

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Legal Division

San Francisco, California

Date: September 2, 1999

Resolution No. L-286

**RESOLUTION**

**Resolution Directing the Release of Documents  
Pursuant to Subpoena by Attorneys for State Farm.  
The Subpoena Seeks All Records Concerning an  
Explosion Occurring on February 17, 1998 at  
2101 San Pablo Avenue, Pinole, California.**

**BACKGROUND**

On June 23, 1999, the Commission was served with a business records subpoena in the case of State Farm Insurance Company v. EBMUD, Contra Costa County Case No. 9805176. The subpoena seeks records concerning the explosion occurring on February 17, 1998 at 2101 San Pablo Avenue, Pinole, California. The explosion resulted from the rupture of a Pacific Gas and Electric Company (PG&E) gas line. The Commission had previously directed the release of the Staff investigative report (Staff Report) for the explosion in Resolution No. L-271.<sup>1</sup> A copy of the Staff Report was therefore already released in response to the subpoena. This Resolution concerns withheld records that were generated subsequent to and/or not included under Resolution No. L-271. General Order (GO) 66-C and Pub. Util. Code § 583 prohibit disclosure of the withheld records absent this formal action by the Commission.

In sum, the Staff Report concluded that PG&E was not at fault. It appears that an East Bay Municipal Utility District (EBMUD) crew was trenching down School Street to install a new water main when it struck a ½ inch copper PG&E lateral which provided gas service to 2101 San Pablo Avenue. The impact severed the copper service line which crossed the trench. EBMUD apparently tried to stop the gas leak where the pipe was severed. However, it was not evident to EBMUD crews that the copper service lateral was pulled from the tee by the force of the dig-in because the main and tee remained buried. Gas escaped, entered the building at 2101 San Pablo Avenue and ignited. The resulting explosion and fire destroyed the building.

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<sup>1</sup> There was no objection by PG&E to the disclosure of the Staff Report.

## DISCUSSION

A draft resolution of the Legal Division in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g). No comments were received in response to the draft resolution. The subpoenaed records are public records, as defined in the Public Records Act (Gov. Code, § 6250 et seq.).<sup>2</sup> A public record is subject to disclosure under the Public Records Act unless there is a specific exemption or "the public interest served by not making the record public *clearly outweighs* the public interest served by disclosure of the record." CBS, Inc. v. Block (1986) 42 Cal.3d 646, 652. The subject records include correspondence between Staff and the Legal Division protected under the attorney-client privilege, codified at Evid. Code § 954. See Roberts v. City of Palmdale (1993) 5 Cal.4<sup>th</sup> 363. Said correspondence falls under the Gov. Code § 6254(k) exemption from disclosure for records privileged under state law.

The other records consist of a clarification to the Staff Report and the underlying records supporting the clarification. The Staff Report clarification and supporting records do not fall under a specific Public Records Act exemption. The records, therefore, are subject to disclosure absent a showing by the Commission that "the public interest served by not making the record public *clearly outweighs* the public interest served by disclosure of the record." CBS, Inc. v. Block, *supra*, 42 Cal.3d at 652. In Resolution No. L-271, the Commission concluded that the public interest in disclosing the Staff Report outweighed the public interest in maintaining its confidentiality. (Resolution No. L-271, Finding of Fact No. 5.) This same rationale applies equally to the Staff Report clarification and supporting records. The clarification did not result in any change to the Staff Report conclusions. For these reasons, there does not appear to be any public policy basis for not disclosing the Staff Report clarification and supporting records.

## FINDINGS OF FACT

1. On June 23, 1999, the Commission was served with a subpoena requesting all records for the February 17, 1998 explosion which occurred at 2101 San Pablo Avenue, Pinole, California.
2. The Commission, in Resolution No. L-271, had previously directed the release of the Staff Report for the February 17, 1998 explosion at 2101 San Pablo Avenue.

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<sup>2</sup> A public record is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Gov. Code § 6252(d).

3. In Resolution No. L-271, the Commission found that the public interest in disclosing the Staff Report outweighed the public interest in maintaining confidentiality.
4. Although the Staff Report was released in response to the subpoena, records generated subsequent to and/or not included under Resolution No. L-271 were withheld.
5. The withheld records include correspondence between Staff and the Legal Division along with a clarification to the Staff Report.
6. A draft resolution of the Legal Division in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g). No comments were received in response to the draft resolution.

#### CONCLUSIONS OF LAW

1. The subpoenaed records are public records, as defined in Gov. Code § 6252(d).
2. GO 66-C and Pub. Util. Code § 583 prohibit the disclosure of the subpoenaed records absent formal action by the Commission or disclosure at a formal hearing.
3. The correspondence between Staff and the Legal Division falls under the Gov. Code § 6254(k) exemption from disclosure.
4. There is no specific exemption for the Staff Report clarification and the supporting documents.
5. For the reasons set forth in Resolution No. L-271, the public interest in disclosing the clarification to the Staff Report and supporting documents outweighs the public interest in maintaining confidentiality.

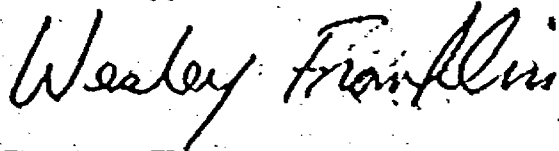
#### ORDER

1. The clarification to the Staff Report and the documents supporting the clarification shall be released in response to the subpoena.

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2. The correspondence between Staff and the Legal Division shall not be released.
3. 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 September 2, 1999, the following Commissioners approved it:



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WESLEY M. FRANKLIN  
Executive Director

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners