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PUBLIC

Ms. Maria Salinas
California Public Utilities Commission
Energy Division
505 Van Ness Avenue, Room 4005
San Francisco, CA 94102

RE: Reply of San Diego Gas & Electric Company to Protest of Supplemental Advice Letter 2258-E-A (USS Energy Star 2 LLC)

Dear Ms. Salinas:

In accordance with Section 7.4.3 of General Order ("GO") 96-B, San Diego Gas & Electric Company ("SDG&E") hereby responds to the Protest of Supplemental Advice Letter ("AL") 2258-E-A filed by the Division of Ratepayer Advocates ("DRA") (the "Protest"). On February 17th SDG&E filed AL 2258-E-A requesting approval of the *Amendment Addressing Pricing And Other Issues* ("Pricing Amendment") regarding an existing power purchase agreement ("PPA") for the Campo Verde Solar project, f/k/a Mount Signal Solar (the "Project"), a photovoltaic facility located near El Centro, California. The Project is located in the Imperial Valley and is one of the original Sunrise Powerlink projects. The Pricing Amendment, among other things, lowers the contract price and increases the quantity of renewable energy provided by the Project in Compliance Period 1 ("CP1") as established under Public Utilities Code § 399.15(b)(1).

DRA's Protest is procedurally flawed and lacking in merit. Pursuant to Rule 7.5.1 of GO 96-B, DRA's Protest must be limited to the substance of the supplemental filing (i.e., the amendments proposed in AL 2258-E-A). The Protest, however, improperly lumps together discussion of the Pricing Amendment (subject of AL 2258-E-A) and the Restated 4th Amendment (subject of AL 2258-E), and repeats arguments from DRA's prior protest to AL 2258-E.

DRA's Protest can be categorized into three content areas: (i) PPA amendment process, (ii) pricing competitiveness, and (iii) Least Cost Best Fit ("LCBF") Methodology. DRA's claims are repetitive, lacking merit and misguided. As further discussed in the below sections, DRA's AL 2258-E-A Protest should be dismissed for the following reasons:

- A) The primary objection set forth in the Protest – i.e., that the amended PPA is an abuse of the amendment process - essentially repeats DRA’s original protest of AL 2258-E, where it was asserted that the contract changes effectively constitute a new project, and so DRA’s Protest on that basis is procedurally invalid;
- B) Compared with recently executed and CPUC-approved renewable energy contracts which were competitively solicited or bilaterally negotiated, the Project is competitively priced;
- C) Anticipated 2013 MWh contributions toward RPS goals from the Campo Verde Solar project are significant and well within the LCBF guidelines for qualifying as a CP1 project;
- D) The appropriateness of the Short-Term/Long-Term (“STLT”) Adder has previously been determined.

PPA AMENDMENT PROCESS

The question of whether proposed changes to the previously-approved PPA should be required to participate in the next RPS solicitation was addressed in SDG&E’s July 7, 2011, reply to the protests of AL 2258-E. Reference is made to the “AMENDMENT PROCESS” section on Page 2 of SDG&E’s protest reply regarding AL 2258-E. To summarize and supplement this section, consideration of complex policy issues related to the contract amendment process and delineating which types of contract modifications give rise to treatment of a modified contract as a new contract should be forward-looking and occur in the LTTP or RPS proceedings rather than in the context of an individual Advice Letter filing. The Independent Evaluator’s (“IE”) Report accompanying AL 2258-E-A recommends that the amended contract merits approval.

The Pricing Amendment did not modify the physical project in any way. Plainly, the lower pricing reflected in the Pricing Amendment and increased CP1 deliveries are both positive developments for ratepayers and the Pricing Amendment does not constitute a “new project.” Accordingly, this aspect of DRA’s Protest should be rejected.

PRICING

Contrary to DRA’s assertion of uncompetitive pricing, the Project compares favorably (i) with other contract prices on a levelized contract cost basis, (ii) with the 2011 RFO Shortlist for similar projects, and (iii) with the results of SDG&E’s Renewable Auction Mechanism (“RAM”). The pricing arguments included in DRA’s Protest should be rejected as lacking in merit for the reasons set forth below:

- 1) DRA asserts that the Pricing Amendment is not price competitive with other offers available to SDG&E and that the new proposed price is not competitive with today’s marketplace



- 2) DRA asserts that the Pricing Amendment's proposed price is not competitive with SDG&E's RPS RFO Shortlist in 2011

[REDACTED]

- 3) DRA asserts that the RAM results demonstrate a large disparity between Campo Verde's proposed cost and the market

The RAM is a program for smaller (mostly distribution-level connected) renewable projects with a limited cap of overall capacity to be contracted over the next few years involving special considerations and no anticipated CP1 procurement. The RAM program is only a small component contributing to RPS compliance.

