

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: July 8, 1999

Resolution No. L-280

RESOLUTION

RESOLUTION AUTHORIZING DISCLOSURE OF COMMISSION CONSUMER SERVICES DIVISION (UTILITIES SAFETY BRANCH) RECORDS PURSUANT TO PUBLIC RECORDS ACT REQUEST BY GREENE, BROILET, ET AL. ON BEHALF OF ALLAN KIMBALL SEEKING DISCLOSURE OF COMMISSION STAFF INVESTIGATIVE RECORDS CONCERNING A MAY 8, 1998, ACCIDENT INVOLVING ALLAN KIMBALL'S CONTACT WITH A SOUTHERN CALIFORNIA EDISON COMPANY DISTRIBUTION LINE IN HACIENDA HEIGHTS, CALIFORNIA.

BACKGROUND

On June 12, 1998, Robert Reeves, former attorney for Allan Kimball, submitted a California Public Records Act (PRA) (Government Code Section 6250 et seq.) request for the Commission's incident investigation report concerning a May 8, 1998 accident that occurred at 1440 Wedgeworth Drive in Hacienda Heights, California, when an aluminum harvesting pole Mr. Kimball was using to harvest avocados made contact with an overhead 12 kV line that is part of the Southern California Edison Company (Edison) distribution system. As a result of the contact, the line fell to the ground, and Mr. Kimball sustained burns to his hands, arms, chest and legs.

At the time of the June 12, 1998, request, the Commission's incident investigation report had not been finalized. On February 8, 1999, staff provided a redacted version of the report to Mr. Kimball's attorney. During this time period Mr. Kimball retained a new law firm (Greene, Broilet, et. al. (Greene)) to represent him. This firm also submitted a PRA request. However, they requested the entire investigative report and file. Staff provided Greene with a copy of the redacted version previously provided to Reeves. The sections that were redacted from the report were determined by staff to be confidential material within the meaning of

General Order (G.O.) 66-C and Public Utilities (PU) Code Section 583. Greene subsequently filed a request to obtain the entire report and file pursuant to G. O. 66-C.

DISCUSSION: Public Utilities (PU) Code Section 583 states:

No information furnished to the commission by a public utility ... except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

PU Code Section 583 "assures that staff will not disclose information received from regulated utilities unless that disclosure is in the context of a Commission proceeding or is otherwise ordered by the Commission." (*Re Southern California Edison Company (Edison)* [Decision (D.) 91-12-019] (1991) 42 Cal.P.U.C.2d 298, 300.) Section 583 neither creates a privilege of nondisclosure for a utility, nor designates any specific types of documents as confidential. (*Id.*, 42 Cal.P.U.C.2d at 301.) As we noted in *Edison*, supra:

The Commission has broad discretion under Section 583 to disclose information. See, for instance, *Southern California Edison Company v. Westinghouse Electric Corporation*, 892 Fed. 2d 778 (1989), in which the United States Court of Appeals for the Ninth District stated (at p. 783):

"On its face, Section 583 does not forbid the disclosure of any information furnished to the CPUC by utilities. Rather, the statute provides that such information will be open to the public if the commission so orders, and the commission's authority to issue such orders is unrestricted."

The Commission's General Order 66-C sets forth the agency's procedures for obtaining public records. G.O. 66-C, Section 1.1, states that:

“Public records” of the Public Utilities Commission, includes all items encompassed in Section 6252 of the Government Code [footnote omitted], except as otherwise excluded by this General Order, statute, or other order, decision, or rule.”

G.O. 66-C, Section 2, lists a number of classes of public records that are not initially open to public inspection. 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.” The fact that requested records fall within one or more of the Section 2 classes of records not open to public inspection acts as an initial bar to public access to the records, but does not limit the Commission’s ability to order the release of the records in appropriate circumstances. G.O. 66-C, Section 3.4, states:

A person wishing to review records which are not open to public inspection may write to the Secretary in San Francisco, indicating the records being withheld, and stating the reasons why these records should be disclosed to him. Sufficient time must be allowed for the full Commission to review this request and the applicable records.

The legal test for state agency disclosure of public records is set forth in the California Public Records Act (PRA) (Government Code Section 6250 et seq.). The PRA is intended to provide “access to information concerning the conduct of the people’s business,” while being “mindful of the rights of individuals to privacy.” (Government Code Section 6250.) PRA exemptions of certain classes of records from public disclosure must be narrowly construed to ensure maximum disclosure of government operations. (*New York Times v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585.) The PRA requires that the public be given access to government records unless they are specifically exempt from disclosure, or the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code Section 6255.) The listing of a record among the specific exemptions in the PRA does not prohibit the release of the records. We have long recognized that PRA exemptions are permissive, not mandatory; “they permit nondisclosure but do not prohibit disclosure.” (*Re San Diego Gas & Electric Company (SDG&E)* (1993) 49 Cal.P.U.C.2d 241, 242, citing *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 655.) The general policy of the PRA clearly favors disclosure. Unless there is a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure, we will generally release records upon request.

Pursuant to the requirements of G.O. 66-C Section 2.2 (a), staff until recently routinely denied initial requests for the release of both accident reports filed with the Commission by regulated utilities, and staff records concerning investigations of such accidents. In response to subsequent requests to the Commission under G.O. 66-C Section 3.4, however, we have routinely released such records. (See, e.g., Resolution L-240 *Re Arrequin-Maldonado* (January 22, 1993) (rehearing denied in *SDG&E*, supra); and Resolution L-278 *Re Turner* (February 18, 1999).)

