



Clay Faber - Director
Regulatory Affairs
8330 Century Park Court
San Diego, CA 92123-1548
Tel: 858-654-3563
Fax: 858-654-1788
CFaber@semprautilities.com

October 25, 2013

ADVICE LETTER 2533-E
(U 902-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUBJECT: REQUEST FOR APPROVAL OF THE FIRST AMENDMENT TO LICENSE AGREEMENT BETWEEN SAN DIEGO GAS AND ELECTRIC AND CABRILLO POWER II LLC

Pursuant to Section 851 of the Public Utilities Code and General Order 173, San Diego Gas & Electric Company ("SDG&E") hereby submits to the California Public Utilities Commission (the "Commission" or the "CPUC") for approval the First Amendment to the License Agreement between SDG&E and Cabrillo Power II LLC (CAB II) ("First Amendment"). SDG&E is seeking Commission approval for a surface license covering certain generation units, known as the "Cabrillo II" units, in order to allow them to run from January 1, 2014 through December 31, 2014, with an option at SDG&E's discretion to extend the license agreement for an additional term from January 1, 2015 through December 31, 2015.

SDG&E is filing this Advice Letter because the original license between these parties is due to expire at the end of 2013. SDG&E wishes to enter into the First Amendment for another year or two so that CAB II may be able to continue to run Cabrillo II units. By approving this Advice Letter, the Commission will make it possible for SDG&E to secure in the near term a resource-adequacy product from these units, representing 188 MWs, which is particularly important due to the loss of SONGS.

SDG&E respectfully urges the Commission to process this request for approval because the Original License is due to expire by the end of the year.

A. BACKGROUND

The Cabrillo II units are a collection of 12 natural gas-fired peaking plants totaling 188 MW that are located on SDG&E property throughout San Diego County (Miramar, Kearny Mesa and El Cajon). These units entered service between 1968 and 1972 and were at one time owned by SDG&E. They were subsequently transferred to Cabrillo Power II LLC during electric-industry restructuring. Cabrillo Power II LLC is owned by NRG and the output of the plants is marketed by NRG Power Marketing LLC. The Cabrillo II units have a long history of contracting with SDG&E, other IOU's and the California Independent System Operator ("CAISO") as part of meeting local and regional reliability needs.

During electric-industry restructuring, as part of SDG&E's sale of the Cabrillo II units to NRG, SDG&E granted a real-estate license ("Original License") to Cabrillo Power II LLC, a subsidiary of NRG - which provided access to SDG&E's land for the purpose of accessing and operating the units that NRG purchased from SDG&E. SDG&E is filing, as a companion to this Advice Letter,

another Advice Letter that describes a proposed agreement between SDG&E and NRG Power Marketing LLC that would grant SDG&E a resource-adequacy product from the Cabrillo II units, for 188 MW. This First Amendment would allow NRG to be able to continue to run the Cabrillo II generation units in support of the Resource Adequacy product contracted by SDG&E from the units.

B. GENERAL ORDER 173 REQUIREMENTS

SDG&E may seek approval of the First Amendment through this Advice Letter. General Order 173 allows SDG&E to use the advice-letter process under Section 851 when certain criteria are met. The First Amendment meets these criteria because: (1) the proposal requires no review under the California Environmental Quality Act (CEQA), as explained below, (2) the proposal will not adversely effect the public interest or the ability of SDG&E to provide safe and reliable service to customers at reasonable rates, (3) the financial proceeds from the transaction will not affect SDG&E's ratebase, (4) the net-present value of the License is far less than \$5 million and the term is far shorter than 25 years, and (5) the License at issue does not warrant a more comprehensive review through a formal Section 851 application.

1. Identity and Addresses of the Parties

The address for CAB II is:
Cabrillo Power II LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008

The address for SDG&E is:
San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593

2. Description of the Property

As mentioned above, the Cabrillo II units are located throughout San Diego County (Miramar, Kearny Mesa and El Cajon). These units entered service between 1968 and 1972, and have been in operation on these properties ever since.