[REDACTED]

LCBF METHODOLOGY

As a threshold matter, SDG&E notes that a detailed description of its LCBF Methodology, which includes both the Short-Term/Long-Term ("STLT") Adder and criteria for a individual project's eligibility for CP1 inclusion, was set forth in its 2011 RPS Shortlist Report submitted in AL 2300-E.¹ DRA elected to not protest SDG&E's LCBF methodology in AL 2300-E. It is unreasonable for DRA to seek to challenge SDG&E's LCBF Methodology now in the context of an AL related to an individual renewable project. Moreover, DRA's concerns are unfounded and should be rejected for the reasons stated below:

- 1) DRA asserts that the Project will make a negligible contribution to SDG&E's Compliance Period 1 obligations

This claim by DRA is incorrect.

[REDACTED]

- 2) DRA asserts that the inclusion of the STLT Adder in the 2011 RPS RFO LCBF Methodology unfairly biases proposal evaluations

Section IV – Revised Pricing Evaluation, in the confidential section of AL 2258-E-A, discusses the STLT Adder and how it was applied in the evaluation of the Pricing Amendment which was consistent with its application in other similarly situated projects. Additionally, beginning on page 3-6 of the IE Report, the Independent Evaluator gave extensive consideration to the STLT Adder (referred to as the Near Term Long Term ("NTLT") Adder in the IE Report) and how it should be applied. In Section 3.3 of the IE Report the IE has opined that SDG&E's LCBF Methodology is reasonable, bears a rational and consistent relationship to cost and value, and the 2011 LCBF model is superior to the models SDG&E used in previous RFOs.

¹ San Diego Gas & Electric Company, *2011 RPS Shortlist Report*, Advice Letter 2300-E, effective February 28, 2012.

In conclusion, not only is the Campo Verde Solar project competitively priced, but it also meaningfully contributes to CP1 RPS compliance objectives and supports the Sunrise Powerlink. Since filing the Pricing Amendment in AL 2258-E-A, the Project's viability has further been enhanced with the posting of the second CAISO financial security installment. All this represents a favorable and viable transaction for ratepayers and the State of California. Accordingly, DRA's Protest should be denied and the amended PPA should be approved.

CLAY FABER
Director – Regulatory Affairs

Cc: President M. Peevey
Commissioner T. Simon
Commissioner K. Sandoval
Commissioner M. Florio
Commissioner M. Ferron
Director of the Energy Division J. Fitch
General Counsel F. Lindh
Chief Administrative Law Judge K. Clopton
Energy Division J. Simon
Energy Division P. Douglas
DRA Acting Director J. Como
DRA Program Manager C. Walker
Service List R.11-05-005 (Redacted)

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

**DECLARATION OF THOMAS C. SAILE
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Thomas C. Saile, do declare as follows:

1. I am an Energy Contracts Originator for San Diego Gas & Electric Company (“SDG&E”). I have reviewed SDG&E’s reply to DRA’s Protest to Advice Letter 2258-E-A (requesting approval of an amended renewable Power Purchase & Sale Agreement (PPA) with USS Energy Star 2 LLC), dated March 16, 2012 (“Protest Reply”). 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, as modified by D.07-05-032, and D.08-04-023, to demonstrate that the confidential information (“Protected Information”) provided in the Protest Reply submitted concurrently herewith, falls within the scope of data protected pursuant to the IOU Matrix attached to D.06-06-066 (the “IOU Matrix”).^{1/} In addition, the Commission has made clear that information must be protected where “it matches a Matrix category exactly or

^{1/} 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 Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

consists of information from which that information may be easily derived.”^{2/}

3. I address below each of the following five features of Ordering

Paragraph 2 in D.06-06-066:

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

4. SDG&E’s Protected Information: As directed by the Commission,

SDG&E demonstrates in table form below that the instant confidentiality request satisfies the requirements of D.06-06-066:^{4/}

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
<p><i>Bid Information</i>^{5/}</p> <p>Locations:</p> <p>1. LCBF METHODOLOGY section</p> <p><input type="checkbox"/> Paragraph 1) <i>DRA assets that the Project will make a negligible contribution to SDG&E’s Compliance</i></p>	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>The data provided is non-public bid data from SDG&E’s Renewable RFOs.</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>This information is protected under IOU Matrix category VIII.A.</p>

^{2/} 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).

^{3/} D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

^{4/} See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s Motions to File Data Under Seal*, issued April 30 in R.06-05-027, p. 7, Ordering Paragraph 3 (“In all future filings, SDG&E shall include with any request for confidentiality a table that lists the five D.06-06-066 Matrix requirements, and explains how each item of data meets the matrix”).

^{5/} The confidential information referenced has a GREEN font color / has a green box around it in the confidential appendices.

