



THE DOCKET OFFICE –

PRESENTS

FILING CONFIDENTIAL DOCUMENTS UNDER SEAL



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Senior Legal Analyst

Docket Office – San Francisco – February 23, 2012





In General, Documents filed at the CPUC are Public Documents -

**PUBLIC RECORDS: Public Records are those specified in Gov't
Code §§ 6252 (d) and (e).**

(d) "Public agency" means any state or local agency.

**(e) "Public records" includes 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.**





H O W E V E R

UTILITY RECORDS ARE CONFIDENTIAL UNLESS THE COMMISSION APPROVES THEIR RELEASE TO THE PUBLIC

•Pub. Util. Code §583. **“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. . . .”** [Emphasis Added]

C:\Documents and Settings\ajh\Local Settings\Temporary Internet Files\Content.IE5\VUJ34F5C\dglxasset[1].aspx

•Since most records are open to the public, there must be an approved protocol to file a document under seal that is otherwise claimed to be Confidential.





What does the term “Under Seal” mean?

- Historically, on all official governmental documents, the Great Seal of the Kingdom was impressed upon all documents using Sealing Wax



*"The time has come", the walrus said, 'To talk of many things:
Of Shoes and Ships and Sealing Wax, of Cabbages and Kings."*

•Lewis Carroll in "[Through the Looking Glass](#)"- written over 100 years ago

- So, whenever a “Seal” was affixed to a document with wax, it was accepted as authentic and genuine, even though many could not then read the document.
- The wax seal has therefore served as a stamp of indisputable authenticity, just as a Notary Public *Jurat* authenticates signatures in the world today.





FUNDAMENTAL FILING RULE FOR **CONFIDENTIAL DOCUMENTS:**

NEVER SUBMIT A CONFIDENTIAL DOCUMENT FOR FILING WITHOUT IT BEING PROPERLY “CONCEALED”

“Concealed”: Any medium that shields/protects the Confidential portions from unauthorized public viewing

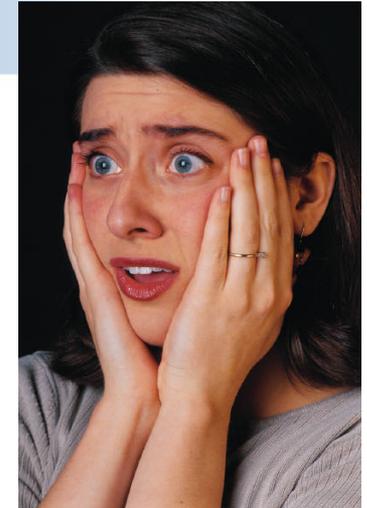
Typical Media Form:

- **Manila envelopes**
- **Small Boxes**
- **Bankers Boxes**
- **Other media whose function is to **conceal** may be used.**





NO RETROACTIVE CONFIDENTIALITY



If you fail to claim the Confidentiality of a Document at the earliest possible time & it gets into the Public Domain, we cannot “Unring that Bell” because there is no protocol for Retroactive Confidentiality

TOO LATE, TOO BAD





MECHANICS





**In order to properly tender a Confidential Document for filing,
there must be three (3) component parts:**

- **PART I - THE PRIMARY DOCUMENT (PUBLIC VERSION)**
- **PART II - THE CONFIDENTIAL DOCUMENTS (**Concealed** Inside Containers)**
- **PART III - MOTION TO FILE UNDER SEAL (MFUS) + PROPOSED ORDER**
 - **RULE 11.4(a)**
or
 - **Refer to D.06-06-066/D.08-04-023**
 - **USE OF MATRIX FOR IOU'S & ESP'S**
- **These decisions set forth what type of information may be filed under seal**





11.4. (Rule 11.4)

Motion for Leave to File Under Seal

- (a) A motion for leave to file under seal shall attach a proposed ruling that clearly indicates the relief requested.**
- (b) Responses to motions to file pleadings, or portions of pleading, under seal shall be filed and served within 10 days of the date that the motion was served.**





| HOW FILED? | PRIMARY DOCUMENT (PUBLIC VERSION) | (CONFIDENTIAL VERSION) | MOTION TO FILE UNDER SEAL + PROPOSED ORDER |
|--------------|---|--|---|
| EFILE | YES | NEVER | YES (3) |
| PAPER | MAYBE(1) | ALWAYS (2) | YES (3) |
| | (1) Unless Rule 1.13 (b) (2) Applies | (2) Includes media forms other than paper | (3) Or, Motion Per D.06-06-066 & D.08-04-023 |





1.13. (Rule 1.13)

Tendering of Document for Filing.

