

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California  
Date: August 11, 1995  
Resolution No. L-249

R E S O L U T I O N

BACKGROUND:

By letter dated July 9, 1995, the law firm of Carrington & Nye on behalf of Michael Lopez (Petitioner), formally requested release of records not otherwise produced by the Commission pursuant to Resolution L-248. Carrington & Nye seeks documents relating to Southern California Edison Company's (Edison) underground switch or other equipment failures held by the Commission's Safety Division relating to incidents dating May, 1992, June, 1994 and June, 1995. Documents related to the June, 1994 underground explosion have already been released by staff pursuant to Resolution L-248. Documents relating to the May, 1992 and June, 1995 explosions do not appear to be covered by Resolution L-248. Petitioner's formal petition for privileged records was properly filed with the Executive Director and served on counsel for Edison. Counsel for Edison filed a response and Petitioner filed a reply to the response.

DISCUSSION:

Although General Order 66-C prohibits staff disclosure of confidential information contained in the accident reports, neither the general order nor the underlying statutes create for the utility an absolute privilege of nondisclosure. For good cause shown, the Commission may authorize or direct the disclosure of such information.

While Public Utilities Code Section 315 prohibits the use of accident reports as evidence in a civil case, it does not preclude discovery of such reports. Decision No. 78162 (1971), 71 CPUC 688, allows the Commission to permit the disclosure of information in the accident reports if the information is relevant and material to the issues in the proceeding. 71 CPUC at 692. Petitioner contends that the accident reports are relevant and material to the issue of safety as this issue applies to Edison's underground equipment.

According to Petitioner, Michael Lopez suffered severe personal injuries when underground vault equipment owned by Edison exploded on April 11, 1992. This incident, and three other incidents are discussed in a newspaper article that was published on July 6, 1995 in the Santa Barbara News Press all of which allegedly occurred within a five block area of the April, 1992 incident. Petitioner requests the documents related to these incidents which have not otherwise been produced by Commission staff pursuant to Resolution L-248. Petitioner believes that

the requested documents will show that Edison has not complied with all Commission staff recommendations regarding underground vaults and that this has created hazardous conditions in certain areas. Petitioner believes that the public interest in disclosing the accident records outweighs Edison's interest in keeping the records confidential.

In response, counsel for Edison asserts that the requested documents are privileged and exempt from disclosure to the public. It is clear that the law does not create an absolute privilege for these documents. Section 315 of the Public Utilities Code states that "...[N]either the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property." Section 583 states that "[N]o information furnished to the commission by a public utility, except such matters as are specifically required to be open to public inspection, shall be open to public inspection or made public except on order of the commission...". General Order 66-C is consistent with both statutes by prohibiting staff from releasing accident reports unless ordered by the Commission.

In deciding whether to release the documents, the Commission uses a balancing test to determine whether the public interest in releasing the documents outweighs the utility's interest in privacy. Decision No. 82-04-072, (1972), 8 CPUC 2nd 663, 667. The test does not require the Commission to take a position on the merits of petitioner's claim, which is the responsibility of the trier of fact.

Because the requested documents are relevant and material to the issue of safety in a personal injury action, and may lead to the discovery of admissible evidence, the disclosure of the information appears in the public interest. Therefore, good cause has been established for releasing the accident reports provided by Edison to the Commission's Safety and Enforcement Division not otherwise covered by Resolution L-248. The request for disclosure of the accident reports and other privileged documents is granted. This order will be effective 20 days from today.

**FINDINGS OF FACT:**

1. Petitioner filed a formal request for privileged documents not otherwise released by Resolution L-248 on July 9, 1995.
2. Edison filed its response claiming that the requested documents cannot be disclosed to the public.
3. The information in the accident reports appears relevant and material to safety related issues and may lead to discovery of admissible evidence in a personal injury suit against Edison.

CONCLUSIONS OF LAW:

1. General Order 66-C prohibits the disclosure of accident reports, unless ordered by the Commission or to the extent disclosed at a formal hearing.
2. It is not necessary to hold a formal hearing on petitioner's request in order to release the records.
3. General Order 66-C does not create for a utility an absolute privilege of nondisclosure.
4. Under the specific facts of this case, the public interest in disclosing the accident reports clearly outweighs the public interest served by confidentiality.

ORDER:

1. The appeal and formal request of Carrington & Nye for the accident reports and other privileged documents filed by Edison with or prepared by the Safety and Enforcement Division is granted.
2. The effective date of this order is 20 days from today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on August 11, 1995. The following Commissioners approved it:

  
Wesley M. Franklin  
Acting Executive Director

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
Commissioners