

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution M-4793
April 1, 1999

RESOLUTION

**AUTHORIZES DISCLOSURE OF INFORMATION
CONCERNING UTILITY READINESS WITH RESPECT
TO THE YEAR 2000 PROBLEM, INCLUDING UTILITY
RESPONSES TO RESOLUTION M-4792, DATED
NOVEMBER 19, 1998**

BACKGROUND

In Resolution M-4792, dated November 19, 1998, the California Public Utilities Commission (Commission) required utilities to provide information regarding their efforts to achieve readiness with respect to the year 2000 (Y2K) computer problem, to certify that they are ready by November 1, 1999, and to develop contingency plans to address Y2K problems that may nonetheless result. That resolution also required certain utilities to participate in industry-wide Y2K efforts and to provide information submitted to industry groups and/or the Securities and Exchange Commission (SEC). Specifically, the Commission ordered:

1. All investor-owned utilities subject to the Commission's jurisdiction shall comply with each of the following. For the purpose of these ordering paragraphs "utility" is defined to include rail transit agencies and heavy commuter rail operations. Vessel Common Carriers and Passenger Stage Corporations are excluded. The Executive Director shall advise California's municipal and public utilities of the Commission's efforts in this regard by transmitting a copy of this Resolution to them.
2. Each utility shall prioritize its Y2K efforts to address safety and reliability of service delivery systems ahead of billing and other administrative systems.

3. Each utility shall respond to the checklist and survey attached hereto as Exhibit 1 not later than December 15, 1998. Failure to respond in a timely manner may result in the imposition of fines or other penalties.
4. Each utility shall provide the Commission with quarterly updates of its responses to the checklist and survey. Quarterly updates shall be due on March 15, 1999, September 15, 1999, and March 15, 2000.¹ The Commission may require subsequent additional updates.
5. Each telephone and energy utility shall participate in regional and industry-based Y2K efforts. For example, electric utilities shall participate in NRC, NERC, and WSCC efforts, and the EPRI Year 2000 Embedded Systems Project. Not later than December 15, 1998, each telephone and energy utility shall: (a) advise the Commission of existing regional and industry Y2K efforts, and advise the Commission of which such effort(s) the utility is participating in; and (b) provide copies to the Commission of any responses submitted to regional or industry-based Y2K efforts. Future submissions to such efforts shall be provided to the Commission contemporaneously with submission to the regional or industry-based Y2K effort.
6. Each utility which is required by the Securities and Exchange (“SEC”) to report the SEC on Y2K issues shall provide copies to the Commission of all such information it has provided to the SEC not later than December 15, 1998, and shall provide any and all additional such information to the Commission contemporaneously with submission to the SEC.
7. Each utility shall certify to the Commission not later than November 1, 1999, that all of its essential service delivery systems are Y2K compliant or Y2K ready. The certification should provide that all new systems, software and equipment purchased or implemented thereafter will be complaint as well.
8. Each utility shall develop contingency plans to address Y2K problems which may ensue, and report such contingency plans to the Commission no later than July 1, 1999. A utility may report updated contingency plans to the Commission when the utility provides the certification required by Ordering Paragraph No. 7.

¹ Resolution M-4792 inadvertently omitted to list June 15, 1999 as a date upon which quarterly Y2K update reports are due.

Resolution M-4792 notes that letters were sent earlier this year to Commission regulated utilities and companies requesting confirmation of their Y2K plan, preparation, and timetable for readiness, and that response in general had been very good. That resolution also notes that we were informed that municipal public utilities, under the direction of their respective managing boards, were similarly addressing the Y2K issue. We note further that while we viewed the Y2K issue as a managerial problem and its solution as a managerial decision, we wanted to ensure that solutions are implemented not only by the largest utilities but by all of the entities under our jurisdiction.

Resolution M-4792 finds that: “The Y2K issue, if not properly addressed, has the potential to cause serious disruptions in essential utility services to California ratepayers, which may affect the public health, safety, and welfare” (Finding of Fact 1) and that “Commission oversight can enhance the utility response to the Y2K issue and public confidence in that response” (Finding of Fact 2).