- **Documents may be tendered for filing in hard copy or electronically, as follows, except that a utility whose gross intrastate revenues, as reported in the utility's most recent annual report to the Commission, exceed \$10 million shall electronically file all documents unless otherwise **prohibited** or **excused** by these rules**





1.13. (Rule 1.13) (Continued)

- **(b) Electronic:**
- **(1) Documents must be transmitted to the Docket Office using the Electronic Filing System on the Commission's website at <http://www.cpuc.ca.gov/PUC/efiling>.**
- **(i) Documents must be transmitted in PDF Archive format (PDF/A). [EXCUSED]**
- **(ii) A single transmission may not exceed 20.0 megabytes in size. Documents tendered in a transmission that exceeds this limit shall not be filed electronically. [PROHIBITED]**
- **(iii) The certificate of service must be transmitted with the document as a separate attachment.**
- **(2) Electronically tendered documents WILL NOT BE FILED UNDER SEAL. Documents which a person seeks leave to file under seal (Rule 11.4) must be tendered by hard copy. However, redacted versions of such documents may be electronically tendered for filing. [PROHIBITED]**

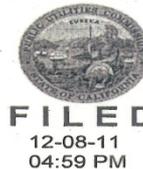




EXAMPLE OF TITLE PAGE

When a Confidential Document is filed, the Primary Document must add the words “Public Version”

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
12-08-11
04:59 PM

Application of Pacific Gas and Electric Company (U 39E) for Approval of Amendments to Qualifying Facility Power Purchase Agreement With Thermal Energy Development Partnership, L.P.

Application No. 11-12-_____ A1112003

APPLICATION OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
FOR APPROVAL OF AMENDMENTS TO
QUALIFYING FACILITY POWER PURCHASE AGREEMENT WITH
THERMAL ENERGY DEVELOPMENT PARTNERSHIP, L.P.

PUBLIC VERSION 
(Appendices A, B, C and D Confidential)





HOW TO CONCEAL

**THE CONFIDENTIAL PORTION OF THE PUBLIC DOCUMENT
aka THE “REDACTED PAGES”**

**METHOD #1 – SPECIFIC LANGUAGE IS
PHYSICALLY REMOVED**

**“Confidential Begins
. Confidential Ends.”**





Example - Redacted Document

[End Confidential Information]. Sprint's success results from several factors, including its first-to-market 4G network, its strong device line-up and its value offerings. Indeed, in Los Angeles, San Francisco, San Diego and Sacramento, among other California cities, Sprint has won more [Begin Confidential Information]

[End Confidential Information].⁴

6. MetroPCS and Leap have been particularly successful in California. These AYCE carriers are playing an increasingly important role in the wireless marketplace, by growing their share and expanding into new markets. MetroPCS has greater than a 10% estimated subscriber share in [Begin Confidential Information]

[End Confidential Information]. MetroPCS entered Los Angeles in 2007 and in just these past few years has grown to a [Begin Confidential Information] [End Confidential Information] estimated subscriber share in that DMA. So far in 2011, MetroPCS [Begin Confidential Information]

⁴ In the Los Angeles CMA, Sprint/Nextel won over [Begin Confidential Information] [End Confidential Information]. In the San Francisco CMA, Sprint/Nextel won over [Begin Confidential Information] [End Confidential Information]. In the San Diego CMA, Sprint/Nextel won over [Begin Confidential Information] [End Confidential Information]. In the San Jose CMA, Sprint/Nextel won over [Begin Confidential Information]





ADMONISHMENT

Link to ADOBE ACROBAT X PRO REDACTION INSTRUCTIONS:

- http://help.adobe.com/en_US/acrobat/X/pro/using/WS4E397D8A-B438-4b93-BB5F-E3161811C9C0.w.html

- **IF YOU DO NOT HAVE OR USE**

ADOBE ACROBAT X PRO,

DO NOT USE THE “BLACK OUT” METHOD.

