COMPLETED

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May 20, 2013

California Energy Commission
DOCKETED
13-IEP-1B
TN # 71005
5-22-13

Mr. Robert Oglesby
Executive Director
California Energy Commission
1516 Ninth Street MS-39
Sacramento, CA 95814-5512

RE: Docket No. 13-IEP-1C

Dear Mr. Oglesby:

Enclosed please find the Electric Resource Plan of San Diego Gas & Electric Company (SDG&E) in referenced docket, along with SDG&E's Application for Confidential Designation and Penalty of Perjury Certification. The requested information contains confidential information. The material highlighted in yellow is **confidential/privileged**; review and access restricted; and subject to PUC Code Sections 454(g), 583, GO-66-C and D. 06-06-006.

Please feel free to contact me should you have any questions.

Yours sincerely,

Linda Wrazen
Regulatory Affairs SDG&E on behalf of
Tamara Rasberry
Governmental Affairs Manager

APPLICATION FOR CONFIDENTIAL DESIGNATION
(20 CCR SECTION 2505)

2013 INTEGRATED ENERGY POLICY REPORT
Docket Number 13-IEP-1C

Applicant: San Diego Gas & Electric Company (SDG&E)

Attorney for Applicant: Paul Szymanski
Address of Applicant: 101 Ash Street, HQ 12
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1. (a) Title, date, and description of the record.

SDG&E seeks confidential designation for data provided to the California Energy Commission (Commission) as part of the 2013 Integrated Energy Policy Report (IEPR). The information for which confidential designation is requested pertains to SDG&E's electric resource planning, energy balance resource accounting, bilateral contracts and power purchase agreements.

In developing this request, SDG&E is attempting to seek a balance between public disclosure and protecting ratepayer's interests. SDG&E's sole objective is to not disclose to the market data which could result in higher costs to consumers. SDG&E is willing to discuss with the Commission different methods to achieve these objectives, including ways to aggregate the data. Also, in developing this request, SDG&E relied heavily on the Commission's decisions regarding the treatment of similar data in the 2011 IEPR.

(b) Specify the part(s) of the record for which you request confidential designation.

Electric Resource Planning Form S-1 CRAT

- Line 1: Forecasted Total Peak-Hour1-in-2 Demand
- Line 5: Adjusted Peak-Hour Demand: End-Use Customers
- Line 6: Coincidence Adjustment
- Line 7: Coincidence Peak-Hour Demand
- Line 8: Required Planning Reserve Margin
- Line 11: Firm LSE Peak-Hour Resource Requirement
- Line 22: Firm LSE Peak-Hour Resource Requirement
- Line 23: (Capacity Need) or Capacity Surplus
- Line 25: Generic Non-Renewable Resources

Electric Resource Planning Form S-2 Energy Balance Resource Accounting Form

- Line 1: Forecast Total Energy Demand/Consumption (Front 3 forecast years)

- Line 5: Adjusted Energy Demand/Consumption (Front 3 forecast years)
- Line 7: Firm LSE Energy Requirement (Front 3 forecast years)
- Line 8a-f through line 9a-c: Energy from all fossil and nuclear utility-controlled resources
- Line 12a-g: Energy from DWR contractual resources
- Line 15a-k: Energy from dispatchable bilateral contracts (not renewable energy)
- Line 17: Total Energy: Existing and Planned Resources (Front 3 forecast years)
- Line 18: Firm LSE Energy Requirement (Front 3 forecast years)
- Line 19: Energy Surplus or (Energy Need) (Front 3 forecast years)
- Line 21: Generic Non-renewable Energy (Front 3 forecast years)

IEPR Form S-5 Bilateral Contracts and Power Purchase Agreements

- Lines titled: Scheduling Coordinator, Contract/Agreement Product(s), Availability of Contract Products, Must Take, Generating Unit(s) Specified, Capacity of Unit(s), Availability of Unit(s), Unit Contingent/LD Contract, Firm, Firming or Shaping, Contract Agreement Type, Transmission Contingent and Path, Termination and Extension Rights, Performance Requirements and Notes.

2. State and justify the length of time the Commission should keep the record confidential.

SDG&E requests that the forecast data indicated be kept confidential for a period of three years, or through December 31, 2015. The three-year period is adequate time for the demand and supply forecast to become "stale" in terms of price movement in the electricity and gas markets. There periods of time are required to ensure that SDG&E's detailed demand forecast data and supply portfolio remains secure from market participants who could otherwise make competitive use of this information to the detriment of utility ratepayers.

SDG&E also requests that its bilateral contract and power purchase agreement information be kept confidential for three years from the date the contract starts deliveries or until one year following expiration of the contract, whichever comes first. Public knowledge of this information could lead to financial harm to SDG&E's ratepayers because it would allow other market participants access to specific terms that could be used to gain an unfair advantage in the otherwise competitive marketplace.

