

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: March 18, 1999

Resolution No. L-278

RESOLUTION

RESOLUTION DIRECTING THE RELEASE OF COMMISSION UTILITIES SAFETY BRANCH REPORTS PURSUANT TO PUBLIC RECORDS ACT REQUEST BY MARGARET TURNER. PUBLIC RECORDS ACT REQUEST SEEKS RELEASE OF COMMISSION UTILITIES SAFETY BRANCH STAFF INVESTIGATIVE RECORDS CONCERNING NOVEMBER 15, 1997, ELECTROCUTION DEATH OF PAUL TURNER, A PG&E EMPLOYEE.

BACKGROUND

On February 11, 1998, the Commission received by facsimile transmission a Public Records Act Request by Margaret Turner, mother of an employee of Pacific Gas & Electric Company (PG&E) who was fatally injured by electrocution on November 15, 1997, while working for PG&E. Due to deficiencies in the initial request, Mrs. Turner resubmitted a Public Records Act Request on March 12, 1998, by mail which requested "all reports prepared by the Utility Safety Branch of the California Public Utilities Commission." The Utilities Safety Branch prepared an investigative report of the November 15, 1997, accident, as required by Public Utilities Code Section 315. An internal version of the report was completed July 7, 1998. On February 11, 1999, the Utilities Safety Branch adopted a Final Report.

DISCUSSION

The materials in the Commission's investigation file regarding the November 15, 1997, accident are "public records," as defined by the California Public Records Act, codified as Government Code Section 6250 *et seq.* 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. Section 2.2(a) specifically prohibits disclosure of "records of investigations ... made by the Commission, except to the extent disclosed at a hearing or by formal Commission action." (Emphasis added).

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. Additional and separate requirements regarding access to public information generally are contained in the California Public Records Act, Government Code Sections 6250 *et seq.* The Public Records Act generally favors public disclosure of government records, and a justification for withholding a public record must be found either 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 arguably appears to fall within a specific exemption of the Public Records Act, Government Code § 6254(f), but the fact that a record may fall within a Public Records Act exemption does not preclude the Commission from releasing such a record in an appropriate circumstance.

The Commission has previously concluded that an agency may justify the withholding of a public record from disclosure only if on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. *Re: San Diego Gas and Electric Company, D.93-05-020 (May 7, 1993), 49 Cal.P.U.C.2d 241, 243.*

Additionally, Public Utilities Code Section 315 provides that, notwithstanding the public disclosure of investigative reports of accidents, such reports may not be introduced as evidence in any proceeding for damages "based on or arising out of such loss of life, or injury to person or property."

The Commission has recently released accident reports when faced with similar requests. In Resolution No. L-272, issued on December 17, 1998, the Commission announced that "future accident reports filed by utilities will be subject to public disclosure upon request unless it is shown that in the specific circumstances of a particular accident or related proceeding the public interest in nondisclosure clearly outweighs the public interest in disclosure." Resolution No. L-272, pp. 11-12. There are no compelling reasons to withhold the requested information from the public. Although the accident report in question was filed prior to issuance of Resolution L-272, the Commission's policy of disclosure of accident reports was

well established prior to the date the accident report was filed. The Commission again concludes that the public interest in non-disclosure of accident reports does not clearly outweigh the public interest in disclosure of such reports, particularly when under Public Utilities Code Section 315 such reports cannot be used directly as evidence for damages.

The Utilities Safety Branch reports regarding the November 15, 1997, accident do 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 reports 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 from any prejudice arising from public release of the report.

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on February 2, 1999, in accordance with PU Code Section 311(g). Comments were filed on February 18, 1999, by PG&E. PG&E does not object to disclosure of the investigative reports to the public pursuant to the request, but asks that PG&E also be provided with copies of the materials. Because the granting of a Public Records Act request allows any member of the public access to the document in question, PG&E will also have the right to examine the requested materials and we grant PG&E's request, just as we would to any other member of the public under the circumstances of this case. On March 9, 1999, both PG&E and Mrs. Turner were notified of the Commission's intent to release the February 11, 1999, report, and waived both comments and the 30-day notice requirement of PU Code Section 311(g).

In view of the above, the request for disclosure of the investigative reports of the Utilities Safety Branch relating to the November 15, 1997, accident involving the son of Margaret Turner is granted.

FINDINGS OF FACT

1. A Public Records Act Request requesting production of all reports prepared by the Commission, including those prepared by the Utilities Safety Branch, in connection with an accident on November 15, 1997, that resulted in the death by electrocution of an employee of Pacific Gas & Electric Company, was made on the Commission on February 11, 1998 by Margaret Turner, mother of the deceased.

2. The public interest in confidentiality of the materials in connection with the November 15, 1997 accident fails to clearly outweigh the public interest in disclosure.

CONCLUSIONS OF LAW

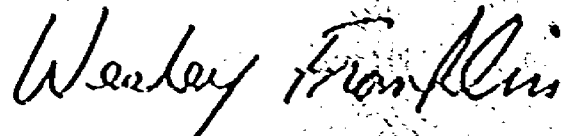
1. The materials at issue are "public records," as defined by Government Code Section 6252(d).
2. Both Public Utilities Code Section 583 and General Order 66-C prohibit disclosure of such materials, unless ordered by Commission action, or to the extent disclosed at a formal hearing.
3. Neither Public 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. 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.
7. Under the specific facts of this case, the public interest served by withholding the investigation file regarding the November 15, 1997, accident fails to clearly outweigh the public interest served by disclosure of the reports.

ORDER

1. The Public Records Act Request for production of the all public records and reports prepared by the Commission regarding the November 15, 1997, accident involving the electrocution of Paul Turner is granted.
2. The effective date of this order is today.

March 18, 1999

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of March 18, 1999. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners