staff shall reject the advice letter supplements if they are not in compliance with this Resolution or the applicable Commission decisions.
3. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 9, 1997.

The following Commissioners approved it:



WESLEY FRANKLIN
Executive Director

P. Gregory Conlon, President
Jessie J. Knight, Jr.
Henry M. Duque
Josiah L. Neeper
Richard A. Bilas
Commissioners