

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

**DECLARATION OF STEPHEN R. TAYLOR
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Stephen R. Taylor, do declare as follows:

1. I am Senior Energy Administrator in the Electric & Fuel Procurement Department for San Diego Gas & Electric Company (“SDG&E”). I have reviewed SDG&E’s August 1, 2011 Project Development Status Report, submitted concurrently herewith (the “Report”). In addition, I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066^{1/} and D.08-04-023 to demonstrate that the confidential information (“Protected Information”) provided in the Report submitted concurrently herewith (described below) falls within the scope of data protected as confidential pursuant to the IOU Matrix attached to the Commission’s confidentiality decision, D.06-06-066 (the “IOU Matrix”) and/or under relevant statutory provisions.^{2/}

^{1/} As amended by D.07-05-032.

^{2/} The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if information is eligible for statutory protection, it must be protected under the Matrix. (See *Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, *38-39) Thus, by claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of applicable statutory provisions including, but not limited to, Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

3. In D.06-06-066, the Commission adopted rules governing confidentiality of certain categories of electric procurement data submitted to the Commission by investor owned utilities (“IOUs”) and energy service providers (“ESPs”). The Commission established two matrices – one applicable to IOUs, the other to ESPs – setting forth categories and sub-categories of data and providing a confidentiality designation for each.^{3/}

4. To the extent information matches a Matrix category, it is entitled to the protection the Matrix provides for that category of information. In addition, the Commission has made clear that information must be protected where “it matches a Matrix category exactly . . . or consists of information from which that information may be easily derived.”^{4/} In order to claim the protection afforded by the relevant Matrix, the party seeking confidential treatment must establish:

- 1) That the material it is submitting constitutes a particular type of data listed in the Matrix,
- 2) Which category or categories in the Matrix the data correspond to,
- 3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- 4) That the information is not already public, and
- 5) That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.^{5/}

^{3/} See, D.06-06-066, as amended by D.07-05-032, *mimeo*, Appendices 1 and 2.

^{4/} See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

^{5/} D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

5. SDG&E's Protected Information: The Protected Information, consisting of the information described below, is protected pursuant to the following Matrix categories:

Description of Data	Matrix Category	Period of Confidentiality
RPS Contract requirement/milestone completion data for 2004-2010 CPUC approved contracts and CPUC contracts pending approval.	VII.G Project status information constitutes "analyses and evaluations of proposed RPS projects" afforded confidential treatment for 3 years from the contracted date of delivery. ^{6/}	3 years
Project Viability Scoresheet	VII.G Score sheets, analyses, evaluations of proposed RPS projects	3 years
RFO bid data including transmission details, related to short-listed contracts from 2006-2009 RFOs.	VIII.A Bid information, including counterparty name, etc., is afforded confidential treatment until after contracts are submitted to CPUC for approval	Until contracts submitted to CPUC for approval

6. The Commission previously considered and approved application of IOU Matrix confidentiality protection to project development status data in its *Administrative Law Judge's Ruling Granting San Diego Gas & Electric Company's May 21, 2007 Amendment to April 3, 2007 Motion and May 22, 2007 Amendment to August 1, 2006 Motion*, issued June 28, 2007 in R.06-05-027.

7. SDG&E intends to comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

8. I am not aware of any instance of public disclosure of the Protected Information.

^{6/} See *Administrative Law Judge's Ruling Granting San Diego Gas & Electric Company's May 21, 2007 Amendment to April 3, 2007 Motion and May 22, 2007 Amendment to August 1, 2006 Motion*, issued June 28, 2007 in R.06-05-027, p. 3; D.06-06-066, as modified by D.07-05-032, p. 64.

9. The Protected Information cannot be provided in a form that is further aggregated, redacted, or summarized and still provide the level of detail requested and expected by the Energy Division.

10. As an alternative basis for requesting confidential treatment, SDG&E submits that the project status information provided in the Report is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under Govt. Code § 6254(k), and that the disclosure of this information would place SDG&E at an unfair business disadvantage, thus triggering the protection of G.O. 66-C.^{2/}

11. Public Utilities Code § 454.5(g) provides:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

12. General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

^{2/} This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See, Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v. Tanforan*, 173 Cal. 270, 274 (1916) (“Since . . . inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.”)

13. Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.^{8/} Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

14. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.^{9/}

15. If disclosed, the Protected Information could provide parties with whom SDG&E is currently negotiating insight into SDG&E's procurement needs, which would unfairly undermine SDG&E's negotiation position and could ultimately result in increased cost to ratepayers. In addition, if developers mistakenly perceive that SDG&E is not committed to assisting their projects, disclosure of the Protected Information could act as a disincentive to developers. Accordingly, pursuant to P.U. Code § 583, SDG&E seeks confidential treatment of this data, which falls within the scope of P.U. Code § 454.5(g), Evidence Code § 1060 and General Order 66-C.

16. Developers' Protected Information: The RPS project status information provided in the Report may also constitute confidential trade secret information of the listed projected developers that SDG&E is contractually obligated to protect. The project status information set forth in the Report relates directly to viability of the respective projects and identifies barriers to project success. Disclosure of this extremely

^{8/} See also Govt. Code § 6254.7(d).

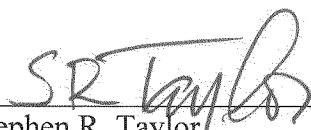
^{9/} See, D.06-06-066, *mimeo*, pp. 26-28.

sensitive information could harm developers' ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

17. In accordance with its contractual obligations and pursuant to the relevant statutory provisions described herein, SDG&E hereby requests that the information set forth in the Report be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 1st day of August, 2011, at San Diego, California.



Stephen R. Taylor
Senior Energy Administrator