Finally, Resolution M-4792 states:

The Commission is committed to providing the public with information regarding the Y2K readiness of California utilities. To that end, the Commission has begun to publish information pertaining to Y2K readiness on its web site, *www.cpuc.ca.gov*. Additional material will be published on the web-site in the weeks and months to come. In addition, consumers may contact the Commission staff by telephone or in writing for such information.

Utilities have begun responding to the ordering paragraphs in M-4792, and we are receiving numerous filings concerning the Y2K problem. We continue to post information concerning the Y2K issue on our web site.

We have also, however, begun receiving many requests from the public for additional information concerning utility Y2K readiness. Some of these requests seek disclosure of the documents filed by the utilities in response to Resolution M-4792. Some point out that many of these documents duplicate in whole or in part Y2K related reports or other documents that the utilities have filed with other governmental entities such as the SEC. Many documents filed with other agencies are publicly available, but may contain less information than we have through Resolution M-4792 required utilities to file with us.

One electric utility stamped each of the documents it submitted pursuant to Resolution M-4792 “confidential pursuant to Public Utilities Code Section 583,” which states:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in 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.

That utility provided no specific explanation why it seeks confidential treatment of its Y2K readiness information.

No other electric utility asserts that its Y2K readiness information is confidential. No water utility makes such an assertion. Nor, apparently, does any non-utility entity required to file reports in compliance with Resolution M-4792. Several telecommunications utilities, out of approximately 1,200, appear to assert the confidentiality of limited portions of their Y2K readiness reports, but none have requested that their entire reports remain confidential. Because some elements of certain reports contain attachments which are labeled confidential or proprietary, and which appear to have been originally developed for use in another context, it is difficult to determine with precision the extent to which these entities intend to assert confidentiality in the context of our own Y2K readiness review process, and the specific basis for any such assertion of confidentiality.

DISCUSSION

While Resolution M-4792 makes clear our intent to provide the public with information concerning utility Y2K readiness, both through our web site and through public contact with our staff, either by telephone or in writing, we note that we inadvertently failed to state clearly whether the actual utility responses to the information-gathering orders in that resolution were themselves to be considered public documents.

This current resolution will remedy the oversight in Resolution M-4792 by authorizing the disclosure to the public of the various checklist and survey responses, reports, and updates provided to the Commission in response to that resolution, subject to a very limited exception for specific portions of Y2K readiness reports for which the providers convince us of the need for confidentiality. Any requests for confidentiality must be very narrowly tailored to cover the minimum scope of records for which confidentiality is essential, and must provide a very specific and detailed explanation of why the records for which confidentiality is sought fall within one of the specific exemptions within the

California Public Records Act (Act) (Government Code Sections 6250 et seq.) and why the public interest in nondisclosure of those specific records clearly outweighs the public interest in disclosure.²

The records in question constitute "public records," as defined by the Act. The Act is intended to provide "access to information concerning the conduct of the people's business" while being "mindful of the right of individuals to privacy." (Section 6250.) The general policy of the Act favors disclosure and a decision to withhold public records must be based on the specific exemptions listed in the Act, or on a determination that the public interest in confidentiality clearly outweighs the public interest in disclosure. (Section 6255; *see, e.g., American Civil Liberties Foundation v. Deukmejian* (1982) 32 Cal.3d 44; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771-772; and *Re San Diego Gas and Electric Company (Re SDG&E)* [D.93-05-020] (1983) 49 Cal.P.U.C.2d 241.) The specific exemptions set forth in Section 6254 are permissive, not mandatory; *i.e.*, "they permit nondisclosure but do not prohibit disclosure." (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 655; *see also, Re SDG&E, supra*, 49 Cal.P.U.C.2d at 242.)

