

DOCKETED

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**REPEAT APPLICATION FOR CONFIDENTIAL DESIGNATION
(20 CCR SECTION 2505)**

**ELECTRICITY FORECAST PLAN SUPPLY FORMS
DOCKET NUMBER 22-IEPR-03**

Applicant: Southern California Edison Company

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1. Identification of the information being submitted, including title, date, size (for example, pages, sheets, megabytes), and docket number

Southern California Edison Company (SCE) submits its 2022 Electricity Resource Planning Supply Forms S-1, S-2, and S-5. The excel file SCE submitted is titled Supply Forms Excel Sheets_ Confidential. The file size is 2.16 MB. SCE used the forms provided by the California Energy Commission (CEC) for this year's submission. The public versions of the forms were filed on Friday, September 30, 2022. SCE also submitted the confidential versions that same day with a letter certifying that the CEC previously granted confidential designation to the content highlighted in yellow in the forms. The CEC, however, reminded SCE that such repeat requests for confidential designation also require a repeated application. SCE is therefore resubmitting the confidential files with this application. The data submitted was previously granted confidential designation because it reveals SCE and its bundled customers' open position. As such, if its confidentiality is not maintained, SCE's bundled position will be revealed, allowing third party market participants to engage in market manipulation that would drive up prices for SCE's customers. The data the CEC previously designated as confidential was submitted at the annual level. This year, SCE is submitting even more granular data at the monthly level. If the annual data was entitled to the confidential designation, so too is the more

granular data housed within it. SCE therefore submits this a repeated, not new, application for confidential designation of the data highlighted yellow

2. Description of the data for which confidentiality is being requested (for example, particular contract categories, specific narratives, and time periods).

SCE requests that the Energy Commission again designate all the rows and columns highlighted in yellow in the forms as confidential for the same reasons it deemed that information confidential in the past.

3. A clear description of the length of time for which confidentiality is being sought, with an appropriate justification, for each confidential data category request.

SCE requests that the specified information above be restricted from public disclosure based on a window of confidentiality looking three years forward and one year back, or the entire forecast for a three-year period. As data becomes one year old, the 1-year window of confidentiality for historical data becomes applicable. This methodology is consistent with the California Public Utilities Commission's (CPUC's) Decision (D.) 06-06-066, as modified by D.07-05-032, and its attached Confidentiality Matrix. Specifically, the data highlighted in yellow in the supply forms, if made public, would reveal SCE's bundled net open long or short position for capacity and total bundled customer energy forecast, which the CPUC has designated three years of forecast data as confidential. The CEC and the CPUC are often charged with overlapping responsibilities. As a result, both commissions undertake endeavors that require them to review similar types of data. Accordingly, the CEC has endeavored to work collaboratively with the CPUC to assure regulatory consistency and should continue to employ that practice with respect to its disposition of this application.

4. Applicable provisions of the California Public Records Act (Government Code Section 6250 *et seq.*) and/or other laws, for each confidential data category request.

SCE purchases and sells large quantities of electrical energy on behalf of its customers. The marketplace for such purchases and sales is highly competitive. Accordingly, information about the timing and quantity of energy SCE must sell or needs to purchase to serve its

customers is extremely valuable and, if revealed, could place SCE at a competitive disadvantage when purchasing or selling energy. For this reason, CPUC decisions protect such information from public disclosure and dissemination by prohibiting SCE from sharing such data with third parties. As noted above, SCE encourages the CEC to adopt a methodology that is consistent with the one utilized by the CPUC for maintaining the confidentiality of such information so that SCE is not violating the CPUC's regulations in order to comply with the CEC's regulations.

The data identified as confidential in this application requires confidential treatment because this information could allow a market participant to calculate SCE's forecasted energy supply needs and discern SCE's bundled net open position – the amount of energy SCE must procure in the market after meeting its forecasted load with “must take” and utility-retained generation – and potential suppliers could calculate whether SCE had sufficient resources to meet that demand. With such information, a supplier could charge SCE a higher price for power or depress the price SCE could obtain for selling power when it had an excess that it desired to sell. Either outcome would ultimately harm SCE's customers.

The California Legislature has enacted statutes to protect confidential information, including the information for which SCE seeks protection here, from public disclosure. Specifically, the Public Records Act, found at Government Code Section 6254(k), establishes that public records subject to privileges established in the California Evidence Code are not required to be disclosed.

Evidence Code §1060 shields “trade secrets” from public disclosure. “Trade secrets” include any “information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who could obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”¹

¹ Civil Code §3426.1(d).

The Section 25322 of the California Public Resources Code governing the confidentiality of information gathered by the CEC follows the same standard.² Specifically, if the information is exempt from disclosure under the California Public Records Act, “[t]he commission shall grant the [confidentiality] request.”³

The data for which SCE seeks confidential protection here are trade secrets because they derive value from not being known to the public. In fact, public disclosure of this information would cause electricity prices to materially increase, which would harm customers. Accordingly, SCE makes reasonable efforts to maintain its secrecy.