- **YOU MUST USE ONE OF THE OTHER REDACTION METHODS INSTEAD.**





REDACTION IS FILER'S SOLE RESPONSIBILITY

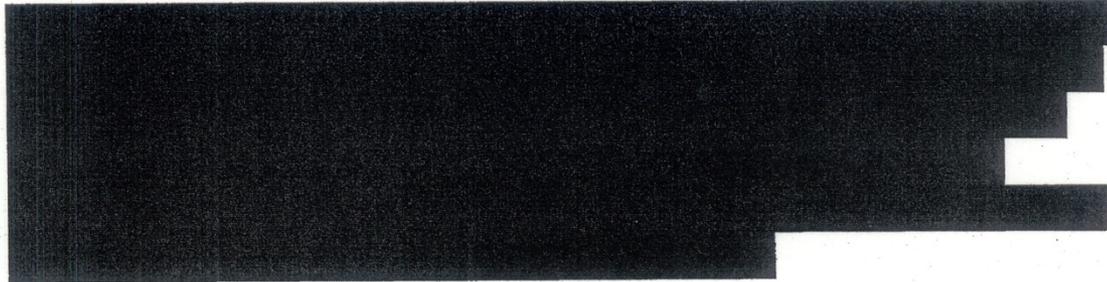
- IF YOU FAIL TO USE ONE OF THE OTHER REDACTION METHODS INSTEAD OF THE BLACKOUT METHOD WHICH RESULTS IN THE VISIBILITY OF THE REDACTED MATERIAL, YOU ARE RESPONSIBLE FOR THAT FAILURE, NOT THE COMMISSION.**





Example - Redacted Document (Text Blacked Out) (see, Admonishment)

CPSD brings a Rule 1.1 claim and seeks imposition of a \$720,000 penalty against SCE, alleging that the documents in Mr. Peralta's possession "contained certain field observations that were not included in the Disclosed Peralta Documents" and that "field observations included only in the Original Arthur Peralta documents have been used by CPSD to identify a violation." Prehearing Conference Statement of CPSD at 6 (Oct. 21, 2011) (emphasis in original). However,



III. ARGUMENT

A. Summary Judgment Standard

Under California law, a motion for summary judgment must be granted if the papers submitted show that there is no triable issue of material fact and that the moving party is entitled to judgment as a matter of law. Cal. Civ. Proc. Code § 437c(c). The Commission has applied this standard when considering motions for summary judgment. *Cox Cal. Telecom, LLC v. Global NAPs Cal., Inc.*, D.07-01-004, 2007 Cal. PUC LEXIS 8 at *4; *Westcom Long Distance*,





or,

**The Redacted Page is
completely removed, in which
case you must create a
REPLACEMENT PAGE**





Example - Redacted Document (REPLACEMENT PAGE)

APPENDIX A

Energy Price Amendment and Fifth Amendment to PPA

**THIS DOCUMENT IS
CONFIDENTIAL IN ITS ENTIRETY**

CONFIDENTIAL





PART II COMES NEXT - PART III – MOTION TO FILE UNDER SEAL (MFUS) + PROPOSED ORDER (RULE 11.4(a))

Attorney prepares

- **MFUS with Proposed Order pursuant to Rule 11.4(a), or,**
- **a Motion for Confidential Treatment that complies with Rule 11.4(a) pursuant to D.06-06-066 and D.08-04-023, or,**
- **a Declaration Under Penalty of Perjury meeting the five (5) requirements of OP2 of D.06-06-066 (“MATRIX”).**





(Return to PART II)

PART II CONFIDENTIAL DOCUMENTS

- **Prepare the media form by which the Confidentiality of the document is maintained - i.e., manila envelope, shoe box, banker's box.**
- **Scotch-Tape a copy of the first page of the Motion to File Under Seal to the outside of each container along all four (4) sides.**
- **Enclose the **Confidential Materials**, but do NOT permanently seal the container; just use the clasp. (for the Docket Office ONLY)**





SEALED OR UNSEALED ?

