

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

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| Order Instituting Rulemaking to Continue |) | Rulemaking 11-05-005 |
| Implementation and Administration of California |) | (Filed May 5, 2011) |
| Renewables Portfolio Standard Program. |) | |

**SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)
COMMENTS ON STAFF PROPOSAL FOR
RENEWABLE NET SHORT CALCULATION**

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In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”) and the *Administrative Law Judge’s Ruling (1) Issuing Staff Proposal on the Renewable Net Short Calculation (2) Entering Staff Proposal Into the Record and (3) Setting Date for Comments on Proposal* (the “ALJ Ruling”), issued in the above-captioned docket on July 11, 2012, San Diego Gas & Electric Company (“SDG&E”) hereby submits these comments regarding the proposed procurement net short calculation methodology (the “Proposal”) proposed by staff of the Commission’s Energy Division (“Staff”).

The Proposal is based upon the preliminary Renewable Portfolio Standard (“RPS”) net short calculation methodology proposal presented by Staff at the workshop held June 12, 2012. SDG&E does not object to the Proposal, as presented in the ALJ Ruling, but notes that the Proposal is not fully developed and omits important details regarding, for example, process requirements. It is not clear, for instance, whether the monthly updates described in the Proposal would be provided informally to Staff or through some other, more formal process.^{1/} Thus, while SDG&E has no objections at this point to the Proposal, it reserves the right to raise concerns in the future regarding aspects of the Proposal that are yet to be defined.

^{1/} See ALJ Ruling, Attachment 1, p. 4, Table 1.

The ALJ Ruling sets forth specific questions to be considered in connection with the Proposal.^{2/} With regard to the question of whether measuring the renewable net short on an annual basis is appropriate, SDG&E notes that it does not object to providing the renewable net short calculation to the Commission on an annual basis for informational purposes. As the Commission has acknowledged, RPS targets are enforceable on a compliance period basis rather than on an annual basis.^{3/} Thus, SDG&E expects that the annual net short calculation data provided in its RPS Plan would be for the purposes of updating the Commission on SDG&E's procurement efforts rather than for enforcement purposes.

SDG&E further notes that the Proposal contemplates monthly and pre-advice letter filing updates of the net short calculation, but does not, as discussed above, specify the process for providing such updates. SDG&E proposes that the monthly updates be provided to Staff through the procurement review group ("PRG") process. SDG&E's current practice is to provide monthly net short updates to its PRG at its regularly-scheduled PRG meetings. Staff routinely participates in SDG&E's PRG meetings. Thus, the goal of administrative efficiency is served by permitting SDG&E to fulfill the monthly RPS net short update requirement through its current practice of advising Staff of net short status through its PRG meetings.

This common sense approach will keep in check the number of submittals that must be processed by the Energy Division and will avoid adding further complexity to the RPS reporting process. SDG&E further proposes that it be required to prepare a pre-advice letter filing update to its net short calculation only where there are material changes to the net short calculation, and that such updates, when necessary, be provided

^{2/} *Id.* at Attachment 1, p. 2.

^{3/} D.11-12- 020, *mimeo*, Conclusion of Law Nos. 6 and 7.

in the advice letter filing rather than through a separate filing. This approach will, similarly, serve the goals of administrative efficiency and reduction of program complexity.

The ALJ Ruling further inquires whether the Proposal “appropriately balance[s] the need to protect confidential project specific information with the desire to provide the Commission and the renewables market a renewable net short that can be used for RPS procurement authorization?”^{4/} It is not entirely clear to what aspect of the Proposal the question relates. The Proposal does not address the issue of confidential treatment of project specific information or utility net short data other than to acknowledge that the net short calculation relies upon “*confidential* and project-specific viability assessments.”^{5/}

It is beyond dispute that both utility net short data and project specific viability assessments are market sensitive, electric procurement-related information protected under D.06-06-066, *et seq.* The RPS net short is the amount of renewable generation that the utility must procure in order to comply with RPS procurement targets.^{6/} The confidentiality matrix adopted in D.06-06-066 (the “Matrix”) protects utility net short data under category VI.B, which applies to “utility bundled net open (long or short) position for energy.” Project-specific viability assessments are, likewise, protected under Matrix category VII.G, which protects “analyses and evaluations of proposed RPS projects.”

The protections outlined in the Matrix are derived from the statutory protections extended to non-public market sensitive and trade secret information.^{7/} The analysis of protection afforded under the Matrix must always produce a result that is consistent with

^{4/} ALJ Ruling, Attachment 1, p. 2.

^{5/} *Id.* at Attachment 1, p. 3 (emphasis added).

^{6/} *Id.* at Attachment 1, p. 1 (“[t]he renewable net short (RNS) is defined as the amount of new renewable generation necessary for retail sellers to meet or exceed the renewable procurement quantity requirements.”).

^{7/} See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1.

the relevant underlying statutes. In short, if information is eligible for statutory protection, the Commission's rules must operate to protect such information from disclosure. Applying a statutory analysis, it is clear that utility net short data and project-specific viability assessments are protected under Public Utilities Code §§ 454.5(g) and 583, as well as Govt. Code § 6254(k).^{8/}

Section 583 establishes a right to confidential treatment of information otherwise protected by law.^{9/} Both § 454.5(g) and Govt. Code § 6254(k) protect RPS net short data and project-specific viability assessments. Section 454.5(g) requires the Commission to protect from disclosure market sensitive information related to a utility's procurement plan:

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 non-market participants shall be provided access to this information under confidentiality procedures authorized by the Commission. (Emphasis added)

The Commission has declared that information is "market sensitive" if it has "the potential to materially affect an electricity buyer's market price for electricity."^{10/}

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.^{11/} Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in

^{8/} All statutory references herein are to the Public Utilities Code unless otherwise noted.