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
<p><i>Period 1 obligations – SDG&E’s response as shown in green text;</i></p>	<p>Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data</p>	<p>In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that this information be kept confidential until the final contracts from each of the RFOs have been submitted to the CPUC for approval.</p>
	<p>Affirm that the information is not already public</p>	<p>SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.</p>
	<p>Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.</p>	<p>SDG&E cannot summarize or aggregate the bid data while still providing project-specific details. SDG&E cannot provide redacted or masked versions of these data points while maintaining the format requested by the CPUC.</p>
<p><i>Specific Quantitative Analysis⁶</i></p> <p>Location:</p> <p>1. PRICING section</p> <p>□ Paragraph 2) <i>DRA asserts that the Pricing Amendment’s proposed price is not competitive with SDG&E’s RPS RFO Shortlist in 2011 – SDG&E’s response;</i></p>	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>This data is SDG&E’s specific quantitative analysis involved in scoring and evaluating renewable bids. Some of the data also involves analysis/evaluation of proposed RPS projects.</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>This information is protected under IOU Matrix categories VII.G and/or VIII.B.</p>
	<p>Affirm that the IOU is complying with the limitations on</p>	<p>In accordance with the limitations on confidentiality set forth</p>

^{6/} The confidential information referenced has a **BLUE** font color / has a blue box around it in the confidential appendices.

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
	confidentiality specified in the Matrix for that type of data	in the IOU Matrix, SDG&E requests that this information be kept confidential for three years.
	Affirm that the information is not already public	SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	SDG&E cannot summarize or aggregate the evaluation data while still providing project-specific details. SDG&E cannot provide redacted or masked versions of these data points while maintaining the format requested by the CPUC.
<p><i>Contract Terms</i>^{2/}</p> <p>Locations:</p> <p>1. PRICING section</p> <p><input type="checkbox"/> Paragraph 1) <i>DRA asserts that the Pricing Amendment is not price competitive with other offers available to SDG&E and that the new proposed price is not competitive with today's marketplace – SDG&E's response;</i></p>	Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix	This data includes specific contract terms.
	Identify the Matrix category or categories to which the data corresponds	This information is protected under IOU Matrix category VII.G.
	Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that this information be kept confidential for three years.
	Affirm that the information is not already public	SDG&E has not publicly disclosed this information and is not

^{2/} The confidential information referenced has a RED font color / has a red box around it in the confidential appendices.

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
		aware that it has been disclosed by any other party.
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	In order to include as much detail as possible, SDG&E has provided specific contract terms instead of summaries. SDG&E has provided summaries of certain contract terms in public portions of the testimony.
<p><i>Analysis and Evaluation of Proposed RPS Projects</i>^{8/}</p> <p>Locations:</p> <p>1. PRICING section</p> <p>□ Paragraph 3) <i>DRA asserts that the the RAM results demonstrate a large disparity between Campo Verde’s proposed cost and the market – SDG&E’s response as shown in purple text;</i></p>	Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix	The Commission has concluded that Actual Procurement Percentage data must be protected in order to avoid disclosing SDG&E’s Bundled Retail Sales data. ^{9/}
	Identify the Matrix category or categories to which the data corresponds	This information is protected under IOU Matrix category VII.G.
	Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that the “front three years” of this information be kept confidential.
	Affirm that the information is not already public	SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.
	Affirm that the data cannot be aggregated,	It is not possible to provide this data point in

^{8/} The confidential information referenced has a VIOLET font color / has a violet box around it in the confidential appendices

^{9/} See *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s Motions to File Data Under Seal*, issued April 30 in R.06-05-027.

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
	redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	an aggregated, redacted, summarized or masked fashion.
<p><i>IPT/APT Percentage</i>^{10/}</p> <p>Locations: NONE</p>	Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix	The Commission has concluded that since APT Percentage is a formula linked to Bundled Retail Sales Forecasts, disclosure of APT would allow interest parties to easily calculate SDG&E's Total Energy Forecast – Bundled Customer (MWH). ^{11/} The same concern exists with regard to IPT percentage.
	Identify the Matrix category or categories to which the data corresponds	This information is protected under IOU Matrix category V.C.
	Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that the “front three years” of this information be kept confidential.
	Affirm that the information is not already public	SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.

^{10/} The confidential information referenced has a AQUA font color / has a aqua box around it in the confidential appendices.

^{11/} 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; *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.

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	It is not possible to provide these data points in an aggregated, redacted, summarized or masked fashion.

5. As an alternative basis for requesting confidential treatment, SDG&E submits that the Protest Reply contains information which 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). Disclosure of this information would place SDG&E at an unfair business disadvantage, thus triggering the protection of G.O. 66-C.^{12/}

6. 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

^{12/} 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.”).

provided access to this information under confidentiality procedures authorized by the commission.

7. 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.”

8. 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.^{13/} 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.

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

10. 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.

^{13/} See also Govt. Code § 6254.7(d).


^{14/} See, D.06-06-066, *mimeo*, pp. 26-28.

11. Developers' Protected Information: The Protected Information also constitutes confidential trade secret information of the developer listed therein. SDG&E is required pursuant to the terms of its original Power Purchase Agreement as amended to protect non-public information. Some of the Protected Information in the original Power Purchase and Sale Agreement as amended and my supporting declaration (including confidential appendices), relates directly to viability of the respective projects. Disclosure of this extremely sensitive information could harm the developers' ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

12. In accordance with its obligations under its Power Purchase and Sale Agreement and pursuant to the relevant statutory provisions described herein, SDG&E hereby requests that the Protected Information 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.

Executed this 16th day of March, 2012, at San Diego, California.



Thomas C. Saile
Energy Contracts Originator
Electric and Fuel Procurement
San Diego Gas & Electric