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SCE Comments - Docket No. 12-AFC-03: Redondo Beach Energy Project

Additional submitted attachment is included below.

September 24, 2015

Susan Burns Cochran, Hearing Adviser
California Energy Commission
Docket Unit, 12-AFC-03
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: Docket No. 12-AFC-03: Redondo Beach Energy Project (“RBEP”)

Dear Ms. Burns Cochran:

Southern California Edison Company (“SCE”) appreciates the opportunity to comment on the Motion for Issuance of Subpoena Duces Tecum (“Motion”) to SCE and the California Public Utilities Commission (“CPUC”) filed by City of Redondo Beach (“City”). In its Motion, the City requests that the Energy Commission issue a subpoena to SCE and the CPUC to produce “the unredacted version of pages 35-39 of the TESTIMONY OF SOUTHERN CALIFORNIA EDISON COMPANY ON THE RESULTS OF ITS 2014 LOCAL CAPACITY REQUIREMENTS REQUEST FOR OFFERS FOR THE WESTERN LOS ANGELES BASIN or, at a minimum, the name and location for each proposed site for gas-fired generation facilities contained in each bid submitted in response to the LCR RFO.” [Motion, p. 6.]

SCE respectfully requests that the Energy Commission deny the Motion on the following grounds: (1) the requested information is protected from disclosure by the CPUC’s confidentiality rules as provided in Decisions (“D.”) 06-06-066, as modified by D.07-05-032, and D.08-04-023, and the Public Records Act; (2) the information sought is not relevant to this proceeding; (3) the City’s declaration of good cause lacks factual support and is therefore insufficient to support its Motion; and (4) the Motion is untimely since discovery in the proceeding has closed.

I.

Factual Background

Pursuant to CPUC authorization, SCE held the Local Capacity Requirements (“LCR”) Request for Offers (“RFO”) to procure electrical capacity in the Western Los Angeles (“LA”) Basin and Moorpark sub- areas. SCE received 1,136 indicative offers of all project types, including gas-fired generation (“GFG”), energy storage (“ES”) and Preferred Resources (*i.e.*, energy efficiency, demand response, renewable resources, distributed generation resources and combined heat and power resources) for both the Western LA Basin and Moorpark sub-areas. [Motion, Ex. 2, *Testimony of Southern California Edison Company on the Results of its 2013 Local Capacity Requirements Request for Offers (LCR RFO) for the Western Los Angeles Basin* (“Testimony”), p. 35, Table V-9, fn. 55.] Of the 1,136 indicative offers, 198 were for GFG projects located in both

the Western LA Basin and Moorpark sub-areas. [*Id.*] After shortlisting, contract negotiations, and rejection or withdrawal of offers by counterparties, SCE received final offers for GFG projects in only a handful of locations in the Western LA Basin. SCE selected 63 contracts for the Western LA Basin; three of those contracts were for GFG projects with counterparties AES Alamitos Energy, LLC, AES Huntington Beach Energy, LLC, and Stanton Energy Reliability Center, LLC. On November 21, 2014, SCE filed an application with the CPUC seeking approval of the contracts selected through the LCR RFO for new capacity in the Western LA Basin (Application (“A.”) 14-11-012), and submitted confidential and public versions of Testimony in support of its application.

By letter dated July 15, 2015, the City submitted a Public Records Act Request to the CPUC requesting (1) the confidential version of the Testimony and (2) the name and location of each proposed site for a gas-fired generation facility contained in each bid submitted to SCE through the LCR RFO. [Motion, p. 4, Ex. 3, pp. 1-2.] By letters dated July 27, 2015 and August 12, 2015, the CPUC responded to the City’s request and advised the City that the requested information is confidential and under Public Utilities Code Section 583, the information cannot be “made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.” [See Motion, Ex. 4.] The CPUC advised the City that “while proceeding A.14-11-012 remains open the challenges [the City] presented should be submitted in a formal motion to the assigned Administrative Law Judge (“ALJ”) and the assigned Commissioner.” The City did not challenge SCE’s confidentiality designations in CPUC proceeding A.14-11-012. Instead, approximately two weeks later, the City filed the Motion at issue seeking the same information.