3. Intended Use of the Property

There is no proposed change in the use of the property; NRG plans to continue to operate the Cabrillo II units as provided in the propose Resource Adequacy agreement between the parties.

4. Financial Terms

The substance of the negotiations is provided in Confidential Attachment A to this Advice Letter. In that attachment, SDG&E explains that the First Amendment was negotiated at arms' length and represents fair-market value. Confidential Attachment B contains a full copy of the executed First Amendment. SDG&E believes the contents of both Attachment A & B should be protected from public disclosure and requests that the Commission treat the information provided in those Attachments as confidential. Accompanying this Advice Letter is a Declaration in support of this request to preserve the confidentiality of the information provided in Attachments A & B.

5. Financial Proceeds

Because the revenues associated with this transaction will facilitate SDG&E's RA procurement, SDG&E proposes to credit the revenues through its ERRRA proceedings. This will help offset (reduce) RA costs to ratepayers

6. Related Transactions

Within the past two years and for the anticipated future, SDG&E is unaware of any related transactions, such as sales or leases of the same property, or any other real estate transactions with CAB II that would be located in proximity to the land at issue.

7. CEQA Exemption

In D.98-12-012 the Commission addressed the environmental aspects of SDG&E's divestiture of generation assets which included the Cabrillo II units. In that Decision, the Commission adopted a Mitigated Negative Declaration for the sale of the generation assets, along with the related mitigation, monitoring, and reporting program. At issue here is simply an extension of land rights that will allow certain of the units to continue running for up to another two years. No other change is proposed. This minor proposal does not constitute a "project" under CEQA. Nevertheless, even if deemed a "project", the extension of land rights requires no further review under CEQA.

First, the extension of land right will not change the physical environment. The Cabrillo Units are existing facilities that will simply continue to run for another year or two, just as they have for years. Thus, consistent with CEQA guidelines, Section 15061(b)(3) of the California Code of Regulations ("CCR"), it can be seen with certainty that this transaction will have no significant environmental effect. 14 CCR § 15061 (b)(3). Second, the Cabrillo II units are existing facilities, which further warrant an exemption from CEQA. Section 15301 of the CCR provides:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include but are not limited to:...(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services.

In this case, SDG&E will provide land rights to NRG to allow NRG to provide a Resource Adequacy product to SDG&E, for a limited time, from units that once belonged to SDG&E and are still needed by SDG&E. Accordingly, the Commission should conclude that the land-rights extension at issue here involves no expansion of an existing use. Finally, the Commission could also find that any potential environmental effects due to SDG&E's proposed License were adequately reviewed and mitigated by the mitigated-negative declaration adopted in D.98-12-012.

C. CONTRACT SUMMARY

The following table provides a summary of key aspects of the proposed transaction:

Counterparty	Cabrillo Power II LLC
Resource Type	Natural Gas Fired
Location	NRG Cabrillo II Units (Miramar Kearny Mesa and El Cajon) all located in San Diego County
Capacity	188 MW
Number of Units	12
Licensee Fee	\$150,000 per year on a monthly basis in arrears due on the fifth (5th) day after the end of each month of the applicable Extension Term
Length of Contract (Initial Term & Extension Term)	Approximately One -Year; beginning on the later of January 1, 2014 or the effective date of that certain First Amendment through December 31, 2014 with SDG&E's option to extend the agreement for an additional year January 1, 2015 through December 31, 2015

D. LOCAL CAPACITY REQUIREMENTS

This Section D provides an overview of key components of the annual Resource Adequacy process which have come together to establish the circumstances that lead to the current need for the First Amendment .

1. ANNUAL GRID TECHNICAL STUDY PROCESS

On May 1, 2013 the California Independent System Operator (“CAISO”) published its 2014 Local Capacity Technical Analysis – Final Report and Study Results (“2014 LCT Study”). These annual technical analyses accomplish four purposes¹:

- a) Determining minimum quantities of local generation capacity necessary, the Local Capacity Requirement (“LCR”), to ensure reliable grid operations in transmission-constrained load pockets with limited power-import capability, Local Capacity Areas (“LCA”)
- b) Serving as a basis for the local procurement obligations issued by the Commission to Load Serving Entities (“LSE”) under its resource adequacy program²
- c) Assisting in cost allocation regarding any CAISO capacity procurement needed to achieve grid reliability, and
- d) Providing additional information on LCA sub-area need and effectiveness factors in order to allow LSEs to engage in more informed capacity procurement in their LCA.

¹ CAISO 2014 Local Capacity Technical Analysis – Final Report and Study Results, May 1, 2013, http://www.caiso.com/Documents/May1_2013-2014FinalReport-LocalCapacityTechnicalAnalysisR11-10-023.pdf

² D.12-06-025 under R.11-10-023, “Decision Adopting Local Procurement Obligations For 2013 and Further Refining The Resource Adequacy Program” dated June 21, 2012 (“2013 RA Decision”)

2. EVOLVING LOCAL CAPACITY AREAS

There are 10 major LCAs within the CAISO Balancing Authority Area each of which can have further refined LCA sub-areas. For SDG&E there is just one major LCA, the San Diego local capacity area (“SD Area”), extending as far east as the Miguel and Sycamore substations, along with 5-10 LCA sub-areas (these may change year-to-year based on load growth and transmission grid enhancements). The LCR for the traditional SD Area, as determined in the annual technical study, has historically been the basis for the CPUC in assigning local RA obligations to LSEs in the San Diego region. While the sub-areas have not come into play in establishing LSE RA obligations, the CAISO, has the authority to backstop capacity needed to meet grid reliability criteria even to the sub-area level.

The CAISO has recognized SDG&E’s need for the Cabrillo II units, as explained in the CAISO’s 2014 Local Capacity Technical Analysis (“LCTA”). The purpose of the LCTA is to identify areas with limited import capability, and to identify minimum-generation needs to mitigate local reliability challenges. The CAISO provides its LCTA to the Commission for consideration in the Commission’s resource adequacy program.

In the LTCA, the CAISO specifically identifies the need for the Cabrillo II units to mitigate for a number of contingencies, such as: (1) the loss of the Mission-Kearney 69 kV line followed by the loss of the Mission-Mesa Heights 69 kV line, and (2) the loss of the Otay Mesa-Miguel Tap – Silvergate 230 kV line with Miramar Energy Facility Nos. 1 or 2 out of service. Accordingly, the public interest will be served by granting this Advice Letter and approving the proposed License Amendment so that the Cabrillo II units may continue to run.

Moreover, Public Utilities Code section 362 provides that in proceedings pursuant to Section 851 of the Public Utilities Code, among other sections, the Commission:

“shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational...In order to determine whether the facility needs to remain available and operational, the commission shall utilize standards that are no less stringent than the Western Electricity Coordinating Council [WECC] and North American Electric Reliability Council [NERC] standards for planning reserve criteria.”

Here, the CAISO has used NERC criteria to determine SDG&E’s local capacity needs, and has recommended retention of the Cabrillo II units. These CAISO findings support a Commission determination that the Cabrillo II units must remain operational. Accordingly, Section 362 of the Public Utilities Code supports the approval of this Advice Letter because the First Amendment is necessary to maintain the availability of the Cabrillo II units.

Finally, the Commission should grant authority under Section 851 of the Public Utilities Code because the encumbrance of utility property at issue here -- a temporary grant of land rights -- is necessary to enable NRG to continue running the Cabrillo II units for the benefit of SDG&E’s customers.

3. SDG&E'S 2014 NET RESOURCE ADEQUACY POSITION

Following the publishing of CAISO's 2013 LCT Study in late April 2012, the CPUC issued its 2013 RA Decision in late June, and followed-up in mid-September with the Commission releasing the Final 2013 RA Obligations for LSEs.

