

DOCKETED

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Project Title:	Electricity and Natural Gas Demand Forecast
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Document Title:	SCE Application for Confidential Designation Demand Forms
Description:	Confidential request for years 2018 through 2021 in the breakout table of Migrating Load Included in Forecast (GWh)
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**APPLICATION FOR CONFIDENTIAL DESIGNATION
(20 CCR SECTION 2505)**

**2017 INTEGRATED ENERGY POLICY REPORT
DOCKET NUMBER 19-IEP-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 2019 Electricity Demand Forecast Form 1.1a, Retail Sales of Electricity by Class or Section (GWh) Bundled, Direct Access, and CCA. Until 2017, SCE did not apply for confidential treatment of the content in Form 1.1a because the form solely consisted of aggregated bundled and migrating load retail sales forecast data. Beginning in 2017, however, the California Energy Commission (Energy Commission) has requested a breakout of the migrating retail sales. If the breakout and the total aggregated retail sales are made public, one can simply subtract the migrating retail sales forecast from the aggregated total to discern SCE's bundled retail sales forecast, which is confidential. Therefore, in the 2017 IEPR, SCE requested confidential designation for the years 2017-2020. On March 3, 2017, the Energy Commission granted SCE's request to designate the migrating load retail sales information confidential. SCE contends it is entitled to the same confidential treatment in 2019 for the same reasons. SCE has highlighted the confidential data in Form 1.1a in 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 deem the years 2018 through 2021 in the breakout table of Migrating Load Included in Forecast (GWh) to be confidential and exempt from public disclosure because that data can be used to calculate LSE Total Energy Forecast for Bundled Customers and Service Area, both which are confidential under the California Public Utilities Commission's (CPUC's) Confidentiality Matrix, Section V.C and V.E, respectively.

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.

For reasons discussed in more detail below, SCE requests that the specified information above be restricted from public disclosure based on a window of confidentiality looking three years forward. As data becomes one year old, the 1-year window of confidentiality for historical data becomes applicable. Thus in a 2018 forecast of confidential information for 2019, 2020, and 2021, the data for 2019 should be released in 2020, when it is one year old.

This methodology is consistent with the CPUC's Decision (D.) 06-06-066, as modified by D.07-05-032, and its attached Confidentiality Matrix.¹ The Energy Commission 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 Energy Commission has endeavored to work collaboratively with the CPUC to assure regulatory consistency in areas such as the Energy Commission's Demand Forecasts. As a result, in all prior years, the Energy Commission has consistently granted SCE's requests to keep three year forward forecast of bundled customer electricity retail sales confidential. Making the migrating retail forecast public would reveal SCE's bundled retail forecast, which is inconsistent with the Energy Commission's past practice and policy. It should therefore grant SCE's request here to keep the years 2018-2021 in the migrating load portion of Form 1.1a confidential.

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.

¹ D.06-06-066, as modified by D.07-05-032, Confidentiality Matrix, p. 2, fn. 6.

SCE respectfully requests that the Energy Commission grant SCE the confidential treatment sought. As a factual matter, the data for which SCE requests confidential treatment is confidential proprietary sensitive information about the quantity of energy SCE must buy for and sell to its customers.² SCE purchases and sells large quantities of electricity on behalf of its customers. The market place for such purchases and sales is highly competitive. Accordingly, such information is extremely valuable and, if revealed, could place SCE at a competitive disadvantage when purchasing or selling energy.

From a public policy perspective, the CPUC tries to prevent such harm to customers from arising by requiring SCE to protect such information from public disclosure and dissemination. As a regulated utility, SCE is subject to the jurisdiction of both the Energy Commission 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 Energy Commission 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, the Energy Commission should 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. As noted above, SCE encourages the Energy Commission to continue to adhere to its policy and practice of adopting a consistent methodology for maintaining the confidentiality of such information.

² Likewise, SCE has reconsidered its past request for confidential designation and has decided not to request confidential treatment of Form 2.2 and for the columns of historical and forecast Resale City Load and Municipal Department Load data on Form 1.6a for 2012 and 2013. SCE continues to maintain, however, that the historical and forecast Total System Load data for 2012 and 2013 on Form 1.6a should be designated confidential because, as discussed in Section 5 below, that data can be used to calculate information that is protected by D.06-06-066, as modified by D.07-05-032, and the Confidentiality Matrix.

Finally, with respect to specific legal requirements, 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.”³ The Section 25322 of the California Public Resources Code governing the confidentiality of information gathered by the Energy Commission follows the same standard.⁴ Specifically, if the information is exempt from disclosure under the California Public Records Act, “[t]he commission shall grant the [confidentiality] request.”⁵ 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 be binding on the Energy Commission, as a matter of interagency respect and consistency, the Energy Commission should apply the same level of confidential protection to information

³ Civil Code §3426.1(d).

⁴ 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.)

⁵ *Id.*

provided to it 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 Energy Commission, 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 market sensitive when releasing the information would materially increase the price of electricity, thereby harming customers.⁶

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 Energy Commission should grant this trade secret information confidential treatment.

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.

For the reasons explained above, public disclosure of the data could allow the entities to manipulate the electricity market to the disadvantage of SCE's customers. 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. The data for which SCE seeks protection is "market sensitive" and protected under the CPUC-approved Confidentiality Matrix. Specifically, the data can be used to calculate LSE Total Energy Forecast for Bundled Customer and Service Territory, which SCE is required to keep

⁶ See D.06-06-066 at 40-43 and Finding of Fact No. 2, at p. 76.

confidential under the Confidentiality Matrix, Section V.C and V.E, respectively. SCE therefore treats the data in Form 1.1a for which SCE seeks confidential treatment is protected as a trade secret. It is therefore entitled to confidential treatment under the Public Records Act, the Public Resources Code, and Public Utilities Code.

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.

Through discussions with Energy Commission staff in previous IEPR proceedings, 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 2019 Electricity Demand Forecast Form 1.1a in the Migrating Load Included in Forecast (GWh) cannot be aggregated or masked to allow for its public disclosure. That aggregated data is included in the other table in Form 1.1a and SCE does not seek confidential treatment of that aggregated data.

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 Public Utilities Code Section 583⁷ and other CPUC procedural safeguards to

⁷ California Public Utilities Code Section 583 provides: "No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a

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 may have also previously released the information to non-market participants of the Procurement Review Group (PRG). SCE has only made such information available to non-market participants under strict non-disclosure agreements approved by the CPUC and signed by parties receiving 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 this Application for Confidential Designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the Applicant.

Dated: February 8, 2019

Signed: /s/ Hongyan Sheng

Name: Hongyan Sheng

Title: Principal Manager, Modeling Forecasting and Economic Analysis

commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.”