

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California  
Date: June 25, 1997  
Resolution No. L-257

R E S O L U T I O N

L-257 AUTHORIZES THE RELEASE OF ELECTRIC UTILITY RESPONSES TO A NOVEMBER 18, 1996 DATA REQUEST BY THE COMMISSION'S UTILITIES SAFETY BRANCH CONCERNING THE UNDERGROUNDING OF ELECTRIC AND COMMUNICATIONS LINES.

BACKGROUND

On March 18, 1997, Karen Johanson (Johanson) formally requested the release of records pursuant to the Public Records Act (PRA), Government Code section 6250, et seq. Johanson seeks responses from San Diego Gas and Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), Southern California Edison, Sierra Pacific, and Pacific Power and Light (Pacific Power) to a November 18, 1996 data request by the Commission's Utilities Safety Branch (USB) for information for a study on the undergrounding of electric and communications facilities in California, and any subsequent documents sent or received by the Commission relating to the November 18, 1996 request and the subsequent study initiated by the Commission.

The USB data request, in 26 questions, sought, among other things, information concerning the average cost of overhead line installation, underground line installation, conversion from overhead to underground lines, maintaining overhead lines, and maintaining underground lines. The data request also asked whether the cost of underground conversion decreases as the number of miles increases, and for information concerning the number and types of incidents (injuries/fatalities) associated with overhead and underground lines for the past ten years. Finally, the data request sought information regarding the number of overhead and underground line miles in each utility's territory, and for a great deal of other information concerning the utilities' implementation of undergrounding pursuant of Tariff Rules 15, 16, and 20.

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1. All references to code sections will be to the Government code unless otherwise specified.

In a letter dated April 8, 1997, the Legal Division asked the utilities to explain what, if any, portion of their responses they believe should remain confidential. The utilities' responses generally request continued confidential treatment only for certain responses concerning the cost of constructing and maintaining underground electric lines (questions 10-15). Two utilities seek continuing confidential treatment of responses concerning utility line accidents (questions 18 and 19). Having received the utilities' limited requests for continued confidentiality, the Legal Division asked the utilities to provide Johanson with copies of the data request responses for which the utilities do not seek confidential treatment. All five utilities agreed to provide Johanson with copies of appropriately redacted data request responses.

On May 28, 1997, Johanson, through her attorney, responded to the utilities' requests for continued confidentiality of the responses to the specific data request questions referenced above. Johanson asserts that: 1) the Commission must release all the information requested unless it can meet its burden of proving that any information is exempt from disclosure under the PRA. Johanson notes that Public Utilities Code Section 583 provides a procedure for responding to PRA requests which bars staff disclosure of material submitted by utilities in the absence of "an order of the commission or a commissioner in the course of a hearing or proceeding," but adds no specific right to withhold information beyond the PRA; 2) the Commission should release all information in the data request responses which the utilities do not object to disclosing<sup>2</sup>; 3) the utilities have not factually justified any public interest in withholding information, since they do not cite any specific exemption in Section 6254 and have thus waived any claim except under Section 6255, and have not made a "specific and detailed" justification for withholding under Section 6255, which allows the Commission to balance the public interest in withholding versus disclosing information; and that 4) the public interest in disclosure, based on the statewide interest in the safety, reliability and cost of constructing and maintaining of overhead versus underground power lines (see., e.g., San Diego Gas & Electric Co. v. Superior Court (Covalt) (1996) 13 Cal.4th, 893, 926-935; AB 1890 (Stats. 1996, C. 854) outweighs any public interest in nondisclosure.

#### DISCUSSION

Because the utilities should, pursuant to their agreement with the Legal Division, have by now already provided Johanson with a copy of their responses to data request questions 1 through 9, 16, 17, and 20 through 26, for which they do not assert the need

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2. Evidently, as of this May 28, 1997 letter, Johanson had yet to receive these nonconfidential responses.

for continued confidentiality, the Commission need not address further the availability of this information under the PRA. Given the absence of utility assertions of the need for continued confidentiality of these responses, it is clear that there is no public interest in the nondisclosure of these responses.