The Act contains no specific exemption for Y2K information submitted by public utilities. The Act does, however, contain an exemption for "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." (Section 6254 (k).) Sections 6275 et seq. list statutes which may exempt certain records, or portions thereof, from disclosure pursuant to Section 6254 (k). Section 6275 provides that: "The listing of a statute in this article does not itself create an exemption. Requesters of public records are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts records from disclosure." Public Utilities Code Section 583 is among the statutes listed as potentially operating to exempt certain records, or portions thereof, from disclosure. (Section 6276.36.)

Public Utilities Code Section 583 prohibits staff disclosure of utility-provided information without formal authorization by the Commission, or by the Commission or a Commissioner in the course of a hearing or proceeding. Section 583 does not, however, limit the Commission's authority to order the release of information provided by utilities. Thus, the Commission is under Section 583 free to order that confidential or other information provided to the Commission by utilities be disclosed to other governmental agencies and/or made public. Since Public Utilities Code Section 583 by itself provides no independent grounds for a

² All statutory references are to the Government Code, unless otherwise noted.

Commission decision to refrain from disclosing Y2K readiness information to the public, further review of potential reasons for nondisclosure is necessary.

In addition to the specific exemptions listed in Section 6254 and elsewhere, the Act contains a general exemption available where a public agency demonstrates that the public interest in nondisclosure of specific public records clearly outweighs the public interest in disclosure. (Section 6255.) In light of the facts before us, this exemption appears inapplicable.

In M-4792 we noted our intention to make information derived from the Y2K reports publicly available on our web site; we have in fact made much such information available. We recognized the strong public interest in the Y2K readiness of public utilities and other entities of a similar nature, whose effective operation is vital to the functioning of our complex society. The public's continuing concern over the potential Y2K problems facing public utilities and similar entities is shown by the number of inquiries we receive seeking access to such information.

Only one electric utility asserts that its Y2K readiness responses to Resolution M-4792 is confidential, and this utility cites no specific reasons why it believes the public interest in the nondisclosure of its Y2K readiness information clearly outweighs the public interest in disclosure of this information. The few telecommunications utilities seeking confidential treatment of portions of their Y2K readiness reports appear to have similarly provided no detailed basis for their requests.

Furthermore, much of the information certain utilities seek confidential treatment for is contained in reports these entities have filed with other agencies seeking information concerning Y2K readiness or have posted on their own web sites. To the extent such information has been made available in other forums, such entities should not assert that this Commission should treat such information as confidential. In these circumstances, we could not find that the public's interest in the nondisclosure of Y2K readiness information clearly outweighs the public interest in the disclosure of such information.

Therefore, on the facts currently before us, Section 6255 cannot serve as a basis for nondisclosure of the Y2K readiness reports that have been, and will be, submitted to the Commission in response to Resolution M-4792.

We now clarify our intent that all information submitted in response to Resolution M-4792, either in the past or in the future, shall be available to the public, with one limited potential exception. If an entity submitting a report demonstrates to

our satisfaction that specific elements of its reports should be exempt from public disclosure both because they fall within a specific exemption in the Act and because the public interest in nondisclosure clearly outweighs the public interest in disclosure, we will consider exempting such information from disclosure. Any such limited request for confidentiality should be filed prior to the close of the comment period for this resolution. We do not anticipate permitting many, if any, exemptions from disclosure. Most entities responding to Resolution M-4792 appear to recognize the public's concern regarding Y2K readiness, and accept the sharing of their Y2K readiness information with the public. We expect that most entities will continue to exhibit this enlightened point of view.

COMMENTS

The draft resolution of the Executive Division in this matter was mailed on March 2, 1999, to the parties in accordance with Public Utilities Code Section 311(g). Comments were filed on or before March 15, 1999, by Hertz Technologies, Inc. (Hertz), Carmel Solutions, Inc. (Carmel), Pacific Gas and Electric Company (PG&E), Time Warner Telecom of California, LP (Time Warner), Premiere Technologies, Inc. (Premiere) and EZ Phone. Norstan Communications, Inc., filed comments on March 22, 1999. AirTouch Communications filed a motion to accept late filed comments, and comments, on March 22, 1999.