**Always distinguish the Confidential Envelopes
tendered to the Docket Office to be **FILED** from
the Confidential Envelopes to be **SERVED** on
CPUC Staff & other recipients entitled to receive
the Confidential Version**

IF FILED – UNSEALED/CLASP ONLY



IF SERVED – SEALED COMPLETELY





ISSUE - NUMBER OF EXACT COPIES

[Per Rule 1.13(a)(2)]

| HOW FILED? | Primary Document | Confidential Version | MFUS |
|--|--------------------------------------|--|--------------------------------------|
| EFILE | Original only; No Copies | NEVER EFILED - PAPER^[1] ONLY | Original only; No Copies |
| PAPER – NO ALJ (Manual Signature Issue) | 1 + 6 Per Rule 1.13 (a)(2) | 1 + 6 Per Rule 1.13 (a)(2) | 1 + 6 Per Rule 1.13 (a)(2) |
| PAPER – ALJ Assigned (Manual Signature Issue) | 1 + 3 Per Rule 1.13 (a)(2) | 1 + 3 Per Rule 1.13 (a)(2) | 1 + 3 Per Rule 1.13 (a)(2) |

^[1] The word “PAPER” as used herein is a generic term to describe one of several different media forms, including but not limited to, Paper, CD-ROMs, DVDs, Portable External Hard-Drives & other acceptable media forms that are not Efiled.





MUST SERVE ALJ WITH PAPER COPY UNLESS

Rule 1.10 (e) In addition to any other requirements of this rule, **the serving person must provide a paper copy of all documents served by e-mail service to the assigned Administrative Law Judge** (or, if none is yet assigned, to the Chief Administrative Law Judge), unless the Administrative Law Judge orders otherwise.

[Tip: Ask ALJ at first PHC]





WHAT HAPPENS IF THE ENTIRE DOCUMENT IS CONFIDENTIAL, SO YOU CANNOT FILE A “PUBLIC VERSION” ?



Completely redacted document

- **The scenario presented here is when there are soooooo many redactions contained in the primary document that it makes no practical sense to file a “Public Version.”**
- **The redacted version looks like some very well-aged Swiss Cheese.**





ANSWER:

STILL FILE A “PUBLIC VERSION,”

but a

“DUMMY” PUBLIC VERSION





“DUMMY” PUBLIC VERSION

- **Prepare a primary document as though you were going to file a “Public Version.” In the Opening (& only) Paragraph, merely recite that the entire filing is comprised of the **CONFIDENTIAL VERSION ONLY** & there is **No Public Version.****
- **Prepare & attach Certificate of Service & Service List and E-Serve the document just like any other document. Then, E-File it.**
- **Readers will then become immediately aware of the unique format of the filing.**





ACTUAL FILED EXAMPLES

Docket Office Staff will show you actual filed samples of Motions to File Under Seal with Proposed Orders and Confidential Envelopes (containers) that have been Filed Under Seal





Example – Motion to File Under Seal

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



FILED
11-18-10
04:59 PM

Application of Pacific Gas and Electric
Company for Authority to Increase Electric
Rates and Charges to Recover Costs Relating
to California Solar Photovoltaic Manufacturing
Development Facility

A.10-11-002
(Filed on November 1, 2010)

U 39 E

**MOTION OF PACIFIC GAS AND ELECTRIC COMPANY FOR LEAVE TO
FILE CONFIDENTIAL INFORMATION UNDER SEAL [TOGETHER WITH
PROPOSED] ALJ RULING GRANTING PACIFIC GAS AND ELECTRIC
COMPANY’S MOTION FOR LEAVE TO FILE CONFIDENTIAL INFORMATION
UNDER SEAL**

CHRISTOPHER J. WARNER

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6695
Facsimile: (415) 973-0516
E-Mail: CJW5@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: November 18, 2010





Example – Motion to File Under Seal (Opening Paragraph)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company for Authority to Increase Electric
Rates and Charges to Recover Costs Relating
to California Solar Photovoltaic Manufacturing
Development Facility

A.10-11-002
(Filed on November 1, 2010)

U 39 E

**MOTION OF PACIFIC GAS AND ELECTRIC COMPANY FOR LEAVE TO
FILE CONFIDENTIAL INFORMATION UNDER SEAL [TOGETHER WITH
PROPOSED] ALJ RULING GRANTING PACIFIC GAS AND ELECTRIC
COMPANY'S MOTION FOR LEAVE TO FILE CONFIDENTIAL INFORMATION
UNDER SEAL**

I. INTRODUCTION

Pursuant to the Rule 11.4 and the above-referenced application, Pacific Gas and Electric Company (PG&E) respectfully requests leave to file certain confidential information under seal.

