

DOW JONES

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VIA ELECTRONIC AND FIRST-CLASS MAIL

(fnh@cpuc.ca.gov and jva@cpuc.ca.gov)

Fred Harris
Staff Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102-3298

Re: *Comments of Dow Jones & Company on California Public Utilities Commission Draft Resolution L-459 (February 6, 2014 Draft)*

Dear Mr. Harris:

I am counsel to Dow Jones & Company, the publisher of *The Wall Street Journal*. Dow Jones hereby submits comments on Draft Resolution L-459, issued on February 6, 2014, which would grant *Journal* reporter Rebecca Smith's request for disclosure of records pertaining to an attack on Pacific Gas and Electric Company's Metcalf Substation in San Jose on April 16, 2013.

Dow Jones commends the Commission and its staff for acknowledging in the draft resolution that "the public interest favors disclosure of the requested Commission's investigation records." Indeed, release of the material Ms. Smith seeks will serve the public interest by shedding light on the safety, security, and resiliency of California's energy infrastructure and on the Commission's efforts to oversee the utilities that it regulates. The public interest in disclosure of information regarding the attack is particularly compelling for customers of PG&E, which is seeking to recover from its ratepayers the cost of security upgrades that the company believes to be necessary at critical facilities like the Metcalf Substation.¹ And, as the Commission's staff noted in the draft resolution, the investigation at issue was closed nearly nine months ago,² further bolstering the public interest in release.

As the important interests at stake highlight, the compelling public interest served by releasing the records Ms. Smith seeks clearly outweigh any lesser interest served by their withholding.³

¹ Comments of Pacific Gas & Electric Company, March 3, 2014 (hereafter "PG&E Comments"), at 3 fn.1.

² Draft Resolution L-459, issued Feb. 6, 2014, at 4.

³ Cf. Cal. Gov't Code § 6255(a) (justifying withholding only when suppression clearly outweighs disclosure).

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At the same time, Dow Jones is compelled to respond to several points in the comments on the draft resolution that PG&E submitted to the Commission on March 3, 2014. In general, PG&E urges that the Commission modify the draft resolution to withhold from Ms. Smith certain classes of information that the utility fears “may be utilized to do harm to PG&E’s electric system and to public and employee safety.”⁴

PG&E’s request, however, is inconsistent with California law and the Commission’s policies. Accordingly, rather than modify the draft resolution as PG&E has requested, the Commission should adopt it in its current form and release to Ms. Smith the materials she has requested.

In the past, the Commission has rightly been skeptical of abstract assertions that public records should be withheld due to generalized fears that release of the requested materials could prove useful to wrongdoers. The Commission has observed that “[a]ssertions of the need to redact information alleged to raise security and privacy concerns in a particular context must be backed by evidence that disclosure would result in problems that are more than merely speculative.”⁵ California’s Supreme Court has reached the same conclusion, finding that “‘a mere assertion of possible endangerment’ is insufficient to justify nondisclosure.”⁶

In this case, PG&E’s submission provided no evidence to support its claim that portions of the public records Ms. Smith seeks could be used to jeopardize the company’s electrical system or the safety of its employees or the public at large. Moreover, PG&E⁷ and other utilities and regulators⁸ have already begun responding to the attack by increasing security at facilities and identifying protective measures that could thwart future similar attacks. As a result of this increased security, any information about last year’s attack on the Metcalf Substation is likely to be of reduced utility to those who would do harm to the nation’s energy infrastructure.

In support of its comments, PG&E highlights language from Resolution L-436 stating that it may at times be necessary for the Commission to withhold incident investigation records when the

⁴ PG&E Comments at 1.

⁵ Resolution L-436, Feb. 13, 2013, at 8-9.

⁶ *Comm’n on Peace Officer Standards & Training v. Superior Court*, 42 Cal.4th 278, 302 (2007), quoting *CBS Inc. v. Block*, 42 Cal.3d 646, 652 (1986).

⁷ PG&E Comments at 3.

⁸ Letter from Fed. Energy Regulatory Comm’n Acting Chairman Cheryl A. LaFleur to Senator Harry Reid, dated February 11, 2014, available at www.ferc.gov/industries/electric/indus-act/reliability/chairman-letter-reid.pdf.

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disclosure of such records is prohibited by law or restricted by the Commission's need to conduct its investigation efficiently and effectively.⁹ While there may be instances in which the Commission must withhold records for those reasons, neither applies in this case.

Dow Jones is not aware of any state or federal law that prohibits the disclosure of the material Ms. Smith seeks; indeed, if anything, California's Constitution and the California Public Records Act *compel* their release. Moreover, because the Commission's investigation into the attack on the Metcalf Substation was completed on June 24, 2013,¹⁰ this is not an instance in which the Commission must withhold public records to conduct its investigation efficiently and effectively.

Finally, PG&E asks that the Commission redact from any material released to Ms. Smith the names of PG&E inspectors. Redacting the names of other identifying information of PG&E employees or contractors, however, would be inconsistent with the Commission's past practice. The Commission has concluded that utility safety inspectors, like other utility employees with responsibility for safety management, do not have an objectively reasonable expectation in the privacy of their identity and job classification or specification.¹¹ Accordingly, the Commission should decline to redact the names of such personnel from any material released to Ms. Smith.

In conclusion, Dow Jones urges the Commission to approve Draft Resolution L-459 in its current form and to release to Ms. Smith the public records that she seeks.

This letter is not a full recitation of the facts and issues related to this matter and is written without prejudice to Dow Jones's claims or defenses, all of which are expressly reserved.

Sincerely,



Craig Linder

cc: Brian K. Cherry
Vice President, Regulatory Relations, Pacific Gas and Electric Company
(via email to Redacted)

⁹ PG&E Comments at 2, quoting Resolution L-436, Feb. 13, 2013, at 10.

¹⁰ Draft Resolution L-459, issued Feb. 6, 2014, at 4.

¹¹ Resolution L-436, Feb. 13, 2013, at 11.