

DOCKETED

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

**2018 RENEWABLES PORTFOLIO STANDARD
DOCKET NUMBER 18-RPS-02**

Applicant: Southern California Edison Company (SCE)

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

On April 23, 2019, Camille Remy-Obad, of the California Energy Commission’s (CEC’s) staff requested a copy of the Renewables Portfolio Standard (RPS) Power Purchase Agreement (PPA) between Southern California Edison Company (SCE) and Terra-Gen Dixie Valley, LLC (RPS ID 60313) in an email message to Loic Gaillac, an SCE employee. This request was in connection with the CEC’s review of SCE’s notification letter regarding the RPS Certification of Terra-Gen Dixie Valley, LLC (RPS ID 60313). As the letter describes, SCE learned of an RPS certification issue, and is seeking confirmation of the RPS eligibility of the project.

In accordance with this request, SCE submits a copy of its RPS PPA with Terra-Gen Dixie Valley, LLC (RPS ID 60313) that began delivery on July 5, 2018 which is within the last three years, to the CEC staff. SCE requests confidential treatment of this RPS PPA. SCE has conspicuously labeled this RPS PPA that SCE believes should be afforded confidential treatment by the CEC.

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

The RPS PPA with Terra-Gen Dixie Valley, LLC (RPS ID 60313) that began delivery on July 5, 2018 is the information that should receive confidential treatment in its entirety.

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 the CEC restrict public disclosure for a period of three years following the commercial operation date for the RPS PPA with Terra-Gen Dixie Valley, LLC (RPS ID 60313), which would be July 5, 2021, or until one year following expiration whichever comes first.

SCE's request is consistent with the California Public Utilities Commission's (CPUC's) Decision (D.) 06-06-066, as modified by D.07-05-032, and accompanying Confidentiality Matrix.¹ 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 endeavors to work collaboratively with the CPUC to assure regulatory consistency in areas such as RPS contracting and should continue to employ that practice with respect to its disposition of this application. In particular, Section VII (G) of the D.06-06-066 Matrix allows that terms and condition of RPS PPAs are confidential for three years, or until one year following expiration whichever comes first.

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.

The data described above for which SCE requests confidential treatment is confidential, proprietary, market sensitive information about the terms and conditions of its RPS PPAs. SCE has entered into many RPS PPAs on behalf of its customers. The market place for RPS power is highly competitive. Accordingly, such information is extremely valuable and, if revealed, could place SCE at a competitive disadvantage when purchasing or selling RPS energy. For this reason, the Public Utilities Code and CPUC decisions protect such information from public disclosure and dissemination. As noted above, SCE encourages the CEC to act in conformance with the CPUC's treatment of such data.

¹ D.06-06-066, as modified by D.07-05-032, Confidentiality Matrix, p. 17, Section VII(G).

The California Legislature has enacted statutes to protect confidential information, including the information for which SCE seeks protection here, from public disclosure. Section 454.5(g) of the California Public Utilities Code provides that: “The [CPUC] 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, 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.”

Consistent with those authorities, the CPUC initiated Rulemaking (R.) 05-06-040 and issued Decision (D.) 06-06-066 in which the CPUC acknowledged the importance of protecting market sensitive information that could allow market participants to manipulate the market.² To strike the appropriate balance between public participation and protecting market sensitive procurement information, the CPUC adopted the utilities’ proposal, which is set forth in the Confidentiality Matrix attached to D.06-06-066, for the treatment of market sensitive information, which made a distinction between the treatment of such information with respect to market and non-market participants.³ Specifically, D.06-06-066, as modified by D.07-05-032, adopts procedures to afford confidentiality to investor-owned utilities’ (IOUs) procurement data. These procedures comply with Public Utilities Code §454.5(g)’s mandate that “the [CPUC] shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information.”

Although the CPUC’s decisions and the statutes applicable to the CPUC may not be binding on the CEC, they are binding on SCE. SCE must therefore comply with the CPUC’s decisions by engaging in efforts to maintain the confidentiality of market sensitive data. As a matter of comity and consistency, the CEC should apply the same level of confidential protection

² D.06-06-006 at p. 15

³ Id. at pp. 40-46, CL 10, 13, CL 22.

to information provided to it as the CPUC would provide under D.06-06-066 and the Confidentiality Matrix. 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 market sensitive when releasing the information would materially increase the price of electricity, thereby harming customers.⁴

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. Indeed, the RPS PPA for which SCE is seeking confidential treatment is 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 CEC should protect SCE's market sensitive information 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.

- 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.**

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 RPS PPA with Terra-Gen Dixie Valley, LLC (RPS ID 60313) for which SCE seeks protection is "market sensitive" and protected under the Public Utilities Code Section 454.5(g)

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

and the CPUC-approved D.06-06-066 Confidentiality Matrix. Specifically, Section VII (G) of the D.06-06-066 Matrix allows that terms and condition of RPS PPAs are confidential for three years, or until one year following expiration whichever comes first.

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.

The RPS PPA with Terra-Gen Dixie Valley, LLC (RPS ID 60313) 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. The RPS PPA may have previously been submitted to the CPUC pursuant to Public Utilities Code Section 454.5(g) and the D.06-06-066 Matrix and other CPUC procedural safeguards to maintain its confidentiality. With respect to the CEC staff, SCE has identified the information as confidential and has followed all CEC 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 CEC.

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: May 16, 2019

Signed: /s/ Loic Gaillac

Name: Loic Gaillac

Title: Senior Manager, Contract Compliance and Technical Services