



April 3, 2019

The Honorable Mark Stone
Room 3146
State Capitol
Sacramento, California 95814



SUBJECT: **AB 1323 (Stone) – Notice of Opposition – As Amended April 2, 2019**
PUC Release of Highly Sensitive and Confidential Information
In Assembly Utilities and Energy, Wednesday April 10th



Dear Assembly Member Stone:



The California Railroads must respectfully oppose AB 1323. The bill would completely reverse existing confidentiality requirements for documents provided to the PUC by utilities and would substantially eliminate current CPUC statutes that limit public access to highly sensitive documents required by, and supplied to, the Commission by public utilities, including freight railroads.

AB 1323 is an overly-broad bill. The requirement to disclose all information including confidential information is arbitrary. The bill fails when it comes to CPUC's own stewardship value which states: "Service as responsible caretakers of the human, financial, information, and natural resources entrusted to us." Disclosure of confidential information to the public must be weighed against the benefits of nondisclosure. The cost benefit analysis of disclosing confidential information is a case-by-case situation -- an overly broad order could potentially erode perception of and trust in the CPUC. The bill should be amended to maintain the responsibility of the CPUC to secure information that utilities are compelled to provide; information that is extremely safety-sensitive and security-sensitive and dangerous if disclosed to those that wish to do harm to the public or utility.

The railroads have the following critical concerns with this bill:

- States that all information furnished to the commission by a utility, except matters specifically required to be closed to public inspection by federal or state law, must be open to public inspection, except by order of the commission, a commissioner, or an administrative law judge. Currently, no information furnished by a utility is open to public inspection unless the information is specifically required to be open under the Public Utilities Act. This drastic change would mean that the CPUC would no longer be required to ensure that currently-designated confidential and highly-sensitive information, particularly safety-sensitive, rail information, is protected from falling into the wrong hands. Further, the bill appears to push the CPUC to disclose as much information as possible as a matter of policy, without fully analyzing if such a broad policy makes sense given the type of information that the CPUC has in its possession. Highly sensitive information supplied by a public utility is distinctive from much of the information released to other state agencies in that the CPUC can compel a utility to submit such information. The CPUC must accept the responsibility of requiring submittal of safety-sensitive and security-sensitive information.
- Allows, but does not require, the commission to designate specific categories of information as confidential, if it finds that the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing the information. This bill does not require, but disturbingly does not prevent, the commission from disclosing documents when the public interest would be better served by not disclosing the records. That is a very dangerous balancing

act given the intent of the bill to require substantially broader access to utility information by the CPUC. This unspecified process is not adequate to protect highly-sensitive information. Under various circumstances the CPUC may come into possession of or compel the railroad to provide information about the railroads' safety and security practices; what each railroad ships, where it ships it, and when; proprietary information about how the railroad does business that could place it in an economic disadvantage if disclosed to others; and information about railroad personnel. These types of information should be deemed confidential or the state will risk jeopardizing the communities in which the railroads operate and the personnel who operate the railroads, and risk exposing the railroad to unfair business practices.

- Allows a utility to request the commission to withhold from public disclosure all or a portion of the information provided, but only if such confidentiality is specifically required by federal or state law or if the commission exempts the information from public disclosure based on public interest not being served. Limiting the ability for the railroads to request confidentiality to just these two exemptions leaves open the real possibility of disclosure of still highly confidential information if released for any other purpose. Some situations that could reasonably arise through inadequate protection of this information, by making the information available for use by those who would use the information to do harm include information about:
 1. Types, volumes, and routes of shipments of flammable or toxic commodities.
 2. Practices used to protect safety and security of rail shipments, including homeland security information.
 3. Customers, including pricing.
 4. Employees who operate trains, maintain track and perform other duties related to train movements.
- If the commission does not agree with a request for confidentiality, requires the utility to bring a motion for confidentiality. Automatically deems information as public and open for public inspection if the commission fails to issue an order on a request from the utility for a motion for confidentiality within 45 days of the request. If that occurs, the bill provides that the information that is the subject of the request will be provisionally withheld from public disclosure subject to the right of the utility to seek a writ of review. This is a dangerous and irresponsible process to deal with the type of information requested by the PUC. By assuming all information should be made public with only a few options to keep the information confidential, this bill would also require the railroads to continually exhaust its remedies by going to court to prevent the release of confidential information. This would impose an administrative burden for the railroads and other utilities, requiring the utilities to incur additional costs for procedural/filing requirements to deem the substantial amounts of information requested by the CPUC as confidential, and handling disputes associated with the overly-broad policy.
- Limits the Commission's authority to designate documents as "confidential" to a public interest exemption. In addition to weighing the public interest, any valid legal basis in federal or state law or regulations preventing disclosure or allowing nondisclosure should be available to the Commission to include in its Confidentiality Matrices.
- Finally, provides that any present or former officer or employee of the commission who divulges any information that is specifically exempt from public disclosure under this section, as determined by the commission, is guilty of a misdemeanor. Current law instead imposes a misdemeanor on any present or former officer or employee of the commission who divulges any confidential information. This section applies specifically to reports that the commission can

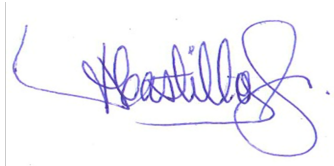
require a public utility to submit on any subject within the commission's jurisdiction. The Legislature already recognized that information that is compelled to be submitted to the Commission should be protected by stern consequences for employees who disclose it to the public without authorization. Why would proprietary, safety-sensitive information now deserve less protection?

We understand that the bill is intended to increase transparency of utility practices and the criteria authorizing the release of public information by the CPUC. Consolidating and clarifying the rules would be helpful, adding additional disclosure protections for CPUC-specific sensitive information in a single location in the code. However, this bill as written would instead set up a very onerous and dangerous public policy of allowing highly-sensitive information to get into the wrong hands.

Sincerely,



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