

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California

Date: October 22, 1997

Resolution No. L-263

### RESOLUTION

#### BACKGROUND

On October 2, 1996 a natural gas explosion and fire occurred at San Jacinto, California, resulting in third degree burns over 51% of the body of Michael R. Schwab. Subsequently, an action was filed against Southern California Gas Co. (So Cal) in Schwab v. Southern California Gas Co., et al., Case No. 293791, Superior Court, Riverside, California. On September 4, 1997, a subpoena was issued requiring production of records in possession of the Commission relating to the accident.

An investigation was conducted and reports compiled by the Commission staff and are in possession of the Los Angeles office of the Commission. The staff report, issued October 4, 1996, indicates that at approximately 4:40 p.m. on October 2, 1996, an explosion occurred at a commercial structure located on Main street in the city of San Jacinto. So Cal was notified of the explosion. Company personnel responded and immediately initiated an investigation of the gas system serving the buildings involved in the incident.

#### DISCUSSION

The material in the Commission's investigative file regarding the 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 among 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 investigative file for the 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, against injury caused by release of the requested records.

In view of the above, the request for disclosure of the investigative report is granted

### **FINDINGS OF FACT**

1. A request for copies of an investigative report prepared by the Commission staff in connection with the gas explosion in San Jacinto, California on October 2, 1996 was received by the Commission on September 4, 1997.
2. The public interest in the confidentiality of the report fails to clearly outweigh the public interest in disclosure.

### **CONCLUSIONS OF LAW**

1. The investigative report at issue is a "public record", as defined by Government Code Section 6252(d).
2. Both Public Utilities Code Section 583 and Commission General Order 66-C prohibit disclosure of the report, 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 favors disclosure.
5. Withholding of a public record must be found among specified exemptions in the Public Records Act or upon a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure.
6. The investigative report in question does not fall within the specific exemptions contained in Section 1 of the Public Records Act.

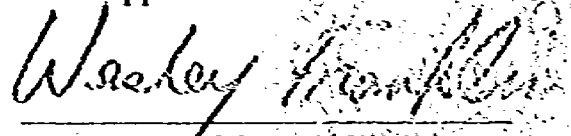
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7. Public Utilities Code Section 315 bars the introduction of the investigative report in question in any action for damages.
8. In the specific facts of this case, the public interest served by withholding the report in question fails to clearly outweigh the public interest served by disclosure of the report.

**ORDER**

1. The subpoena for release of the investigative report into the explosion and fire in San Jacinto, California on October 2, 1996 is granted.
2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of October 22, 1997. The following Commissioners approved it.



WESLEY M. FRANKLIN  
Executive Director

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