II. RELIEF REQUESTED

On November 1, 2010, PG&E filed A.10-11-002, requesting Commission approval to increase electric rates and charges to collect \$35.6 million over 3 years as the reasonable level of revenue requirements necessary to provide partial support for the balance of non-federal matching funds under an application by SVTC Technologies, a for-profit entity, for an award of \$98 million in federal funds from the U.S. Department of Energy (DOE) to construct a California solar photovoltaic (PV) manufacturing development facility (California Solar PV MDF) in San Jose, California. In return for PG&E's financial contribution, PG&E will receive a financial interest in SVTC Solar in order to provide the potential for full reimbursement to PG&E's customers over the long-term.

On October 5, 2010, SVTC Technologies applied to the DOE for \$98 million in federal funding to construct and operate the California Solar PV MDF in Northern California under DOE's PV Manufacturing Initiative announced on July 30, 2010. SVTC Technologies' application to the DOE provides extensive detailed, relevant and factual information on its





Example – Motion to File Under Seal (Proposed Order)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Increase Electric Rates and Charges to Recover Costs Relating to California Solar Photovoltaic Manufacturing Development Facility

U 39 E

A.10-11-002
(Filed on November 1, 2010)

[PROPOSED] ALJ RULING GRANTING PACIFIC GAS AND ELECTRIC COMPANY'S MOTION FOR LEAVE TO FILE CONFIDENTIAL INFORMATION UNDER SEAL

I. INTRODUCTION

On November 18, 2010, Pacific Gas and Electric Company (PG&E) filed a motion for leave to file certain confidential information under seal. This Ruling grants the relief requested.

II. RELIEF REQUESTED

On November 1, 2010, PG&E filed A.10-11-002, requesting Commission approval to increase electric rates and charges to collect \$35.6 million over 3 years as the reasonable level of revenue requirements necessary to provide partial support for the balance of non-federal matching funds under an application by SVTC Technologies, a for-profit entity, for an award of \$98 million in federal funds from the U.S. Department of Energy (DOE) to construct a California solar photovoltaic (PV) manufacturing development facility (California Solar PV MDF) in San Jose, California. In return for PG&E's financial contribution, PG&E will receive a financial interest in SVTC Solar in order to provide the potential for full reimbursement to PG&E's customers over the long-term.

On November 18, 2010, PG&E filed a motion in this proceeding requesting leave to file certain proprietary and confidential information under seal in this proceeding. PG&E's motion

represents as follows: On October 5, 2010, SVTC Technologies applied to the DOE for \$98 million in federal funding to construct and operate the California Solar PV MDF in Northern California under DOE's PV Manufacturing Initiative announced on July 30, 2010. SVTC Technologies' application to the DOE provides extensive detailed, relevant and factual information on its proposal to develop the California Solar PV MDF. However, much of the information in the DOE application is designated as proprietary and confidential by SVTC Technologies and therefore is not able to be provided in the record of this proceeding and made available to appropriate interested parties unless the DOE application is submitted under seal. Public dissemination of the SVTC Technologies DOE application could compromise and adversely impact the proprietary information contained in the application, to the detriment of SVTC Technologies and its proposal.

Based on these assertions, PG&E's motion requests leave under Section 583 of the Public Utilities Code and CPUC General Order No. 66-C to file the SVTC Technologies' DOE application under seal in this proceeding. If this Motion is granted, PG&E will file the complete DOE application in this proceeding and will make it available under Section 583 and to appropriate interested parties upon execution of an appropriate non-disclosure agreement acceptable to PG&E and SVTC Technologies.