Faced with an ever increasing number of requests for such records, many of which request records concerning utility accidents over a number of years, we have begun to refine our approach to the release of accident records. For example, in Resolution L-272 *Re San Jose Mercury News and Los Angeles Times* (December 17, 1998), we stated that:

[F]uture 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. Such circumstances include situations in which an accident report contains confidential personal information concerning a victim, the redaction of which is permitted by law. (Resolution L-272 at 11-12.)

Resolution L-272 also addressed the disclosure of records of accident investigations by Commission staff. We found that:

As a general rule, the public interest in the confidentiality of the records of accident investigations which have been completed by the Commission fails to clearly outweigh the public interest in disclosure, in that disclosure may assist in achieving settlement of any possible litigation resulting from the incident (See *San Diego Gas & Electric Co. App. for Rehearing of Resolution L-240* (1993) 49 CPUC2d 241, 243), and may extend the public's knowledge of and ability to analyze and respond to accidents involving electric utility facilities. (Resolution L-272 at 20 (Finding of Fact 14).)

We also found that:

Disclosure of accident investigation records to the public while an investigation is still underway could jeopardize the safety and effectiveness of the staff of the Commission or other governmental entity conducting the investigation. The public interest in the confidentiality of Commission records concerning accident investigations which have not been completed clearly outweighs the public interest in the disclosure of such records. (Id. (Finding of Fact 12).)

We concluded that:

Investigative records maintained by Commission staff are exempt from disclosure pursuant to a specified exemption in the Public Records Act (Government Code Section 6254 (f)) when they are created when the prospect of an enforcement proceeding is concrete and definite. This exemption does not end when the investigation ends. However, once the investigation is complete, the disclosure of exempt investigative records will generally not compromise the investigation, or otherwise harm the public interest. Indeed, disclosure of exempt records concerning completed investigations may well serve important public interests such as increased public awareness of utility safety issues, the development of safer utility facilities and practices, and the resolution of litigation concerning utility accidents. Because this may not always be the case, and because investigative records may contain privileged or otherwise exempt records the disclosure of which would not be in the public interest, exempt records should not be subject to automatic public disclosure. Exempt investigative records should be disclosed in response to Public Records Act requests only after a determination that the balancing of public interests favors disclosure, and the redaction or removal of any privileged or exempt records the disclosure of which would not be in the public interest. (Id. at 21 (Conclusion of Law 9).)

We intend soon to consider further streamlining our procedures for the release of both accident reports filed by utilities and records of investigations concerning such accidents. In many situations, our cumbersome present process requires a

letter initially denying access to accident records and describing the process through which one may appeal that initial denial to the full Commission. If an appeal under G.O. 66-C, Section 3.4, is filed, we then must address the appeal through this resolution process. This approach can, we believe, be made more efficient; however, we will defer changing our process to a later date so that we may refine our approach in a more global setting.

Regarding the current records request, we find no compelling reasons to withhold the requested information from the public. We conclude that the public interest in non-disclosure of the requested investigation records does not clearly outweigh the public interest in disclosure of such records. We note that PU Code Section 315 expressly prohibits the admission of orders or recommendations of the Commission, or any accident reports filed with the Commission, "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 records.

In view of the above, the request for disclosure of the investigative records of the Utilities Safety Branch relating to the May 8, 1998, accident involving Allan Kimball at 1440 Wedgeworth Drive in Hacienda Heights, California, is granted.

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on June 8, 1999, in accordance with PU Code Section 311(g). No comments were filed on the Draft of this Resolution.

FINDINGS OF FACT

1. A Public Records Act request by Greene, Broilet, et al., counsel for Allan Kimball, seeks disclosure of Consumer Services Division Utilities Safety Branch investigation records regarding an accident on May 8, 1998, that resulted in injuries to Allan Kimball in connection with his contact with a Southern California Edison 12 kV distribution line in Hacienda Heights, California.
2. The public interest in confidentiality of the Consumer Services Division Utilities Safety Branch records regarding the May 8, 1998, accident involving Allan Kimball fails to clearly outweigh the public interest in disclosure.

CONCLUSIONS OF LAW

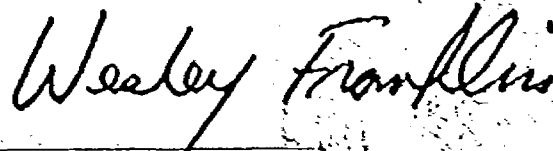
1. The records at issue are "public records," as defined by Government Code Section 6252(d).
2. Public Utilities Code Section 583 and General Order 66-C prohibit disclosure of such records, unless ordered by Commission action, or to the extent disclosed in the course of a formal hearing or proceeding.
3. Neither Public Utilities Code Section 583 nor General Order 66-C create for the utility a privilege of nondisclosure by the Commission.
4. The general policy of the California Public Records Act favors disclosure of public records.
5. Public records may be withheld only if they fall within a specified exemption in the Public Records Act, or if the Commission demonstrates that the public interest in confidentiality clearly outweighs the public interest in disclosure.
6. Public Utilities Code Section 315 bars the introduction of the orders or recommendations of the Commission, or any accident report filed with the Commission, 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 records regarding the May 8, 1998, accident involving Allan Kimball fails to clearly outweigh the public interest served by disclosure of the reports.

ORDER

1. The Public Records Act request by Greene, Broilet, et al., counsel for Allan Kimball, for the disclosure of Consumer Services Division Utilities Safety Branch investigation records regarding the May 8, 1998 accident involving Allan Kimball at 1440 Wedgeworth Drive in Hacienda Heights, California, is granted.
2. The effective date of this order is today.

July 8, 1999

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of July 8, 1999. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

I abstain.

/s/ CARL W. WOOD
Commissioner

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT

Commissioners