3. (a) State the provision(s) of the Public Records Act or other law that allows the Commission to keep the record confidential, and explain why the provision(s) applies to the record.

These forms provide competitively and commercially sensitive business and resource planning information and trade secrets. Under the Public Records Act, Govt. Code Section 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed. See also Govt. Code Section 6254.7(d). Evidence Code Section 1060 provides a privilege for trade secrets, which is defined in Civil Code Section

3426.1 as information, including a formula, technique, and process, that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure. It is well established that the Courts protect trade secret information from disclosure where disclosure would be harmful. See, e.g., Klatmath-Orleans Lumber v. Miller (1978), 87 Cal. App. 3d 458. Among the harm that disclosure causes is the ability of competitors to gain knowledge at the expense of the privilege holder. Pepsico v. Ravmond (9th Cir. 1995) 54 F. 3d 1262.

In addition to the Courts regularly protecting trade secret information, the CPUC also recognizes that utility trade secret information may be kept confidential under appropriate circumstances. See generally, e.g ., R.97-04-010, 71 CPUC 2d 485; D.02-12-074,2002 Cal. PUC LEXIS 905; D.98-02-041, 78 CPUC 2d 486). Of particular relevance here, the CPUC has adopted a "materiality" standard that affords confidential status to procurement-related information that, if revealed, "[a]ffects the market price [that] an energy buyer pays for electricity." D.06-06-066, at p. 42. The CPUC materiality standard was adopted in response to the legislative directive given to the CPUC to re-examine its practices with regard to protection of confidential, procurement-related data and to revise, where appropriate, its practices in this regard.[1] The CPUC issued two decisions in 2006 regarding what information is deemed to be confidential, commercially sensitive, or trade secrets and for what period of time such information is to be kept confidential. (See D.06-06-066 and D.06-12-030).

Section 454.5 of the Public Utilities Code is also pertinent. That section requires the CPUC to maintain as confidential certain market sensitive information related to a distribution utility's procurement plan. Significantly, that code section does not even require any demonstration of "ratepayer" harm, even though that risk is clearly present here. It is important as a matter of public policy that this Commission not publicly disclose information that the CPUC has deemed to be confidential for the sake of protecting ratepayers from potentially higher costs.

Finally, the Commission has already articulated a similar standard of ratepayer protection when it discussed the definition of a "trade secret" in the 2005 IEPR proceeding.[2] The Commission determined there that, in order to qualify as a trade secret, it must be demonstrated that there will be harm to the utility's ratepayers if the information for which confidential designation is sought is publicly released.[3] Again, there is a demonstrable risk of harm to ratepayers if the information were to be released. Each category of data and the resultant harm is discussed in the following paragraphs.

IEPR Form S-1 Capacity Table (Annual): The highlighted lines were marked confidential to protect exposing SDG&E to bundled customers' "net short" capacity position. The total, renewable resource and non-renewable net short values are on lines

[1] SB 1488, 2004 Cal. Stat., ch 690.
[2] *Commission Order Denying Appeals of San Diego Gas and [sic] Electric Company, Southern California Edison Company and Pacific Gas and Electric Company of the Executive Director's Notice of Intent to Release Aggregated Data, dated* September 7, 2005 in Docket No. 04-IEP-1D, at pp. 14-15.
[3] Id., at p. 15.

23, 24 and 25. This is the amount of non-renewable capacity that SDG&E may be procuring or selling in the market during the period for which SDG&E is requesting confidential treatment. Public knowledge of SDG&E's bundled customer's position can impact the prices that SDG&E would have to pay, or can sell excess for, and thus cause financial harm to SDG&E ratepayers. Since the data regarding SDG&E's currently supply portfolio is public, SDG&E's bundled load forecast must remain confidential, since this data minus the existing public data regarding resources would reveal the net short capacity need. Given the overall design of the forms, other lines should also remain confidential, since revealing the data would allow a party to easily calculate the bundled load using other public data in the form. In designating the S-1 Capacity Table (Annual) data is confidential, SDG&E also relied upon (1) the CPUC's use of the Matrix described in S. 06-066-66 and (2) the Commission's prior confidentiality determinations in the 2011 IEPR proceeding for substantially the same information (pursuant to CCR §2505(a)(4), Attachment A is a certification regarding the Commission's prior designations relevant to Forms S-1 and S-2). Thus, the data marked for confidential treatment in this application is data that the CPUC and/or Commission have deemed to be confidential in prior proceedings.