The Comments filed by Hertz, Carmel, Premiere, EZ Phone and Norstan were in the nature of compliance filings setting forth the Y2K readiness of those entities. Premiere's filing consisted primarily of a copy of the Form 10-Q Premiere filed with the SEC for the quarterly period ending September 30, 1998. This 10-Q report includes a section addressing Y2K readiness, which ends with the pronouncement that: "[a]ll statements made herein regarding the Company's state of readiness with respect to the Year 2000 issue constitute "Year 2000 readiness disclosures" made pursuant to the Year 2000 Information and Readiness Disclosure Act, Public Law No. 105-271." Norstan's comments are accompanied by the following statement: "[t]he statements made herein are subject to the Year 2000 Information and Readiness Disclosure Act. In case of a dispute, this act may reduce your legal rights regarding the use of any such statements, unless otherwise specified by your contract or tariff." None of these comments address directly the issues raised in Draft Resolution M-4793 regarding Y2K filing confidentiality. By submitting compliance filings with no reference to confidentiality beyond the references to the federal Year 2000 Information and readiness Disclosure Act, these comments implicitly agree to their disclosure subject to the safeguards of that Act.

PG&E comments that it is willing to formally waive the “confidential” treatment of its December 15, 1998, filing submitted in response to Resolution M-4792, even though PG&E strongly believes that portions of that filing were entitled to confidential treatment at that time, but would like to be able to exercise its right under the federal Year 2000 Information and Readiness Disclosure Act to label material released to the public as a “Year 2000 Readiness Disclosure.”

PG&E would prefer that its non-confidential March 2, 1999, filing be posted instead of its December filing, since the March filing both updates and supercedes the December filing. PG&E believes the public should have clear, accurate, and current information.

PG&E also comments that it is unreasonable to require providers to file now any requests for confidential treatment of information in future readiness disclosures, since the content of such future disclosures is unknown, especially if such requests must be accompanied by a “very specific and detailed explanation” as mandated by the draft resolution. PG&E notes that in subsequent filings it may well file information that properly includes contingency planning or other sensitive information that might contain details with serious corporate security implications, and that it is not in a position to make a confidentiality showing now. PG&E states that the resolution should include a mechanism to permit confidential treatment to be requested at the time of filing. PG&E agrees that a specific showing may be appropriate, but argues that to expect such a showing now may compromise a provider’s legitimate and protectable interests under Public Utilities Code Section 583 or the California Public Records Act. PG&E agrees to work informally with Commission staff prior to such future filings in order to resolve in advance potential disclosure issues.

Specifically, PG&E requests that the draft resolution be modified to strike the reference to “future” filings in the current Ordering Paragraph 1, and that the following sentence be added at the end of that paragraph:

Any requests for confidentiality of information in future Y2K readiness reports must be filed with the material for which confidentiality is requested separated out and clearly marked for ease of identification.

Time Warner comments that the web site posting and the revelation of utility supplied information is unnecessary and will result in the Commission providing confidential information to the public. Time Warner asserts that the draft resolution errs in not mentioning that some utilities, such as Time Warner, have requested and been granted confidential treatment of their filings, and that it would

be bad public policy and procedurally unfair to now claim that confidentiality requests must be narrowly tailored to cover the minimum scope of records involved. Time Warner states that in a December 9, 1998, letter to the Executive Director of the Commission, Time Warner requested an extension of time and confidentiality for the Time Warner filing, and that a December 17, 1998, letter from the Executive Director to Time Warner granted both requests.