Although the CPUC’s decisions and the statutes applicable to the CPUC may not bind the CEC, as a matter of comity and consistency, SCE requests that the CEC apply the same level of confidential protection to information as provided by the CPUC. In D.06-06-066, as modified by D.07-05-032, the CPUC adopted procedures to afford confidentiality to investor-owned utilities’ (IOUs) procurement data, which also fulfills the “trade secret” requirement for maintaining the secrecy of information.

These procedures comply with Public Utilities Code §454.5(g), which provides that “the [CPUC] shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information . . .” The CEC, and numerous other stakeholders, participated in the proceeding leading up to D.06-06-066. The CPUC held a week of evidentiary hearings that included experts in the field of economics. Based on this information, D.06-06-066, as modified by D.07-05-032, and the associated Confidentiality Matrix adopted in those decisions, identify information as

² Cal. Pub. Resources Code 25322 § 25322(a)(1)(A) (“The data collection system managed pursuant to Section 25320 shall include the following requirements regarding the confidentiality of the information collected by the commission: (1) Any person required to present information to the commission pursuant to this section may request that specific information be held in confidence. *The commission shall grant the request in any of the following circumstances: (A) The information is exempt from disclosure under the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.*”) (emphasis added.)

³ *Id.*

market sensitive when releasing the information would materially increase the price of electricity, thereby harming customers.⁴

SCE seeks protection of information identified by the CPUC as market sensitive in the Confidentiality Matrix. As a regulated utility, SCE is subject to the jurisdiction of both the CEC and the CPUC. SCE is required to provide similar information to both agencies. The information for which SCE is seeking confidential treatment in the IEPR can either be used to calculate or is nearly identical to the information for which SCE receives confidential treatment in the Confidentiality Matrix.

To maintain consistency between the CEC and CPUC and to avoid nullifying the CPUC's lawful determination that the release of market sensitive information would result in a material increase in electricity prices, SCE requests that the CEC protect SCE's market sensitive information just as the CPUC does. Allowing persons or entities to circumvent the CPUC's confidentiality rules by "agency shopping" and thus obtain access to data that would otherwise be deemed confidential can have the unintended consequence of undermining the public's confidence in the regulatory environment and both agencies.

In summary, public disclosure of the information for which SCE seeks confidential treatment would harm SCE and its customers by revealing its energy needs. Public knowledge of this trade secret information will ultimately lead to SCE's customers being put at a competitive disadvantage when SCE procures or sells energy on their behalf. Accordingly, the CEC should grant this trade secret information confidential treatment.

SCE respectfully requests that the Energy Commission again grant SCE the confidential treatment sought.

- 5. A statement attesting a) that the specific records to be withheld from public disclosure are exempt under provisions of the Government Code, or b) that the public interest in non-disclosure of these particular facts clearly outweighs the public interest in disclosure.**

⁴ See D.06-06-066 at 40-43 and Finding of Fact No. 2, at p. 76.

The data for which SCE seeks confidential treatment contains information that could allow market participants to calculate SCE's forecasted supply needs to the detriment of customers. By providing a critical factor in the calculation of SCE's position, market participants would potentially be able to calculate whether SCE has sufficient resources to meet that demand. With such information, a supplier could charge SCE a higher price for power or depress the price SCE could obtain for selling power when it had too much on hand. Either outcome would ultimately harm SCE's customers, who will bear the burden of the higher costs.

This information is protected as a trade secret under the Public Records Act, the Public Resources Code, and Public Utilities Code. Accordingly, the CPUC has determined that the benefit of maintaining the confidentiality of this "market sensitive" information outweighs any benefit to be gained from publicly releasing it. All the data for which SCE seeks protection is "market sensitive" and protected under the CPUC-approved Confidentiality Matrix.

SCE cannot assign a specific value to the information it seeks to protect. The information for which SCE seeks confidential treatment cannot be easily acquired or duplicated by others. In addition, it would be very costly to SCE's customers (and therefore commercially valuable to its suppliers) if it were publicly disclosed.

6. A statement that describes how each category of confidential data may be aggregated with other data for public disclosure.

SCE has worked to identify information that can be aggregated with other data for public disclosure. Nonetheless, for the reasons stated in response to questions 3 and 4, the information required in the forms cannot be aggregated or masked to allow for its public disclosure.

7. 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.

Based on information and belief, SCE has not, to the best of its knowledge, previously publicly released the information for which it seeks confidentiality here. Some of the information contained in the referenced forms may have previously been submitted to the CPUC

pursuant to CPUC procedural safeguards to maintain its confidentiality. With respect to the Energy Commission staff, SCE has identified the information as confidential and has followed all Energy Commission procedures to protect the confidentiality of the information. SCE has not, to the best of its knowledge, publicly made this data available in the form required by the Energy Commission.

I certify under penalty of perjury that the information contained in the submission is substantially similar to the information previously granted confidential designation by the California Energy Commission. I also certify that the information is true, correct, and complete to the best of my knowledge. Finally, I also certify that I am authorized to make the application and certification on behalf of Southern California Edison.

Dated: October 4, 2022
Signed: *Daniel Hopper*
Print Name: Daniel Hopper
Title: Director, Portfolio Planning & Analysis