IEPR Form S-2 Energy Table (Annual): The highlighted lines were marked confidential to prevent exposing how SDG&E anticipates dispatching its resources to meet its bundled customers' energy needs and the amount of power that SDG&E anticipates it will buy or sell into the market. Public knowledge of SDG&E's bundled customers' non-renewable energy positions could negatively impact the prices that SDG&E would have to pay, or can sell excess for, and thus cause financial harm to SDG&E's ratepayers. In designating the S-2 Energy Table (Annual) data as confidential, SDG&E also relied upon the CPUC's use of the Matrix and the Commission's prior confidentiality determinations in the 2011 IEPR.

IEPR Form S-5 Bilateral Contracts and Power Purchase Agreements Disclosure of certain information regarding bilateral contracts that started operating less than 3 years prior to the date of this filing on the lines titled "Scheduling Coordinator", "Contract/Agreement Product(s)", Availability of Contract Products", "Must Take", "Generating Unit(s) Specified", "Capacity of Units," "Availability of Unit(s)", "Unit Contingent/LD Contract", "Firm", "Firming or Shaping", "Contract Agreement Type", "Transmission Contingent and Path", "Termination and Extension Rights", "Performance Requirements" and "Notes" would allow market participants access to the specific terms of SDG&E's power supply contracts. Market participants could then make unfair use of such knowledge to their advantage in the otherwise competitive marketplace, to the financial detriment of SDG&E ratepayers. In designating the S-5 data as confidential, SDG&E also relied on the CPUC's use of the Matrix. SDG&E is also relying on the Commission's prior confidentiality determinations in the 2011 IEPR proceeding for substantially the same, or similar information (pursuant to CCR §2505(a)(4), Attachment B is a certification regarding the Commission's prior designations relevant to Form S-5).

(b) Discuss the public interest in nondisclosure of the record. If the record contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please also state how it would be lost, the value of the information to the Applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

SDG&E believes that there is a compelling public interest in protecting its information, as described above. The primary public interest to be protected is, among other things, that SDG&E will be disadvantaged in procurement such that consumers may well pay higher energy prices than they would if the information was not publicly released. It is apparent that where parties have "unequal information" and where the seller knows that the buyer is in a position where it must procure seller's product, that sellers have an unfair advantage. The CPUC has given protection to this information based on these same reasons. Although sellers have some access to historical sales information and a generalized knowledge of the resources in SDG&E's power supply portfolio, they do not have access to the specific operating characteristics of SDG&E's utility retained generation and least cost dispatch, SDG&E's hedging of fuel price and supply, the specific terms of SDG&E's power supply contracts, or other competitive information that would be necessary in order to more precisely calculate SDG&E's hourly and monthly power needs. This inability to know precisely what SDG&E needs (on either the buy or sell side) prevents both buyers and sellers from gaining an unfair advantage in the marketplace, and keeps competitive pressure on prices for both sales and purchases.

4. **State whether the record may be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the Applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if it is aggregated or masked, explain why.**

SDG&E's submittal includes a great deal of aggregated data that the Commission can release immediately. In addition, it may be possible to aggregate certain of the data, e.g., on a statewide basis. SDG&E remains willing to work with Commission and its staff to further aggregate data, where possible, in a matter that could be revealed publicly.

5. **State how the record is kept confidential by the Applicant and whether it has ever been disclosed to a person other than an employee of the Applicant. If it has, explain the circumstances under which disclosure occurred.**

As explained above, SDG&E maintains access to this information on a confidential basis. It is only available by hard copy and electronically on a limited basis within certain departments that must have access to the information to conduct their procurement and regulatory activities. The information is password protected on computer systems or in hard copy form kept in secure locations. Only certain individuals with key card access are able to enter areas of the Company where the information is available and utilized.

The Commission should also be aware that under Standard of Conduct #2 adopted by the CPUC for the utilities' procurement activities, utility employees are obligated to protect the Company's trade secrets:

> 2. Each utility must adopt, actively monitor, and enforce compliance with a comprehensive code of conduct for all employees engaged in the procurement process that: 1) identifies trade secrets and other confidential information; 2) specifies procedures for ensuring that such information retains its trade secret and or confidential status [e.g., limiting access to such information to individuals with a need to know, limiting locations at which such information may be accessed etc. (See D.02-12-074, pp. 57-58)

6. Certification

SDG&E has not, to the best of its knowledge, previously publicly released this information in precisely this format or projected over this duration of time.

I certify under penalty of perjury that the information contained in this Application for Confidential Designation is true, correct, and complete to the best of my knowledge. Applicant is a California corporation, and I am authorized to make the application and certification on behalf of the Applicant.

Dated: May 20, 2013

Signed: _____
Name: Robert B. Anderson
Title: Director of Resource Planning, SDG&E