II.

Bid Information is Protected Under Category VIII.A. of the IOU Confidentiality Matrix

California Public Utilities Code Section 454.5(g) provides that the CPUC “shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information...resulting from or related to [an electrical corporation’s] approved procurement plan.” Based on this statute, the CPUC opened a rulemaking to address and identify market sensitive information. That rulemaking resulted in D.06-06-066, as modified by D.07-05-032, which sets forth the basis for claiming and determining whether information is confidential.

Under D.06-06-066, as modified by D.07-05-032, and the associated matrix of allowed confidential treatment of investor owned utility (“IOU”) data (“IOU Confidentiality Matrix”) adopted in those decisions, bid information such as “participating bids, counter-party names, prices and quantities offered is protected.” [D.06-06-066, Appendix 1, IOU Confidentiality Matrix, p. 18 VIII.A.] The total number of projects and megawatts bid by resource type (*e.g.*, fossil, wind, solar, hydro-electric, etc.) are public after the final contracts are submitted to the CPUC for approval. [*Id.*]

The City asserts that the “final contracts have been submitted to the CPUC for approval, and, thus, all bid information, including the location of the participating plants that were considered

as part of the LTPP process, has become a matter of public and should be disclosed.” [Motion, p. 6.] The City is incorrect. Once the final contracts are submitted to the CPUC for approval, the total number of projects and megawatts bid by resource type becomes public but other bid information such as participating bids, counter-party names, prices and quantities offered are still protected as confidential. SCE regularly requests that the CPUC keep bid information confidential when SCE submits contracts to the CPUC for approval. The CPUC routinely grants SCE’s requests. [See e.g., CPUC Resolutions E-4704, E-4707, E-4712, E-4713.] Similarly, the CPUC, here, correctly denied the City’s Public Records Act Request for the bid information.

III. Bid Information is Market Sensitive

The City incorrectly asserts that SCE bears the burden of proof to show that the bid information is market sensitive. [Motion, p. 5.] “Where a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. Once it does so, it is entitled to the protection the Matrix provides for that category.” [D.06-06-066, Ordering Paragraph 2, p. 80.] Bid information has been determined to be “market sensitive” in the proceeding leading up to D.06-06-066. The CPUC held a week of evidentiary hearings that included the Energy Commission, numerous other stakeholders and experts in the field of economics. Based on that proceeding, D.06-06-066, as modified by D.07-05-032, and the associated IOU Confidentiality Matrix, identified specific categories of information as market sensitive when releasing the information would materially increase the price of electricity, thereby harming customers. [D.06-06-066, pp. 40-43.] Bid information is one of the categories identified in the IOU Confidentiality Matrix as confidential. [D.06-06-066, Appendix 1, IOU Matrix, p. 18, VIII.A.] Therefore, SCE is not required to show that bid information is “market sensitive” when requesting confidentiality because, as discussed, that has already been determined by D.06-06-066, as modified by D.07-05-032.

If another party wishes to challenge the confidentiality designation, the party seeking confidentiality protection “bears the burden of proving: (1) that the material it is submitting actually constitutes a particular type of data listed in the Matrix, (2) which category or categories in the Matrix the data correspond to, (3) that it is complying with the limitations on confidentiality specified in the Matrix for that type of data, (4) that the information is not already public, and (5) that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.” [D.06-06-066, Ordering Paragraph 8, p. 82.] Once the party seeking confidentiality protection meets this burden, the burden shifts to the party seeking access to the data to prove that the data does not meet any or all of Items 1-5 above or that despite meeting the criteria in Items 1-5, the data should nonetheless be disclosed. [*Id.*] SCE has met its burden of showing that the information meets Items 1-5 and the City does not offer evidence to the contrary. [See *Declaration of Jesse Bryson Regarding the Confidentiality of Certain Data*, Appendix A to the Testimony, filed November 21, 2014, pp. A-3 through A-7, attached hereto as Exhibit A.]