For the 2014 RA compliance year, SDG&E's current estimate, based on the 2014 LCT Study, of the total grid LCR requirement for the SD-IV Area is 3,772 MW. SDG&E's share of this is dependent on the amount allocated to the direct access Electric Service Providers in its service territory.

Consistent with the 2013 RA Decision, SDG&E's RA Obligations from the CPUC for 2014 are anticipated to be based on the LCR for the SD-IV Area, thus requiring that additional SD-IV Area RA capacity be added to SDG&E's 2014 RA portfolio. However, in 2014 and 2015, even if SDG&E contracts for its full portion of the SD-IV Area LCR, if it does not contract with the Cabrillo II units there remains a high probability that the CAISO will exercise its backstop procurement authority to procure from the CAB II units, at a significantly increased cost to San Diego ratepayers who will, in effect, be double paying for RA.

For the San Diego region, the sub-areas are small isolated load pockets where the available generation in the sub-areas is often times procured to satisfy the larger LCA requirements thus at the same time satisfying the sub-area requirements. However, in the current situation RA capacity procured from resources within the SD-IV Area does not necessarily satisfy the SD-Sub-Area requirement. The reverse, however, is true that RA capacity procured in the SD Sub-Area will simultaneously satisfy the SD-IV Area.

Therefore, SDG&E proposed to optimize its procurement and minimize ratepayer costs by procuring the Cabrillo II units to satisfy its SD-IV Area requirement.

4. LOOKING AHEAD

The First Amendment is in the public interest because it will bolster SDG&E's local-supply resources at a time when SDG&E has unexpectedly lost a major source of power due to the early retirement of SONGS

The option to keep the Cabrillo II units in operation allows SDG&E to remove some of the uncertainty that is part of the evolving California Resource Adequacy market. Also it will keep the Cabrillo II units from being retired and removed from service. The option to extend the license for one more year (2015) is a benefit to ratepayers because it allows SDG&E to compare its arrangement for the Cabrillo II units against other market resources so that SDG&E can make the most economic decision for its customers. This license extension option gives SDG&E flexibility and some certainty in an uncertain Resource Adequacy market and keeps the units available if needed until the end of 2015.

5. PROCUREMENT REVIEW GROUP (PRG) INVOLVEMENT

When the first draft of the 2014 LCT Study was issued, SDG&E discussed with its PRG SDG&E's concerns regarding the emerging 2014 and 2015 Resource Adequacy market. The topic was presented to the PRG at each meeting between April and September 2013, with each month's discussion narrowing in on potential solutions to the challenges associated with 2014 and 2015 resource adequacy in the San Diego Local Capacity Area. And the need to contract for

the Cabrillo II units for local Resource Adequacy as well as extend the expiring Cabrillo II Original License until the end of 2015.

After discussions with the PRG, SDG&E believes that support exists for the First Amendment.

E. INDEPENDENT EVALUATOR REPORT

Not applicable

F. EFFECTIVE DATE

The First Amendment is conditioned on (1) the receipt of timely Commission approval of the SDG&E-NRG Cabrillo II Resource Adequacy Confirmation with such approval not including any conditions or requirements that are not acceptable to either party, and (2) the receipt of timely Commission approval of this First Amendment with such approval not including any conditions or requirements that are not acceptable to either party.

SDG&E respectfully requests the Commission to approve the First Amendment between SDG&E and CAB II. Approval will enable NRG to provide SDG&E a resource-adequacy product, representing 188 MWs, for up to two years. Making the Cabrillo II Units capacity available for a modest increment of time is in the public interest because it will support the reliability of the electrical system, and help maintain adequate-generation capacity within SDG&E's service territory.

Consistent with General Order 173 and 66-B, Section 851 Advice Letters may be approved by the Executive Director or Energy Division Director. Accordingly, SDG&E is submitting this Advice Letter for Tier 2 review. SDG&E respectfully requests this filing be approved no later than **November 25, 2013**. This date will allow the First Amendment to become effective before the Original License expires.