^{9/} See D.06-06-066, as amended by D.07-05-032, *mimeo*, pp. 27-30.

^{10/} See *id.* at pp. 2-3, 41-42, 46-47.

^{11/} See also Govt. Code § 6254.7(d).

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.

With regard to net short data, disclosure of SDG&E's net short position clearly has the potential to materially affect the price paid by SDG&E ratepayers for renewable energy. Meeting the aggressive goal of 33% renewables by 2020 will require SDG&E to conduct procurement activities within a specified time period. Although SDG&E has disclosed general information about whether it has a need to procure RPS products during each compliance period, SDG&E does not disclose the specific volumes that it must procure. If the market becomes aware that SDG&E will experience a high net short position, it is likely that renewable energy prices will rise in response to SDG&E's high demand. If, on the other hand, the market becomes aware that SDG&E has low demand for new projects, bidders in SDG&E's RPS solicitations may artificially reduce pricing. Given the strong potential that disclosure of specific net short information would affect market pricing, net short data is clearly "market sensitive" procurement data that must be protected under § 454.5(g).

Moreover, while § 454.5(g) focuses solely on the market sensitivity of the data at issue, and does not include a "ratepayer harm" requirement, it is clear that disclosure of specific net short data would harm ratepayers. If SDG&E experiences a high RPS net short, and this fact is disclosed to the market, the result would likely be a rise in renewable energy prices, which would produce a corresponding rise in RPS compliance costs for SDG&E's ratepayer customers. Conversely, if the market becomes aware that SDG&E has low demand for new projects, bidders in SDG&E's RPS solicitations may artificially reduce pricing in order to ensure selection and Commission approval of a contract, and then seek contract re-pricing at a subsequent point, which creates delay and

burdens the administrative process. Thus, given the potential for RPS net short data to affect the price paid by SDG&E ratepayers for renewable energy, and the ratepayer harm caused by disclosure of this data, the data must be protected under § 454.5(g).

In addition, RPS net short data is protected the Public Records Act, Govt. Code § 6254(k). Net short data confers independent economic value (in the form of avoided procurement costs) from not being generally known to developers, who could obtain value from its disclosure. Thus, this information is properly characterized as trade secret information and must therefore be protected under Govt. Code § 6254(k).

Project-specific viability assessments are also properly treated as market sensitive, electric procurement-related information protected under § 454.5(g) and trade secret information protected under Govt. Code § 6254(k). Project-specific viability assessments, which relate to RPS projects for which SDG&E has executed power purchase agreements (“PPAs”), clearly have the potential to affect the price paid by SDG&E ratepayers for renewable energy.

First, disclosure of project-specific viability information would permit potential bidders in SDG&E’s RPS solicitations to glean information concerning SDG&E’s future procurement needs (to know, for example, that SDG&E assigns a low probability of success to a particular project and that SDG&E will therefore solicit additional capacity to add generation to its portfolio). As explained above, knowledge of SDG&E’s specific net short position would provide market participants negotiation leverage, potentially prompting them to raise prices where net short data indicates that demand by a utility for RPS generation will be high.

In addition, because information regarding the viability of RPS projects could influence market prices if it were to be disclosed to market participants, such information constitutes “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.”^{12/} Thus, this information is properly characterized as trade secret information that must be protected under Govt. Code § 6254(k).^{13/}

Finally, utility net short data and project-specific viability assessments are protected by Commission General Order (“G.O.”) 66-C, which operates to protect those “reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.” Net short data is protected under G.O. 66-C inasmuch as disclosure of the data could cause substantial harm to utility ratepayers since such disclosure would place SDG&E at a significant disadvantage in future procurement negotiations, resulting in increased costs to ratepayers. Disclosure of data related to SDG&E’s need for renewable generation provides unfair negotiating leverage to counter-parties, potentially allowing them to raise prices or impose unfavorable conditions where SDG&E’s demand for RPS generation is high.

Similarly, disclosure of project-specific viability information would, as explained above, give counter-parties insight into SDG&E’s procurement needs and place SDG&E at an unfair business disadvantage in negotiating RPS procurement contracts. In addition, disclosure of the project-specific viability assessments would likely create a perception among developers that California is not committed to assisting their renewables projects or protecting their commercially-sensitive project information. This could deter

^{12/} See Civil Code § 3426.1.

^{13/} SDG&E notes further that project-specific viability assessments may also constitute confidential trade secret information of the relevant project developers. The information at issue relates directly to viability of the respective projects and takes into account barriers to project success. Disclosure of this extremely sensitive information could harm developers’ ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

developers from siting projects in California, thereby increasing the difficulty experienced by SDG&E (and other RPS-obligated entities) in achieving RPS compliance. Accordingly, net short data and project-specific viability information must be protected from disclosure pursuant to G.O. 66-C.

For the reasons set forth herein, SDG&E recommends that the Proposal be revised to incorporate the reporting procedures outlined above and to clarify that RPS net short calculation data and project-specific viability assessments will continue to be treated as confidential information and protected from disclosure.

Respectfully submitted this 18th day of July, 2012.

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AFFIDAVIT

I am an employee of the respondent corporation herein, and am authorized to make this verification on its behalf. The matters stated in the foregoing **SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) COMMENTS ON STAFF PROPOSAL FOR RENEWABLE NET SHORT CALCULATION** are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

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 18th day of July, 2012, at San Diego, California

/s/ Hillary Hebert

Hillary Hebert
Partnerships and Programs Manager
Origination and Portfolio Design Department