[No party has opposed PG&E's motion.] PG&E's request that the referenced information be filed under seal pursuant to Public Utilities Code Section 583 and General Order 66-C is reasonable and supported by the facts, and therefore is granted.

Dated: _____ By: _____





- **PROPERLY PREPARED MEDIUM THAT CONCEALS THE CONFIDENTIAL PORTIONS FROM UNAUTHORIZED PUBLIC VIEWING**
- **(Actual Samples available for viewing only)**
 - **-o0o-**





Example #1 – CONFIDENTIAL ENVELOPE (MFUS - Confidential Exhibits)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California Broadband
Cooperative, Inc. for authority to operate as a
competitive provider of full facilities-based
and resold local exchange and interexchange
telecommunications service within the State of
California

Application No. **A-11-09-010**

MOTION OF CALIFORNIA BROADBAND COOPERATIVE, INC.
FOR LEAVE TO FILE CONFIDENTIAL MATERIALS (EXHIBITS 4 – 7)
UNDER SEAL TO APPLICATION FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY

CONFIDENTIAL

FILED UNDER SEAL

Jane Whang
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Telephone: (415) 276-6500
Facsimile: (415) 276-6599
Email: janewhang@dw.com

Attorneys for California Broadband
Cooperative, Inc.

September 16, 2011





Example #2- CONFIDENTIAL ENVELOPE (Financial Information per D.97-09-035)

Form of Application for Registration
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Applicant)
Named below for Registration as an Interexchange)
Carrier Telephone Corporation Pursuant to the)
Provisions of Public Utilities Code Section 1013)

A. 10-05-007

FILED UNDER SEAL

G-FIVE Communications, LLC
4554-C Caterpillar Road
Redding, CA 96049

Telephone: 800-644-3483
Facsimile: 530-243-5390
Toll Free: 800-644-3483

**CONFIDENTIAL FINANCIAL INFORMATION
FILED UNDER SEAL PURSUANT TO DECISION 97-09-035**

Dated: May 3, 2010

Robin Norton, Consultant for Applicant
Technologies Management, Inc.
2600 Maitland Center Parkway
Maitland FL, 32751

Telephone: (407) 740-3004
Fax: (407) 740-0613





Example #3- CONFIDENTIAL ENVELOPE (Materials Tendered On CD-ROM)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
PUBLIC UTILITIES COMMISSION
JUN 24 2011
1.11-06-009 SAN FRANCISCO OFFICE
NO. _____

Order Instituting Investigation on the
Commission's Own Motion Into the
Planned Purchase and Acquisition by
AT&T Inc. of T-Mobile USA, Inc., and
its Effects on California Ratepayers and
the California Economy.)

**RESPONSES OF SPRINT NEXTEL TO
DATA REQUESTS FROM THE COMMISSION
AND FROM THE COMMISSION STAFF**

**HIGHLY CONFIDENTIAL INFORMATION
VERSION - FILED UNDER SEAL
PURSUANT TO ORDERING PARAGRAPH 13 OF
THE OII - 1.11-06-009 - FILED JUNE 9, 2011**

CONFIDENTIAL CD-ROM ORIGINAL WITH CONFIDENTIAL EXHIBITS
SIX CONFIDENTIAL CD-ROM COPIES WITH CONFIDENTIAL EXHIBITS
(506)

NOTE: THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL
INFORMATION WHICH MAY ONLY BE READ BY COMMISSION STAFF OR
PERSONS WHO HAVE SIGNED THE PROTECTIVE ORDER!

CONFIDENTIAL

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Email: stephen.h.kukta@sprint.com
Attorney for Sprint Nextel

Dated: June 24, 2011

SECRET OFFICE





QUESTIONS FROM THE AUDIENCE





Thank you!

**For Additional Information contact:
Docket Office
California Public Utilities Commission
505 Van Ness Avenue, Room 2001
San Francisco, CA 94102
(415) 703-1929/1927
Email: Efile-help@cpuc.ca.gov**

**All references to Rules refer to the Commission's
Rules of Practice and Procedure which are available at:
<http://www.cpuc.ca.gov/PUC/documents/codelawspolicies.htm>**