As a matter of comity and consistency, the Energy Commission should apply the same level of confidential protection to bid information as provided by the CPUC. This is particularly

important where a party, as the City does here, attempts to circumvent the CPUC's confidentiality rules by "agency shopping." By letter dated August 12, 2015, the CPUC advised the City that if it wanted to challenge SCE's confidential designations it was required to do so by a formal motion to the assigned ALJ and CPUC Commissioner. If the City wished to challenge whether SCE met the criteria in Items 1-5, the proper procedure would be to file a formal motion in A.14-11-012. Instead of following the proper procedure, the City filed the Motion with the Energy Commission. The City is attempting to circumvent the CPUC's confidentiality rules and its implementation of Public Utilities Code Section 454.5(g).¹ This proceeding is not the proper forum to challenge SCE's confidentiality designations made in a different proceeding before a different commission for a different purpose. Allowing the City to obtain confidential bid information through improper legal maneuvering will undermine the CPUC's confidentiality rules. Once confidential bid information is made public in any forum, it becomes public in all forums. [See D.06-06-066, Ordering Paragraph 8, p. 82.] SCE will no longer be able to keep the bid information confidential, which it is entitled to do under California law and the CPUC's confidentiality rules.

IV.

The Requested Information is Not Required to be Disclosed Under the Public Records Act

The California Legislature has enacted statutes to protect confidential information 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." [Civil Code §3426.1(d).]

The data for which SCE has confidential protection is market sensitive and can be categorized as trade secrets because SCE derives value from the data not being known to the public. The CPUC held a week-long hearing in Rulemaking 05-06-040 that included several expert witnesses. The conclusion from that week-long hearing, as set forth in D.06-06-066, is that bid information is market-sensitive and confidential, and the release of bid information will harm IOU customers. Moreover, as part of SCE's LCR RFO, SCE sought to procure incremental capacity for the Western LA Basin and Moorpark sub-areas. Revealing the location of potential new/incremental generation facilities will reveal the size and competition of the market within a specific local area and as a result may affect the behavior of bidders in future solicitations. Public disclosure of this information could cause electricity prices to materially increase, which

¹ In an effort to work with the City, SCE contacted the City's attorney and advised the attorney that SCE could provide the City with access to confidential information submitted in A.14-11-012 if the City became a party in A.14-11-012 and signed SCE's non-disclosure agreement. The City did not respond to SCE's suggestion.

would harm customers. Accordingly, SCE has made reasonable efforts to maintain the confidentiality of this data.

V.
The Information Sought is Not Relevant to This Proceeding

The City asserts that the requested information is essential to RBEP's alternative potential site analysis. [Motion, pp. 3-4.] The Energy Commission is not required to conduct an alternative site analysis in this proceeding. [See Public Resource Code Section 25540.6(b).] Nevertheless, the Energy Commission conducted an alternative site analysis in its Preliminary Staff Assessment ("PSA"). [PSA, pp. 4.2-6 through 4.2-16.] The Energy Commission issued data requests, analyzed 191 alternative sites at the Tier 1 level, eliminated the majority of the sites from consideration because of existing development/facilities, analyzed seven alternative sites at the Tier 2 level, and determined that the alternative sites were not viable. [PSA, pp. 4.2-6 through 4.2-16, 4.2-37 through 4.2-42.]

Unsatisfied with the Energy Commission's conclusions, the City argues that the Energy Commission must consider the 198 indicative GFG offers SCE received in its LCR RFO as potential alternative sites. To support its unjustifiable position, the City selectively cites to the California Coastal Commission's ("Coastal Commission") recommendation that the Energy Commission revise and supplement its alternative site analysis.² [Motion, p. 3, fn. 1.] The City omits the relevant language from the Coastal Commission's Cover Letter which narrows the recommended revision to only "incorporating...new information and changed circumstances" and omits the discussion from the Coastal Commission Report that made specific recommendations as to how the Energy Commission's alternative site analysis should be revised and supplemented. [Coastal Commission Report, pp. 12-14.] The Coastal Commission Report expressly identified two alternative sites for evaluation as potential off-site alternatives, AES's Alamitos and Huntington Beach Generating Stations. [Coastal Commission Report, pp. 13-14.] As discussed above, through its LCR RFO, SCE selected two AES offers for GFG projects at AES's existing Alamitos and Huntington Beach sites. The name of the counterparty and location of these two offers are public and have not been redacted from the Testimony. The Coastal Commission Report discussed the results of SCE's LCR RFO and did not recommend or suggest that the Energy Commission evaluate all of the 198 indicative GFG offers received in SCE's LCR RFO as potential alternative sites.