G. PROTEST

Anyone may protest this Advice Letter to the Commission. The protest must state the grounds upon which it is based, including such grounds as financial and service impact. Any protest must be made in writing and must be received 20 days from the date of filing of this Advice Letter. There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division
Tariff Files, Room 4005
505 Van Ness Avenue
San Francisco, California 94102
Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above. The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to SDG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Attn: Megan Caulson

Regulatory Tariff Manager
8330 Century Park Court, Room 32C
San Diego, CA 92123-1548
Facsimile No. 858-654-1879
E-Mail: MCaulson@semprautilities.com

H. NOTICE

A copy of this filing has been served on the utilities and interested parties shown on the attached list including parties in R.12-03-014 and R.11-10-023 by either providing them a copy electronically or by mailing them a copy hereof, properly stamped and addressed.

Address changes should be directed to SDG&E Tariffs by facsimile at (858) 654-1879 or by e-mail at SDG&ETariffs@semprautilities.com.

CLAY FABER
Director – Regulatory Affairs

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **SAN DIEGO GAS & ELECTRIC (U 902)**

Utility type:

ELC GAS
 PLC HEAT WATER

Contact Person: Joff Morales

Phone #: (858) 650-4098

E-mail: jmorales@semprautilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2533-E

Subject of AL: Request for Approval of the First Amendment to License Agreement between SDG&E And Cabrillo Power II LLC

Keywords (choose from CPUC listing): Resource Adequacy, Procurement

AL filing type: Monthly Quarterly Annual One-Time Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: None

Summarize differences between the AL and the prior withdrawn or rejected AL¹: N/A

Does AL request confidential treatment? If so, provide explanation:

Resolution Required? Yes No

Tier Designation: 1 2 3

Requested effective date: 11/25/2013

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: None

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: None

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

**CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Ave.,
San Francisco, CA 94102
EDTariffUnit@cpuc.ca.gov**

**San Diego Gas & Electric
Attention: Megan Caulson
8330 Century Park Ct, Room 32C
San Diego, CA 92123
mcaulson@semprautilities.com**

¹ Discuss in AL if more space is needed.

General Order No. 96-B
ADVICE LETTER FILING MAILING LIST

cc: (w/enclosures)

Public Utilities Commission

DRA

Y. Schmidt
W. Scott

Energy Division

P. Clanon
S. Gallagher
H. Gatchalian
D. Lafrenz
M. Salinas

CA. Energy Commission

F. DeLeon
R. Tavares

Alcantar & Kahl LLP

K. Harteloo

American Energy Institute

C. King

APS Energy Services

J. Schenk

BP Energy Company

J. Zaiontz

Barkovich & Yap, Inc.

B. Barkovich

Bartle Wells Associates

R. Schmidt

Braun & Blaising, P.C.

S. Blaising

California Energy Markets

S. O'Donnell
C. Sweet

California Farm Bureau Federation

K. Mills

California Wind Energy

N. Rader

CCSE

S. Freedman
J. Porter

Children's Hospital & Health Center

T. Jacoby

City of Chula Vista

M. Meacham
E. Hull

City of Poway

R. Willcox

City of San Diego

J. Cervantes
G. Lonergan
M. Valerio

Commerce Energy Group

V. Gan

Constellation New Energy

W. Chen

CP Kelco

A. Friedl

Davis Wright Tremaine, LLP

E. O'Neill
J. Pau

Dept. of General Services

H. Nanjo
M. Clark

Douglass & Liddell

D. Douglass
D. Liddell
G. Klatt

Duke Energy North America

M. Gillette

Dynegy, Inc.

J. Paul

Ellison Schneider & Harris LLP

E. Janssen

Energy Policy Initiatives Center (USD)

S. Anders

Energy Price Solutions

A. Scott

Energy Strategies, Inc.

