

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California
Date: September 24, 1997
Resolution No. L-262

RESOLUTION

RESOLUTION DIRECTING THE RELEASE OF DOCUMENTS PURSUANT TO SUBPOENA BY STEVEN A. SILVER, ESQ., IN CONNECTION WITH U.S. DISTRICT COURT CASES IN THE CENTRAL DISTRICT OF CALIFORNIA (PERALTA V. MCGRAW-EDISON COMPANY, CASE NO.: 97-4570 JSL (VAPX); BOYADJIAN V. MC-GRAW EDISON COMPANY, CASE NO.: SACV 97-571 (ANX)). SUBPOENA SEEKS RELEASE OF COMMISSION STAFF INVESTIGATIVE RECORDS CONCERNING TRANSFORMER ACCIDENT OF STEVE PERALTA AND ADEL BOYADJIAN, AND COMMISSION STAFF INVESTIGATIVE RECORDS CONCERNING OTHER ACCIDENTS (INVOLVING TRANSFORMERS) EXPERIENCED BY OTHER CPUC REGULATED UTILITIES SINCE 1972, THAT WERE PREPARED PURSUANT TO CALIFORNIA PUBLIC UTILITIES CODE SECTION 315.

BACKGROUND

On August 7, 1997, the Commission was served with a subpoena for disclosure of the Commission's investigation file, including handwritten notes and investigative reports, and of reprints of associated photographs of the transformer and accident site, regarding a transformer accident on March 31, 1997 in City of Industry, California in which Steve Peralta and Adel Boyadjian, employees of the Southern California Edison Company, were fatally injured. The subpoena also requested all reports and documentation pertaining to all other accidents since 1972 involving transformers, whether owned by Edison or by other companies, of which the Commission is aware. The Commission only keeps records for a period of three years, so the Commission is only aware of accidents from 1994 to the present. The Commission interprets this request for materials regarding other accidents involving transformers as including all staff investigative reports on other transformer accidents and all documentation submitted by utilities regarding such other transformer accidents. The Southern California Edison Company and Commission staff have prepared investigative reports of the March 31, 1997 accident, as required by Public Utilities Code Section 315.

DISCUSSION

The materials in the Commission's investigation file regarding the March 31, 1997 accident are "public records," as defined by the California Public Records Act, codified as Government Code Section 6250 *et seq.* This includes reprints of the photographs in the Commission's possession. Both Public Utilities Code Section 583 and General Order 66-C prohibit staff disclosure of the materials in question unless formal Commission action orders such disclosure. Neither the statute nor the general order, however, create an absolute privilege of nondisclosure of materials related to an accident for the utility investigated regarding such an accident. The general policy of the Public Records Act favors disclosure of public records, and a justification for withholding a public record must either be found amongst the specified exemptions enumerated in the Act, or on a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure. The investigation file for the March 31, 1997 accident does not appear to meet either the specific exemptions of the Public Records Act or the general public interest exemption of the Act, under the specific circumstances of this case. Public Utilities Code 315 expressly prohibits the introduction of the report in question "as evidence in any action for damages based on or arising out of such loss of life," and therefore offers the utility sufficient protection. In view of the above, the request for disclosure of the investigative reports relating to the accident involving Steve Peralta and Adel Boyadjian is granted.

With respect to photographs of the transformer and accident site in the Commission's possession, the request for production of reprints of such photographs is granted, pending an arrangement between the Commission and the attorney requesting the reprints regarding how reprints of the photographs in the possession of the Commission should be created.

FINDINGS OF FACT

1. A subpoena for production of the Commission's investigation file, including handwritten notes and investigative reports, and of reprints of associated photographs of the transformer and accident site, in connection with a transformer accident involving Steve Peralta and Adel Boyadjian, employees of Southern California Edison Company on March 31, 1997, in City of Industry, California, was served on the Commission on August 7, 1997.
2. The subpoena also requested production of all reports and documentation relating to all accidents involving transformers from 1972 to the present, owned by Edison or others, "of which the PUC is aware."

3. The public interest in confidentiality of the materials in connection with the March 31, 1997 accident fails to clearly outweigh the public interest in disclosure.

CONCLUSIONS OF LAW

1. The materials in the investigative file at issue 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 such materials, unless ordered by Commission action, or to the extent disclosed at a formal hearing.
3. Neither Public Utilities Code Section 583 nor General Order 66-C create for the utility an absolute privilege of nondisclosure by the Commission.
4. The general policy of the California Public Records Act (PRA) favors disclosure of public records.
5. Withholding of a public record must be found among specified exemptions in the PRA, or upon a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure.
6. The materials in the investigative file regarding the March 31, 1997 accident in question do not fall within the specific exemptions contained in the PRA.
7. Public Utilities Code Section 315 bars the introduction of the investigative reports in question in any action for damages arising out of the incident for which the investigation was made.
8. Under the specific facts of this case, the public interest served by withholding the investigation file regarding the March 31, 1997 accident fails to clearly outweigh the public interest served by disclosure of the reports.

ORDER

1. The subpoena for production of the investigative file regarding the March 31, 1997 transformer accident is granted.
2. The subpoena for production of reprints of photographs of the March 31, 1997 accident site and transformer is granted.
3. The effective date of this order is today.

September 24, 1997

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of September 24, 1997. The following Commissioners approved it:

Wesley Franklin
WESLEY M. FRANKLIN
Executive Director

JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

President P. Gregory Conlon being
necessarily absent, did not participate.