Moreover, the properties associated with the 198 indicative GFG offers do not meet the requirements to be off-site alternatives under the Tier 1 Site Screening Factors. One of the Tier 1 Screening Factors is site control. "The site should be void of any site encumbrances (physical or administrative obstructions to long-term use of property), and should be available for sale or long-term lease." [PSA, pp. 4.2-6.] As part of its PSA, the Energy Commission eliminated a majority of sites at the Tier 1 screening level because they did not meet the site control criteria. [PSA, p. 4.2-7.] Here, all counterparties who submitted an indicative offer in SCE's LCR RFO were required to

² The Coastal Commission recognized that the Energy Commission is not required to revise its alternatives analysis.

have site control of the subject property. Therefore, by definition, the properties in the indicative offers do not meet the requirements to be off-site alternatives under the Tier 1 Site Screening Factors and are not relevant to alternative sites analysis.³

In addition, the information redacted from pages 35-39 of the Testimony does not provide the name and location of each of the 198 indicative GFG offers. Therefore, even if the City was successful in obtaining the unredacted confidential version of the Testimony, it would not provide the City with the information it seeks. On the other hand, pages 35-39 of the unredacted confidential version of the Testimony do contain other confidential information such as the number of bidders, the identity of counterparties who withdrew their offers and the reasons for doing so, the identity of counterparties who had their offers removed from consideration and the reasons for doing so, the identity of counterparties and the reasons why their offers were considered, and the type and amount of maximum MWs offered in each of the final offers. This confidential information is not relevant to this proceeding.

VI.

The City's Declaration of Good Cause is Insufficient

Under California law, “[w]hen the agency’s subpoena power is invoked to secure discovery, the good cause and materiality requirements of Code of Civil Procedure section 1985 must be governed by discovery standards.” [*Shively v. Stewart*, 65 Cal.2d. 475, 481 (1966).] Good cause must “be articulated in any given case by an affirmative showing of specific facts justifying discovery.” [*Johnson v. Superior Court*, 258 Cal.App.2d 829, 836 (1968).] “The affiant cannot rely merely upon the legal conclusion, stated in general terms, that the desired documentary evidence is relevant and material.” [*Id.* at 835 (citation omitted).] “Similarly, ‘an affidavit wherein the material facts necessary for the issuance of a subpoena duces tecum are alleged only on information and belief without setting forth supporting facts is insufficient.’” [*Id.* at 836 (citation omitted).] The City’s declaration of good cause in support of its Motion is insufficient because it only contains conclusory statements that the “City contends that the requested information is essential to identifying the location and capacity of alternative sites that can serve the region’s energy needs.” [City’s Declaration of Good Cause in Support of City’s Motion, ¶ 4.] The declaration merely asserts the City’s contention that “the requested information is essential to identifying the location and capacity of alternative sites that can serve the region’s energy needs.” It is wholly lacking in any factual information to support the City’s contention. The City cannot show good cause for the requested information because the information is simply not relevant to this proceeding.

³ Further, the 198 indicative GFG offers were not all in the Western LA Basin sub-area. As stated in the Testimony, the 198 indicative GFG offers include offers for both the Western LA Basin and the Moorpark sub-area. [Motion, Ex. 2, p. 35, fn. 55.]

VII.
The Motion is Untimely

Discovery in this proceeding closed on February 24, 2014.⁴ The Motion was filed on August 27, 2015, over a year and a half after the close of discovery. Therefore, this Motion is untimely and may be denied on that basis alone.

