

**DOCKETED**

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| <b>Docket Number:</b>   | 21-IEPR-02   |
| <b>Project Title:</b>   | Electricity Resource Plans   |
| <b>TN #:</b>            | 240599   |
| <b>Document Title:</b>  | CEC Response Letter for San Diego Gas & Electric (SDG&E)<br>Confidential Application of September 28, 2021 |
| <b>Description:</b>     | N/A  |
| <b>Filer:</b>           | Pam Fredieu  |
| <b>Organization:</b>    | California Energy Commission   |
| <b>Submitter Role:</b>  | Commission Staff   |
| <b>Submission Date:</b> | 11/15/2021 12:01:12 PM   |
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November 12, 2021

**Via Email**

John A. Pacheco  
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San Diego, California 92123  
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**Application for Confidential Designation for Data in Integrated Energy Policy Report, Docket 21-IEPR-02**

Dear John A. Pacheco:

The California Energy Commission (CEC) received a repeated application for confidential designation (application) submitted by San Diego Gas & Electric (applicant) on September 28, 2021, for specified data submitted in the 2021 Integrated Energy Policy Report (IEPR) proceeding. The application contains a repeated request covering data previously designated as confidential. The request indicates that all confidential data is highlighted on the submitted spreadsheets. Specifically, the confidential designation is sought for:

**Form S-1 Capacity / Energy Requirement Form:**

- Form S-1: Forecast Total Peak-Hour 1-in-2 Demand, Col I-R, Row 1
- Form S-1: Adjusted Demand: End-Use Customers, Col I-R, Row 5
- Form S-1: Coincident Peak-Hour Demand, Col I-R, Row 7
- Form S-1: Required Planning Reserve Margin, Col I-R, Row 8
- Form S-1: Firm LSE Procurement Requirement, Col I-R, Row 11
- Form S-1: Forecast Total Energy Demand/ Consumption, Col I-R, Row 12
- Form S-1: Adjusted Demand: End-Use Customers, Col I-R, Row 16
- Form S-1: Firm LSE Procurement Requirement, Col I-R, Row 18

**Form S-2 Capacity / Energy Supply Resources Form:**

- Form S-2: Total Fossil Fuel and Energy Storage Supply, Col V-AE, Row 1a-1n
- Form S-2: Total Hydroelectric Supply, Col V-AE, Row 3a-3e
- Form S-2: Total Utility-Controlled Renewable Supply, Col V-AE, Row 4a-4b
- Form S-2: Total Qualifying Facility (QF) Contract Supply, Col V-AE, Row 5a-5h
- Form S-2: Total Other Bilateral Contract Supply, Col V-AE, Row 7a-8
- Form S-2: Total: Existing and Planned Supply, Col I-R, Col V-AE, Row 9

Form S-2: Firm LSE Procurement Requirement, Col I-R, Col V-AE, Row 10  
Form S-2: Net Surplus (or Need), Col I-R, Col V-AE, Row 11  
Form S-2: Generic Non-Renewable Resources, Col I-R, Col V-AE, Row 13

The application references prior designations of confidentiality for data substantially similar to data provided in this IEPR proceeding. A review of the 2011 application indicates that confidentiality should be granted pursuant to Title 20, California Code of Regulations (CCR), section 2505, on the grounds that the information is not otherwise publicly available and that the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces. The prior application also notes that public disclosure of the information could harm rate payers by exposing bundled customers net short position and that such information is considered confidential by the CPUC.

A properly filed application for confidential designation shall be granted under Title 20, CCR, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 3426.1.) Government Code section 6255 also permits the CEC to withhold a public record where "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

California courts have traditionally used the following definition of trade secret:

A trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, section 757, comment b, p. 5.)

Title 20, CCR, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Here, the application references the prior 2011 application that states that the data constitutes trade secrets or otherwise commercially sensitive data, which has not been shared publicly. The application states that the applicant operates in the competitive and dynamic retail energy markets and is a net purchaser in the competitive wholesale markets, so the confidentiality of data regarding its retail and wholesale market positions

is a competitive advantage. The application notes information about the timing and quantity of energy the applicant must sell or purchase is extremely valuable and that disclosure of this information can be used to directly or indirectly determine the applicant's market position and would result in a loss of competitive advantage in the wholesale and retail marketplaces relative to its ability to negotiate future contracts for the purchase or resale of energy, or with respect to negotiation of contracts with retail customers.

The applicant has made a reasonable claim that the identified data should be confidential. The confidentiality request for specific data fields on Forms S-1 and S-2 is granted until the requested date of December 31, 2023, or until such time as it may be publicly released, whichever is earlier. The information in Forms S-1 and S-2 may be released before December 31, 2023, if applicant-specific information is aggregated with information from all other statewide energy service providers. Load serving entities provide quarterly annual retail sales under Title 20, CCR, section 1306. As set forth in Title 20, CCR, section 2507(e)(1)(A)(1), the quarterly data can be publicly disclosed for an individual load serving entity if aggregated at the statewide level by year. Therefore, data submitted consistent with this aggregation will not be confidential.

Be advised that under Title 20, CCR, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel. Under Title 20, CCR, section 2507, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the Title 20, CCR, sections 2506-2508.

You may seek a confidential designation for information that is substantially similar to information for which an application for confidential designation was granted by the executive director by following the procedures set forth in Title 20, CCR, section 2505(a)(4).

If you have any questions, please contact Jared Babula, attorney IV, at [jared.babula@energy.ca.gov](mailto:jared.babula@energy.ca.gov).

Sincerely,



Drew Bohan  
Executive Director