Time Warner also claims that the release of utility data and the posting of information on the Commission's web site is unnecessary, since most utilities, such as Time Warner, have their own web sites where they provide Y2K information to their subscribers in a form that does not require the divulging of confidential information. Time Warner asserts that it is this same information, in non-confidential form, that the utilities provide to the SEC. Time Warner claims that the Commission would be better off requiring all utilities to post the information on their web sites and update the sites as new information is formulated, thus allowing the utilities to keep confidential any proprietary information in the process. Time Warner argues that this approach would benefit the public, not harm the utilities, and reduce the costs of needless regulatory compliance. Time Warner states that:

Moreover, this manner of proceeding, using utility websites rather than Commission disclosure via its website, insulates utilities from liability under the Federal Year 2000 Information and readiness Non-Disclosure Act ("Y2K Act"). Indeed, the very purpose of the Y2K Act is to encourage information disclosure by business entities, rather than the government, so as to minimize liability to the disclosing entity. Thus, an entity with SEC disclosure obligations could fulfill these disclosure requirements without additional Y2K liability under Time Warner's proposal and still not need to reveal confidential information. Thus, Time Warner requests that the draft resolution be modified in conformity with these comments.

AirTouch regrets it was unable to meet the deadline for filing comments, and noted that at the time it received the request for comments it was (1) preparing its Y2K filing with the SEC; (2) preparing its comments for the California State Legislature's Y2K hearing on March 22, 1999; (3) preparing its first quarter 1999 Y2K readiness report for the Commission. AirTouch complains that it received its copy of draft Resolution M-4793 on March 4, and thus had only 7 business days to respond. AirTouch notes that it takes Y2K issues seriously, that it has 300

employees worldwide working tirelessly to ensure full compliance, but that the issues identified in M-4793, while important, couldn't take precedence over AirTouch's other Y2K responsibilities. AirTouch notes that acceptance of its late filing will not prejudice the Commission or any other party.

In its comments, AirTouch states that it does not oppose the requirement that utilities provide adequate justification for confidential treatment of certain information contained in Y2K readiness reports. AirTouch does, however, argue that draft resolution M-4793 misinterprets the Act. AirTouch contends that if information sought to be treated as confidential is exempt under the express provisions of the Act, then the Commission cannot require such information to be open for public inspection, regardless of the public interest served in disclosing the information. AirTouch agrees that if information does not fall within an express exemption, then the Commission can withhold information only if it demonstrates that the public interest served by non-disclosure clearly outweighs the public interest served by disclosure.

AirTouch states that the confidential information in its December 15, 1998, Y2K readiness report must remain confidential, both because it is specifically exempt from disclosure under the Act and because the public interest in non-disclosure clearly outweighs the public interest in disclosure. Specifically, AirTouch asserts that the information contained in Attachments 1, 2, and 3 of AirTouch's Y2K readiness report is specifically exempted from disclosure pursuant to Government Code Section 6254.7 (d), which provides:

[T]rade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

AirTouch states that the information in the attachments specifically describes the procedures to be utilized by AirTouch to renovate existing or develop new software that will be Y2K compliant, and provides detailed explanation of the roles and responsibilities of key AirTouch systems and employees in validating its compliance. AirTouch states that Attachment 3 contains software coding guidelines. AirTouch asserts that the attachments contain trade secrets because

they include detailed plans, processes and formulas relating to Y2K compliance which are known only to certain individuals within AirTouch which have significant commercial value and give AirTouch a competitive advantage over other who have not chosen to invest significant time and resources into achieving Y2K compliance. AirTouch notes, for example, that the disclosure of the software coding guidelines in Attachments 2 and 3 would enable competitors to profit from AirTouch's substantial investment in Y2K compliance.

AirTouch also asserts that even if the Attachments did not contain trade secrets, the public interest in non-disclosure of this proprietary information would clearly outweigh the public interest in disclosure. AirTouch notes that Resolution M-4792 found that the public interest at issue in requiring utilities to submit Y2K readiness reports is to demonstrate to the public that a utility is Y2K compliant, not to provide others with road maps for compliance. (Resolution M-4792 at 6, Conclusion of Law 1.) AirTouch believes that requiring disclosure of sensitive and proprietary information may have the unintended effect of reducing the amount of Y2K information released to the Commission, as utilities may be deterred from full disclosure by the fear that they may be unable to prevent the release of sensitive and proprietary information to the public.