K. Campbell
M. Scanlan

Goodin, MacBride, Squeri, Ritchie & Day

B. Cragg
J. Heather Patrick

J. Squeri

Goodrich Aerostructures Group

M. Harrington

Hanna and Morton LLP

N. Pedersen

Itsa-North America

L. Belew

J.B.S. Energy

J. Nahigian

Luce, Forward, Hamilton & Scripps LLP

J. Leslie

Manatt, Phelps & Phillips LLP

D. Huard
R. Keen

Matthew V. Brady & Associates

M. Brady

Modesto Irrigation District

C. Mayer

Morrison & Foerster LLP

P. Hanschen

MRW & Associates

D. Richardson

OnGrid Solar

Andy Black

Pacific Gas & Electric Co.

J. Clark
M. Huffman
S. Lawrie
E. Lucha

Pacific Utility Audit, Inc.

E. Kelly

R. W. Beck, Inc.

C. Elder

School Project for Utility Rate
Reduction

M. Rochman

Shute, Mihaly & Weinberger LLP

O. Armi

Solar Turbines

F. Chiang

Sutherland Asbill & Brennan LLP

K. McCrea

Southern California Edison Co.

M. Alexander

K. Cini

K. Gansecki

H. Romero

TransCanada

R. Hunter

D. White

TURN

M. Florio
M. Hawiger

UCAN

M. Shames

U.S. Dept. of the Navy

K. Davoodi

N. Furuta

L. DeLacruz

Utility Specialists, Southwest, Inc.

D. Koser

Western Manufactured Housing
Communities Association

S. Dey

White & Case LLP

L. Cottle

Interested Parties

R.12-03-014

R.11-10-023

San Diego Gas & Electric Advice Letter 2533-E
October 25, 2013

CONFIDENTIAL DECLARATION

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

**DECLARATION OF E BRADFORD MANTZ REGARDING CONFIDENTIALITY
OF CERTAIN DATA**

I, E Bradford Mantz, do declare as follows:

1. I am an Energy Contracts Originator for San Diego Gas & Electric Company (“SDG&E”). I have reviewed Advice Letter 2533-E, requesting approval of the First Amendment to License Agreement with Cabrillo Power II LLC for the Cabrillo II Units (with attached confidential and public appendices), dated October 25, 2013 (“Advice Letter”). 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 Advice Letter 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 consists of information from which that

^{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.

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>1. Confidential Attachment A -Substance of negotiations and pricing analysis</p> <p>2. Confidential Attachment C -Independent Evaluator Report</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 bilateral negotiation evaluation and contract terms</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>This information is protected under IOU Matrix category VIII B. and VII.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>

^{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").

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 until one year following the expiration of the confirmation.
	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 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.
3. Confidential Attachment B -Confirmation	Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix	The data provided is non-public bid data from SDG&E's contract terms
	Identify the Matrix category or categories to which the data corresponds	This information is protected under IOU Matrix category VII.B.
	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 until one year following the expiration of the confirmation.

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
	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 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.

5. As an alternative basis for requesting confidential treatment, SDG&E submits that the Power Purchase Agreement enclosed in the Advice Letter 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.¹¹⁷

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,

¹¹⁷ 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.")

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.

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.^{5/} 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.^{6/}

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.

^{5/} See also Govt. Code § 6254.7(d).


^{6/} 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 Resource Adequacy Confirmation to protect non-public information. Some of the Protected Information in the Resource Adequacy Confirmation (including confidential attachments) and my supporting declaration, relates directly to commercial aspects of the respective transaction. Disclosure of this extremely sensitive information could harm the counterparty's ability to negotiate necessary contracts and/or could invite interference from competitors.

12. In accordance with its obligations under its Resource Adequacy Confirmation 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 25th day of October, 2013, at San Diego, California.



E Bradford Mantz
Energy Contracts Originator
Electric and Fuel Procurement
San Diego Gas & Electric

CONFIDENTIAL

Attachment A

All information contained in the following Confidential Appendices is considered Confidential except where printed in italics. Italicized information contained in the Confidential Appendices is also included in Part 1 of this Advice Letter.

CONFIDENTIAL

Attachment B

All information contained in the following Confidential Appendices is considered Confidential except where printed in italics. Italicized information contained in the Confidential Appendices is also included in Part 1 of this Advice Letter.