
PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 27, 2017

Ms. Meredith E. Allen
Senior Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105

MEAe@pge.com

Dear Ms. Allen,

Thank you for your letter dated October 23, 2017, concerning the posting of certain documents on the Commission's public website regarding the October 2017 Northern California Fires. I appreciate your statement that PG&E takes seriously its obligations to the Commission and remains "committed to being open, transparent and fully cooperative throughout this process."

I also appreciate your statement that PG&E will rely on Commission staff's discretion in determining which Electric Incident Reports ("EIRs") and daily status updates related to the October 2017 Northern California Fires should be posted to the public website, and that PG&E supports publicly posting these records.

I understand that PG&E would like the Commission to redact two categories of information from the EIRs before they are posted publicly:

- (1) personally identifiable information, such as PG&E employee names, emails, and phone numbers; and
- (2) the specific addresses of each incident (not including towns and counties) and the circuit and pole identifying information.

PG&E asks that these two categories of information be redacted "to protect privacy and to preserve the integrity of potential evidence critical to finding the answers our customers and communities deserve."

PG&E states that:

As you know, the EIRs contain personal information, including the specific names and contact information of PG&E front line employees. We are concerned that the disclosure of their information would constitute an unwarranted invasion of their privacy and request that their names and contact information be redacted from the EIRs.

With respect to the locations, we are concerned that disclosing the specific locations identified in the EIRs could interfere with and compromise the collection and preservation of potential evidence for the Commission's and CAL FIRE's reviews. In the interests of avoiding any actions that would compromise a thorough review, we respectfully request that the Commission redact the individual location information, including the address, pole and circuit information. We support releasing the city and county information in each EIR.

PG&E makes one other request:

Finally, under California Public Utility Code §315, accident reports and other materials filed with the Commission are expressly prohibited from introduction "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property". The Commission references this statutory prohibition in orders requiring the disclosure of information pursuant to California Public Records act. We would respectfully request that you consider including a similar statement on the public website with regard to this information.

PG&E Employee Information

With regard to your request that the Commission redact from October 2017 Northern California Fire EIRs posted on its public website "personally identifiable information, such as PG&E employee names, emails, and phone numbers" because you believe that "disclosure of their information would constitute an unwarranted invasion of their privacy", I respectfully disagree. The Commission does not generally redact the names and contact information for utility employees involved in safety-related activities, including activities related to communications with the Commission, from records provided in response to records requests or subpoenas because it does not believe that the disclosure of such utility employee information would constitute an unwarranted invasion of personal privacy.¹

While the Commission notes, in Resolution L-436, that it may withhold certain portions of safety investigation records before posting such records on the internet, where disclosure could create a risk of harm to utility facilities, employees, and the public, without providing significant additional insight into the operations of the utility and the Commission, it goes on to explain that:

¹ See, e.g., Resolution L-436 and Resolution L-459.

The scope of redactions may vary with the facts of a particular case. The objective reasonableness of privacy expectations varies with the context, as does the sensitivity of utility facility location information, which may be available to the public through other sources.² Assertions 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, since there may be competing interests favoring disclosure.³ (Resolution L-436, p. 8.)

Later, the Commission addresses the treatment of records containing utility employee names in more detail:

CPUC generated safety inspection, audit, investigation, and citation records and correspondence may include personal information, and such information is likely to be directly relevant to the purpose of the audit. Such CPUC generated documents include the names and addresses of utility employees to whom the correspondence is directed. Such individuals are generally associated with a utility's regulatory affairs office or safety related unit. Utility job titles include directors and managers of utility units responsible for the safety of a utility's facilities and operations. (Resolution L-436, p. 11.)

...

Since utility employees who receive safety-related correspondence from the CPUC, or who submit such correspondence to the CPUC, are involved in activities relating to utility safety as an element of their routine employment responsibilities, and are often in positions with substantial safety management responsibilities, we do not believe such utility employees have an objectively reasonable expectation in the privacy of their identity and job classification or specification. We have reached this conclusion in prior resolutions, including L-265, L-272 and L-332. (Resolution L-436, p. 12.)

Currently, the Commission does not routinely post safety-incident reports filed by utilities on its website. As both the Commission and PG&E recognize, however, the situation involving the October 2017 Northern California Fires is far from routine, and both the agency and the utility recognize the need for greater public access to relevant records.