In the spirit of full and open disclosure and a recognition of the interest in Y2K information, AirTouch seeks confidential treatment only for Attachments 2 and 3 of its December 15, 1998, Y2K readiness report.

RESPONSE TO COMMENTS

We appreciate PG&E's willingness to waive Public Utilities Code Section 583 protection for the December 15, 1998, report. However, we agree with PG&E that both the public and the utility will be better served by the disclosure of PG&E's non-confidential March 2, 1999, Y2K readiness report than by the disclosure of its outdated and superceded December 15, 1998, report. By disclosing the March report, rather than the December report, we may avoid the need to label the December report as a Year 2000 Readiness Report under the federal Year 2000 Information and Readiness Disclosure Act.

We also agree with PG&E that utilities should be able to file requests that specific portions of future Y2K readiness reports be treated confidentially, since it is possible that portions of such future reports may contain trade secrets or other truly confidential information. Such future confidentiality requests should include a specific showing that information for which confidentiality is sought falls within one of the Act's disclosure exemptions and that the public interest in nondisclosure clearly outweighs the public interest in disclosure. We will

designate a Commissioner to oversee any requests for confidential treatment of limited portions of future Y2K reports. Once such confidentiality requests have been received and evaluated by the Commissioner assigned to oversee Y2K disclosure, the Executive Director with the advice of the General Counsel, or their respective delegates, will be authorized to disclose to the public Y2K readiness reports and other information provided by utilities and other entities pursuant to Resolution M-4792 or other inquiries by the Commission.

We will allow Time Warner's December, 1998, Y2K readiness report to remain confidential, pursuant to the letter sent by the Commission's Executive Director on December 17, 1998. Any Time Warner requests for confidentiality of portions of future Y2K readiness reports should be narrowly tailored, and accompanied by the specific showing noted above. We believe it is highly unlikely that a utility can justify an assertion that an entire Y2K readiness report contains highly proprietary information.

Although we recognize that many utilities already publish Y2K readiness information on their own web sites, and that such disclosures may provide a degree of liability protection pursuant to the federal Year 2000 Information and Readiness Disclosure Act, we also recognize that many utilities do not have such web sites upon which they might post Y2K information. We will not, therefore, require utilities to post Y2K readiness information in lieu of reporting directly to the Commission. We assume, however, that in many instances the filings we receive from utilities with web sites which post Y2K readiness information will primarily simply duplicate the already-posted information.

We will accept AirTouch's late-filed comments, since AirTouch has adequately demonstrated that its Y2K personnel were responsible for making substantive Y2K filings with the SEC and this commission, and for preparing for a legislative meeting on Y2K issues during the draft resolution M-4793 comment period. We agree that accepting AirTouch's late filing will not prejudice the Commission or other parties.

We do not agree with AirTouch's comment that we cannot disclose records expressly exempted by the Act. The California Supreme Court states, in *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652, that: "Section 6254 lists 19 categories of disclosure-exempt material. These exemptions are permissive, not mandatory. The act endows the agency with discretionary authority to override the statutory exceptions where a dominating public interest favors disclosure." (See also, *Black Panther Party v. Kehoe, supra*, 42 Cal.App.2d at 656.) Thus, if we find a dominating public interest favoring disclosure, we may disclose public records which fall within the Act's listed exemptions. Here, however, we agree that

AirTouch has legitimate concerns regarding the impact of disclosing the trade secrets and other proprietary information in Attachments 2 and 3 to its December 15, 1998, Y2K readiness report. As AirTouch notes, our interest is in reassuring the public regarding utility Y2K readiness, not in providing roadmaps for Y2K compliance to be used by those who have not devoted their own resources to this issue. We appreciate AirTouch's narrowing of its request for confidential treatment, and will not order the disclosure of Attachments 2 and 3 of its December 15, 1998, report.