Therefore, only the disclosure of utility answers to questions 10 through 15, 18 and 19 will be considered in depth. These questions read as follows:

10. Average cost (per foot) of overhead line installation with supporting detail (e.g. material, labor, etc.).
11. Average cost (per foot) of underground line installation with supporting detail. Specify cost for each type of construction (e.g. vault, padmount, etc.) if different.
12. Average cost (per foot) of conversion from overhead to underground for:
  - a. Urban areas.
  - b. Suburban areas.
  - c. Rural areas.
13. Annual cost (per foot) of maintaining overhead lines.
14. Annual average cost (per foot) of maintaining underground lines. Specify cost for each type of construction (e.g. vault, padmount, etc.) if different.
15. Does the cost (per foot) of underground conversion or new underground installation decrease as the number of miles increases? If so, by what amount?
18. Number and type of incidents that occurred each year, for the past ten years, in areas served by overhead lines (for the purpose of this data request "incident" means any event, related to utility owned electric facilities, that resulted in injuries/fatalities, service interruptions of 1,000 customers or more, or property damage of \$10,000 or more.
19. Number and type of incidents that occurred each year, for the past ten years, in areas served by underground lines.

A. Disclosure of Responses to Data Request Questions Concerning the Installation, Conversion, and Maintenance of Overhead and Underground Lines

PG&E, SCE, SDG&E, and Sierra Pacific object to disclosing responses to data request questions 10 and 11, concerning the average costs per foot of installing overhead and underground transmission lines, with supporting details (e.g. material, labor, etc.). PG&E, SDG&E, and SCE also object to disclosure of their responses to questions 12 through 14, concerning the average cost of converting from overhead to underground lines, and of maintaining overhead and underground lines. PG&E and SCE

also object to disclosure of their responses to question 15, concerning whether the cost of underground conversion or new underground installation decreases as the number of miles increase.

PG&E and SCE argue that information concerning the cost of electric line installation or conversion projects has not been released because of its competitively sensitive nature, and that disclosure of this information would place those utilities at an unfair business disadvantage in an increasingly competitive environment. PG&E asserts that providing this information to the public would mean that PG&E's competitors would know its cost structure without any reciprocal opportunity for PG&E to learn its competitors' costs. SCE expects to bid installation and maintenance services to other utilities, and fears that the release of this information will hamper its ability to do so. PG&E and SCE recognize that the Tariff Rule 20 reports and proposed undergrounding budgets which utilities are required to file with the Commission contain information concerning the cost of utility facilities, but claim that the more detailed nature of the data request responses requires their continued confidentiality.

PG&E also argues that Commission-mandated changes in utility maintenance practices renders the cost data provided by PG&E obsolete and inaccurate with regard to future costs. PG&E further complains that different utilities may compile statistics in different ways, and that parties outside the Commission may inadvertently misuse the information released because they may lack knowledge regarding the assumptions used by each utility in compiling cost data. Finally, PG&E generally expresses concern that the information provided to the USB may be taken out of context.

SDG&E also concedes that some of the information provided in the data request responses is available through Rule 20 reports or other public documents, but argues that the responses containing cost information for overhead and underground line installation and maintenance are proprietary and should remain confidential. SDG&E asserts that responses to questions 10 through 14 should be protected, since their release would place SDG&E at an unfair business disadvantage by influencing the bids received by SDG&E on contract work for future jobs. SDG&E fears it cannot be assured that it is receiving the lowest possible bids if the information is released.

Sierra Pacific simply argues that the answers to questions 10 and 11 state very broad estimates for constructing overhead and underground lines, which do not reflect actual costs and which should not be released to persons outside the Commission.

Johanson counters that: 1) only two utilities claim they will lose a business advantage to utility competitors through the disclosure of responses to questions 10-15; the lack of objections by the others belies those claims; 2) utilities do not compete with other utilities in the construction and maintenance

of distribution and transmission lines; and 3) whatever competition these two utilities face will not gain an advantage from knowing average historical cost information for building, converting, and maintaining overhead and underground lines, since the cost information is out of date as PG&E concedes and there are so many variables, such as new technologies and contracting policies, that no other competitor can use the information to its advantage.

Johanson argues that SDG&E's concern that contractors might not submit the lowest bids is not shared by the other four utilities, that the cost information is historical and so variable as to make predictions about the future impractical, and that while SDG&E assumes future bidders will use its historic costs as a bid floor, it is just as plausible that contractors will bid below the average cost to get the winning bid.

Johanson also argues that PG&E's claim that the variables involved make future predictions subject to misinterpretation proves the lack of any competitive disadvantage from disclosure, and arrogantly assumes that the public is incompetent to use the information disclosed. Johanson states that the assumption of public incompetence is precisely what the Legislature rejected when it enacted the PRA.

On the whole, Johanson's arguments are well taken. The fact that much of the cost information provided in the utilities' responses is historical and possibly obsolete suggests that the utilities' potential competitors and contractors will not be able to gain any excessive business advantage through its release. The non-standard nature of the utilities' responses are unlikely to result in too much confusion, since most utilities state in their responses the assumptions used in compiling, and the limitations of, the cost information provided. Further, the PRA does not incorporate a "confusion" exemption, and it is improper to assume that the public cannot reasonably interpret utility cost information.

The possibility that the level of detail in certain utilities' responses may be greater than the information previously released in Rule 20 reports, undergrounding budget proposals, and other public documents is somewhat troubling, since electric utilities are indeed entering a more competitive marketplace by virtue of AB 1890 and our electric restructuring proceedings. It is not entirely clear, however, how the utilities' competitive concerns create a public interest in nondisclosure.

It is also not entirely clear how much of the information sought to be protected is unavailable from other sources. The utilities' Rule 20 reports, undergrounding budget proposals, and other public files contain a wealth of information from which cost information can be relatively easily extracted. For example, the Commission's Line Extension Rulemaking, R.92-03-050, offers much information concerning utility line costs. So do the annual reports the utilities file with the Commission. These annual reports contain information concerning utility facilities

and costs which the utilities also provide to the Federal Energy Regulatory Commission (FERC). Indeed, the numerical data in PG&E's responses to questions 13 and 14 are explicitly based on "FERC recorded filings." While one can sympathize with the utilities' competitive concerns, the utilities have not made a compelling case that the information provided in the utilities' responses to questions 10 through 15 is unavailable in other already public documents and will harm the public if disclosed.

Since the information the utilities seek to protect does not fall within one of the specified PRA exemptions, the utilities' desire for nondisclosure must be evaluated under the general exemption for information for which the public interest in nondisclosure clearly outweighs the public interest in disclosure. On the basis of the above discussion, it is evident that any public interest in nondisclosure of the information requested does not clearly outweigh the public interest in disclosure.

Given the PRA's general policy in favor of disclosure, disclosure of the utilities' responses to data request questions 10 through 15 is in the public interest.

B. Disclosure of Responses to Questions Concerning Incidents Related to Overhead and Underground Lines

Although both Public Utilities Code Section 583 and General Order 66-C prohibit staff disclosure of investigative reports concerning utility accidents and require formal Commission action for disclosure, neither the statute nor the general order create for utilities an absolute privilege of nondisclosure. The general policy of the PRA favors disclosure. Records can be withheld only if they fall within specified exemptions enumerated in the Act, or if it is shown that the public interest in confidentiality clearly outweighs the public interest in disclosure.

The "incident" information provided by the utilities in response to questions 18 and 19 is a "public record," as defined by the PRA, and is not statutorily exempt from disclosure under the PRA. While the PRA provides for nondisclosure of public records upon a showing that the public interest in nondisclosure clearly outweighs the public interest in disclosure, such a showing is absent here.

Only two utilities (Sierra Pacific and Pacific Power) object to the disclosure of their responses to questions 18, and only one utility (Sierra Pacific) objects to the disclosure of its response to question 19. Sierra Pacific argues that: "Answers to questions 18 and 19 refer to information that is submitted to USB. It is our position that service interruption reports and information pertaining to property damage and personal injuries could be used against the company in litigation and should remain confidential." Pacific Power argues that: "The information contained in our response to USB Request 18 with regard to

electric contact accidents involving the public is confidential. We deem this information to be confidential due to the sensitive nature of the information and the potential legal ramifications."

Johanson counters with the assertions that: 1) the fact that the other three utilities don't object to the release of accident information belies the claim that the release of such information will hurt their litigation positions; 2) Public Utilities Code Section 315 bars introduction of any such information in a trial over liability for such accidents; 3) the Commission has ordered the release of an entire investigative report of accidents (Resolution No. L-240 (January 22, 1993); 4) the safety of powerlines, above or below the ground, has always been of paramount importance to the public (see, e.g., Covalt, supra), and AB 1890 (supra) contains various provisions for ensuring safety in a deregulated environment (e.g., Section 10 added Public Utilities Code Section 364, (a): "The commission shall adopt inspection, maintenance, repair, and replacement standards for the distribution systems of investor-owned electric utilities no later than March 31, 1997 ..."; and 5) accidents cost utilities money and so are related to the comparative costs of maintaining overhead power lines versus undergrounding.

Comparing the arguments in favor of and against disclosure of the responses to questions 18 and 19, the public's longstanding broad interest in the safety of utility facilities, which may be served by the disclosure of the summary incident information, must be weighed against the concerns of two utilities that disclosure of the incident summaries may harm their litigation positions.

Questions 18 and 19 request "incident" information of a broad, summary nature, without requiring investigative reports regarding specific incidents. Thus, the responses to these questions are not specific, detailed accident reports which may be tied to litigation concerning specific accidents. Even if the responses did incorporate such accident reports, the responses could be disclosed without harming the utilities' litigation positions. Public Utilities Code Section 315 prohibits the introduction of Commission investigative reports concerning utility accidents in any proceeding for damages and thus offers sufficient protection for the utilities.

Since disclosure of the utilities' summary incident information may serve the public interest in the safety of utility facilities without harming the utilities' litigation positions, it is clear that the public interest in disclosure of the utilities' responses to questions 18 and 19 outweighs the interest in nondisclosure.

The Commission has in the past reached similar conclusions regarding the disclosure of information concerning utility accidents. For example, the Commission recently authorized the release of investigative reports in connection with the electrocution and death of a farmworker whose pruning shears touched an overhead line of PG&E. (Resolution No. L-255 (Re: Murillo); May 21, 1997.) Re: Murillo was in accord with a

decision four years ago in which the Commission authorized the release of investigative reports concerning the electrocution and death of a farmworker who touched an overhead conductor of SDG&E while picking avocados. (Resolution No. L-240 (Re: Arreguin-Maldonado); January 22, 1993.) In each case, the Commission cited the strong public interest in the PRA favoring public disclosure, and concluded that the material was not statutorily exempt from the disclosure requirements of the PRA, or that the public interest requires disclosure. In short, the responses to questions 18 and 19 do not meet either the specific exemptions of the PRA or the general public interest exemption under the Act. Disclosure of these responses is in the public interest.

#### FINDINGS OF FACT

1. A Public Records Act (PRA) request has been made for electric utilities' responses to a November 18, 1996 data request by the Commission's Utilities Safety Branch for information concerning the undergrounding of electric and communications facilities in California.
2. The public interest in the confidentiality of the utilities' responses to the November 18, 1996 data request fails to clearly outweigh the public interest in disclosure.

#### CONCLUSIONS OF LAW

1. The electric utilities' responses to the November 18, 1996 data request are "public records," as defined by Government Code Section 6252 (d).
2. Both Public Utilities Code Section 583 and General Order 66-C prohibit disclosure of the data request responses of a confidential nature, unless disclosure is ordered by the Commission, or by the Commission or a Commissioner in the course of a hearing or proceeding.
3. Neither Public Utilities Code Section 583 nor General order 66-C create for the utilities an absolute privilege against disclosure.
4. The general policy of the PRA favors disclosure.
5. Justification for withholding a public record must be based upon specified exemptions in the PRA or upon a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure.
6. Overhead and underground power line installation, conversion, and maintenance cost information does not fall within the specific exemptions contained in the PRA.
7. Summary information concerning the number and type of incidents related to overhead and underground lines does not fall within the specific exemptions contained in the PRA.



8. Public Utilities Code Section 315 bars the introduction of accident reports filed with the Commission in any action for damages.

9. Given the specific facts of this case, the public interest served by withholding the information in question fails to clearly outweigh the public interest served by disclosure of the information.

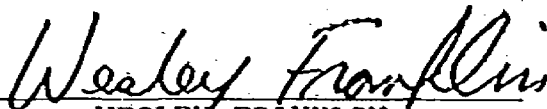
ORDER

1. The request for the release of the electric utilities' responses to the November 18, 1996 data request by the Commission's Utilities Safety Branch is granted.

2. This order is effective today.

Dated June 25, 1997, at San Francisco, California.

I certify that this Resolution was adopted the Public Utilities Commission at its regular meeting on June 25, 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