² Resolution L-436, p. 8, fn. 19: “*See, e.g., International Federation, supra*, 42 Cal.4th at 330-333; *Hill v. National Collegiate Athletic Ass’n*. (NCAA) (1994) 7 Cal.4th 1, 35-37: “in addition, customs, practices, and physical settings surrounding particular activities may create or inhibit reasonable expectations of privacy.” (7 Cal.4th at 37). *See also, Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370-376; *Tom v. City and County of San Francisco* (2004) 120 Cal.App.4th 674, 683-684; D.05-04-030 at 11-19; D.94-02-007; and Resolutions L-265, L-272, and L-332, *passim*.”

³ Resolution L-436, p. 9, fn. 20: “*See, e.g., County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301.”

Thus far, the only PG&E employee names I have seen in the EIRs submitted by PG&E concerning the October 2017 Northern California Fires have been the names of the individuals submitting the EIRs. The job titles of these individuals include Compliance Specialist, and Compliance Specialist, Expert. In my view, these would appear to be utility employees likely to have a very low objectively reasonable expectation that their identities, job titles, and contact information would not be disclosed by the Commission.

As the Commission has noted regarding other contexts in which utilities have sought to restrict Commission disclosure of utility employee names and related information: “the most reliable manner of reviewing records to make determinations [regarding utility activities affecting ratepayers] is by name. ...The reason for this is simple. We, as humans, are more practiced in name recognition than any other form or identification...’ We continue to find the use of names is often “critical to our effective implementation of our regulatory responsibilities....”⁴

The Commission will follow its usual practice regarding the disclosure of the names and contact information of utility employees with safety-related responsibilities.

Incident Location Information (specific addresses, circuit and pole identifying information)

When the Commission discloses safety-incident records, whether they be EIRs submitted to the Commission by utilities, or investigation records generated by the Commission, the Commission does not routinely withhold incident location information from the public.

In this particular situation, where CAL FIRE is still investigating the cause of specific incidents, and where the Commission has heard stories about individuals impersonating utility employees, and other individuals, seeking access to specific incident sites in a manner that could, in theory, make it more difficult for CAL FIRE and other governmental agencies to collect evidence and engage in a thorough review of the incidents, the Commission will, for a limited period of time, redact specific street addresses, and circuit and pole identifying numbers, to the extent they may appear in October 2017 Northern California EIRs submitted to the Commission, before posting such EIRs on the Commission’s public website. This limited period will end when CAL FIRE, and the Commission’s Safety and Enforcement Division, informs the Legal Division Public Records Office that the portions of investigations that involve the collection of evidence and the initial review of the reported incident locations have been completed, and that there is no longer a serious risk that the integrity of the evidence and data collection process would be seriously compromised by the disclosure of street addresses, and circuit and pole identifying information. In the long run, the provision of public access to such information may well be essential to a comprehensive understanding of the reported incidents.

At present, the public interest that would be served by the disclosure of the specific location information for which PG&E requests confidential treatment is clearly outweighed by the public interest that would be served by withholding such information for the period of time needed to ensure that CAL FIRE and others have an opportunity to complete the collection of evidence and

⁴ D.05-04-030, p. 18, quoting D.94-02-007 (53 CPUC 2d 177, 183.)

information regarding the incidents without the potential that such processes could be impeded by the actions of others at the specific incident locations.

Public Utilities Code § 315 Statement

With regard to PG&E's request that the Commission include on its public website a statement referencing the Cal. Pub. Util. Code § 315 prohibition on the admission of certain safety records as evidence in actions for damages associated with safety incidents, similar to statements included in Commission resolutions authorizing disclosure of incident records, we wholeheartedly agree. Commission resolutions authorizing disclosure typically make clear that, while Cal. Pub. Util. Code § 315 does not bar the Commission's disclosure of safety records, it does bar the use of accident reports filed with the Commission, and orders or recommendations of the Commission, as evidence in actions for damages associated with accidents involving utility facilities and operations, but does not limit disclosure of such records.

Cal. Pub. Util. Code § 315 states:

The commission shall investigate the cause of all accidents occurring within this State upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and may make such order or recommendation with respect thereto as in its judgment seems just and reasonable. Neither the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property. Every public utility shall file with the commission, under such rules as the commission prescribes, a report of each accident so occurring of such kinds or classes as the commission from time to time designates.

We will post an appropriate reference to Cal. Pub. Util. Code § 315 on the Commission's public website, on the page devoted to the October 2017 Northern California Fires.

Thank you again for your cooperation in this matter, and your confidence that Commission staff will appropriately exercise its discretion regarding the disclosure of EIRs and daily updates submitted by PG&E, and your understanding of the need to provide the public with information concerning the October 2017 Northern California Fires.

Sincerely,

/s/ Fred Harris

Fred Harris
Staff Counsel