FINDINGS OF FACT

1. In the implementation of its regulatory responsibilities, the Commission has through Resolution M-4792 required utilities to provide information regarding their efforts to achieve readiness with respect to the Y2K computer problem, to certify that they are ready by November 1, 1999, and to develop contingency plans to address any Y2K problems that may nonetheless result.
2. Resolution M-4792 inadvertently omitted to list June 15, 1999, as a date upon which quarterly Y2K update reports are due.
3. In Resolution M-4792 we noted our intention to make information derived from the Y2K reports publicly available on our web site; we have in fact made much such information available. We recognized the strong public interest in the Y2K readiness of public utilities and other entities of a similar nature, whose effective operation is vital to the functioning of our complex society. The public's continuing concern over the potential Y2K problems facing public utilities and similar entities is shown by the number of inquiries we receive seeking access to Y2K information submitted to the Commission in response to Resolution M-4792.
4. One electric utility stamped each of the documents it submitted pursuant to Resolution M-4792 "confidential pursuant to Public Utilities Code Section 583," but provided no specific explanation why it seeks confidential treatment of its Y2K readiness information. No other electric utility asserts that its Y2K readiness information is confidential.
5. No water utility asserts that its Y2K readiness information is confidential. Nor, apparently, does any non-utility entity required to file reports in compliance with Resolution M-4792. Several telecommunications utilities, out of approximately 1,200, appear to assert the confidentiality of limited portions of their Y2K readiness reports, but none have requested that their entire reports remain confidential. Because some elements of certain reports contain attachments which are labeled confidential or proprietary, and which appear to have been originally developed for use in another context, it is difficult to

determine with precision the extent to which these entities intend to assert confidentiality in the context of our own Y2K readiness review process, and the specific basis for any such assertion of confidentiality.

6. Much of the information in Y2K readiness reports provided to the Commission has been made public in reports filed with other agencies or in reports posted on the providers' web sites.
7. The Commission has authority under Section 583 of the California Public Utilities Code to determine whether utility Y2K readiness reports should be made available for public inspection.
8. The public interest will be served by the Commission's making these records available to the public, with the exception of certain limited portions of Y2K reports for which the entity providing the reports provides the Commission with specific and detailed reasons why the portions they wish kept confidential fall within a specific exemption in the California Public Records Act and why the public interest in nondisclosure clearly outweighs the public interest in disclosure.

CONCLUSIONS OF LAW

1. The Commission is vested with the jurisdiction to determine whether it is in the public interest to disclose to the public information furnished to or obtained by the Commission or its employees in the course of their duties.
2. The Commission should allow utilities and other entities providing Y2K readiness reports to the Commission pursuant to Resolution M-4792 to request in comments to this draft resolution that certain limited portions of their Y2K readiness reports should be treated as confidential. Entities seeking confidential treatment should recognize the strong public interest in disclosure of Y2K readiness information, and should seek confidential treatment only if they can demonstrate to the Commission's satisfaction both that the portions they wish kept confidential fall within a specific exemption in the California Public Records Act and that the public interest in nondisclosure clearly outweighs the public interest in disclosure.
3. The Commission should allow utilities and other entities providing Y2K readiness reports to the Commission pursuant to Resolution M-4792 to request that certain limited portions of their future Y2K readiness reports should be treated as confidential. Entities seeking confidential treatment should recognize the strong public interest in disclosure of Y2K readiness information, and should seek confidential treatment only if they can demonstrate to the Commission's satisfaction both that the portions they wish kept confidential fall within a specific exemption in the California Public Records Act and that

the public interest in nondisclosure clearly outweighs the public interest in disclosure. Any request for confidential treatment of future Y2K readiness reports should be made at the time the reports are submitted.