Very truly yours,

/s/ Tristan Reyes Close

Tristan Reyes Close

/trc
Attachment

⁴ http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-03/TN202930_20140815T101324_Notice_of_Status_Conference_and_Scheduling_Order.pdf

Exhibit A

**DECLARATION OF JESSE BRYSON REGARDING THE CONFIDENTIALITY OF CERTAIN
DATA**

I, Jesse Bryson, declare and state:

1. I am a Principal Manager of Contract Origination in the Power Supply organization at Southern California Edison Company (“SCE”). I was responsible for overseeing SCE’s 2013 Local Capacity Requirement (“LCR”) Request for Offers (“RFO”). As such, I have reviewed SCE’s Application seeking California Public Utilities Commission (“Commission” or “CPUC”) approval of the results of its 2013 LCR RFO for the Western Los Angeles Basin, supporting Testimony and Appendices. I make this declaration in accordance with Decisions (“D.”) 06-06-066 and D.08-04-023, issued in Rulemaking 05-06-040. I have personal knowledge of the facts and representations herein and, if called upon to testify, could and would do so, except for those facts expressly stated to be based upon information and belief, and as to those matters, I believe them to be true.

2. Listed below are the data in the Application, supporting Testimony and Appendices for which SCE is seeking confidential protection and the categories of the Matrix of Allowed Confidential Treatment Investor Owned Utility Data (“Matrix”) appended to D.06-06-066 to which these data correspond.

Data	Page	Matrix Category	Period of Confidentiality
Testimony of Southern California Edison Company on the Results of Its 2013 Local Capacity Requirements Request for Offers (LCR RFO) for the Western Los Angeles Basin	Chapter IV, Section E.4 (page 17, lines 12-17 & FN 23)	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
	Chapter V, Section A.1, (page 35, line 8, Table V-9 & FN 56)	VIII.A Bid Information	For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.

	Chapter V, Section A.3, Table V-10 (page 37, lines 7-8, page 38, lines 1-4)	VIII.A Bid Information	For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.
	Chapter V, Section A.4, Table V-11 (page 39)	VIII.A Bid Information	For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.
	Chapter VII, Section B.1.a (page 66, lines 1-2)	VIII.A Bid Information	For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.
	Chapter VII, Section B.1.a.1 (page 68, lines 4-7); Section B.1.a.2 (page 68, lines 10-11); Section B.1.a.3. (page 68, lines 14-16, 18-19, 22-23); Section B.1.a.4 (page 68, line 27)	VIII.A Bid Information VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval. Contracts confidential for three years, or until one year following expiration, whichever comes first.
	Chapter VII, Section B.1.b.1 (page 70, lines 2-4); Section B.1.b.2 (page 70, lines 7-8)	VIII.A Bid Information	For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for

			approval.
	Chapter VII, Section B.1.c (page 70, lines 13-15); Section B.1.c.1 (page 71, lines 7, 10-12)	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
	Chapter VII, Section B.1.d (page 72, line 24; page 73, lines 1-2)	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
	Chapter VII, Section B.1.d.2 (page 75, lines 14-20); Section B.1.d.3. (page 76, lines 9-18); Section B.1.d.4 (page 76, lines 23-25; page 77, lines 1-2)	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
	Chapter VII, Section C (page 81, lines 8, 13, 16, 18, 21)	VIII.A Bid Information	For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.
		VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.

LCR RFO Contracts (Western LA Basin)	Confidential Appendix B	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
LCR RFO Summary of Selected Offers (Western LA Basin)	Confidential Appendix C	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
Independent Evaluator Report	Confidential Appendix B of Independent Evaluator Report (Confidential / Public Appendix D of Application)	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS) VIII.A Bid Information VIII.B Specific quantitative analysis involved in the scoring and evaluation of participating bids	Contracts confidential for three years, or until one year following expiration, whichever comes first. For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval. Specific quantitative analysis involved in the scoring and evaluation of participating bids confidential for three years after winning bidders selected.

1 3. SCE is complying with the limitations on confidentiality specified in the Matrix that
2 pertain to the data listed in the table above.

3 4. I am informed and believe and thereon allege that the data in the table in paragraph 2
4 above cannot be aggregated, redacted, summarized, masked or otherwise protected in a manner that
5 would allow partial disclosure of the data while still protecting confidential information.

6 5. I am informed and believe and thereon allege that most of the data in the table in
7 paragraph 2 above has never been made publicly available.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct.

3 Executed on November 21, 2014, at Rosemead, California.

4

5

/s/ Jesse Bryson

Jesse Bryson