4. The Commission should designate a Commissioner to oversee any requests for confidential treatment of limited portions of future Y2K reports. Once such confidentiality requests have been received and evaluated by the Commissioner assigned to oversee Y2K disclosure, the Executive Director with the advice of the General Counsel, or their respective delegates, should be authorized to disclose to the public Y2K readiness reports and other information provided by utilities and other entities pursuant to Resolution M-4792 or other inquiries by the Commission.
5. If an entity submitting Y2K readiness reports demonstrates to the Commission's satisfaction that specific elements of its reports should be exempt from public disclosure both because they fall within a specific exemption in the California Public Records Act and because the public interest in nondisclosure clearly outweighs the public interest in disclosure, the Commission will consider exempting such information from disclosure. The Commission should not anticipate permitting many, if any, exemptions from disclosure. Most entities responding to Resolution M-4792 appear to recognize the public's concern regarding Y2K readiness, and accept the sharing of their Y2K readiness information with the public. The Commission should anticipate that requests for limited exemptions from disclosure will be the rare exception, rather than the rule.
6. Resolution M-4793 amends the previous Resolution M-4792 to correct the inadvertent omission of June 15, 1999, as a date upon which quarterly Y2K update reports are due.

ORDER

1. Utilities and other entities required to provide Y2K readiness reports to the Commission pursuant to Resolution M-4792 were given an opportunity to request in comments to this draft resolution that certain limited portions of their Y2K readiness reports should be treated as confidential. The requests received are addressed as follows:

- a. The request of PG&E that its updated March 2, 1999, Y2K readiness report be made public instead of its outdated and superceded December 15, 1998 report is granted.
- b. The request of Time Warner that its December 15, 1998, Y2K readiness report remain confidential pursuant to its December 9, 1998, letter to the

- Commission's Executive Director and the Executive Director's December 17, 1998, response granting an extension of time to reply and Time Warner's confidentiality request is granted. Time Warner requests for confidentiality of limited portions of future Y2K readiness reports must be made at the time of filing.
- c. The request of AirTouch that Attachments 2 and 3 of its December 15, 1998, Y2K readiness report remain confidential because they contain trade secrets as defined in Section 6254.7 (d) is granted. AirTouch requests for confidentiality of limited portions of future Y2K readiness reports must be made at the time of filing.
 2. Utilities and other entities required to provide future Y2K readiness reports to the Commission pursuant to Resolution M-4792 may request at the time of filing that certain limited portions of their future Y2K readiness reports be treated as confidential.
 3. Entities seeking confidential treatment of portions of Y2K readiness reports should recognize the strong public interest in disclosure of Y2K readiness information, and should seek confidential treatment only if they can demonstrate to the Commission's satisfaction both that the portions they wish kept confidential fall within a specific exemption in the California Public Records Act and that the public interest in nondisclosure clearly outweighs the public interest in disclosure. An entity should not seek confidential treatment of any information which has been made publicly available through Y2K readiness reports filed by that entity with other agencies or through reports posted on the entity's web site.
 4. Requests for limited confidentiality for past Y2K readiness reports have been received and evaluated by the Commission and, with the exceptions noted above, the Executive Director with the advice of the General Counsel, or their respective delegates, are authorized to disclose to the public Y2K readiness reports and other information provided by utilities and other entities pursuant to Resolution M-4792 or other inquiries by the Commission.
 5. The Commission will designate a Commissioner to oversee any requests for confidential treatment of limited portions of future Y2K reports. Once such confidentiality requests have been received and evaluated by the Commissioner assigned to oversee Y2K disclosure, the Executive Director with the advice of the General Counsel, or their respective delegates, are authorized to disclose to the public Y2K readiness reports and other information provided by utilities and other entities pursuant to Resolution M-4792 or other inquiries by the Commission.

6. The second sentence of Ordering Paragraph 4 of Resolution M-4792 is hereby amended by the insertion of the date “June 15, 1999” between the dates “March 15, 1999” and “September 15, 1999.” Thus, each utility shall provide the Commission with a quarterly update of its responses to the checklist and survey on March 15, 1999, June 15, 1999, September 15, 1999, and March 15, 2000. The Commission may require additional updates as appropriate.

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 April 1, 1999, and that the following Commissioners approved it.

WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President

HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioner