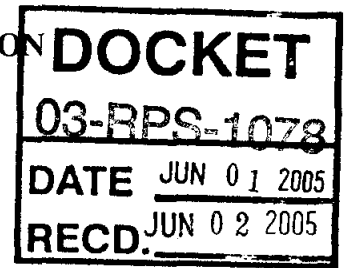


APPLICATION FOR CONFIDENTIAL DESIGNATION  
(20 CCR SECTION 2025)

RENEWABLES PORTFOLIO STANDARD  
Docket Number 03-RPS-1078



Applicant: San Diego Gas & Electric Company ("SDG&E")

Attorney for Applicant: Meredith E. Allen  
Address of Attorney: 101 Ash St.  
San Diego, California 92101  
meallen@sempra.com  
(619) 699-5050

1. (a) Title, data, and description of the record.

California Energy Commission Short List Data Request - Bids Below Market Price Referent and Bids Above Market Price Referent

(b) Specify the part(s) of the record for which you request confidential designation.

SDG&E is requesting confidential treatment of portions of SDG&E's response to the California Energy Commission's Short List Data Request, as discussed below.

**Responses to Questions Regarding Bids Below Market Price Referent:**

Question 2 - The response to question 2 relating to estimated generation per year should be kept confidential for the entire period and should be only disclosed as part of the actual aggregated generation data released in the annual compliance filings with the California Public Utilities Commission ("CPUC"). For example, aggregated 2006 generation data will be released in SDG&E's first compliance filing with the CPUC in 2006 but future years estimates would be kept confidential.

Questions 3 and 5 - The responses to question 3 and 5 relating to the number of projects in the shortlist and the percentage of GWs that require transmission development should be kept confidential until SDG&E has filed each of its contracts resulting from the 2004 RPS solicitation for approval with the CPUC.

Question 6 - The response to question 6 seeking an aggregated weighted-average price should never be disclosed.

## **Responses to Questions Regarding Bids Above Market Price Referent:**

Questions 2, 3, 7, 8 and 9 – The responses to these questions relating to the product type, contract term, negotiation status and transmission upgrades should be kept confidential until SDG&E has filed each of its contracts resulting from the 2004 RPS solicitation for approval with the CPUC.

Question 5 – The response to question 5 relating to the year energy delivery would begin should be kept confidential until the project is online.

Questions 4 and 10 – The responses to questions 4 and 10 relating to price should never be disclosed. The portion of the response to question 10 relating to estimated annual generation should not be disclosed for future years and should only be disclosed on a historical basis in a manner consistent with the CEC's requirements for tracking generation for RPS compliance.

### **2. State and justify the length of time the Commission should keep the record confidential.**

SDG&E requests that the responses to questions 3 and 5 in regard to bids below the market price referent and the responses to questions 2, 3, 7, 8 and 9 in regard to bids above the market price referent be kept confidential until SDG&E has filed each of its contracts resulting from the 2004 solicitation for approval with the CPUC. SDG&E is presently in contract negotiations with short-listed bidders. If information relating to SDG&E's RFO is released during these negotiations, SDG&E will be disadvantaged in its negotiations with bidders to the detriment of SDG&E and its customers. Furthermore, in regard to projects above the market price referent, the bidders to SDG&E's RFO have requested that bid specific information remain confidential. This particular information, therefore, will not be publicly disclosed until SDG&E has filed its contracts for approval with the CPUC. If this condition of SDG&E's RFO is not respected, SDG&E is concerned that prospective bidders will be reluctant to deal candidly with SDG&E, which could prevent the parties from reaching the best mutually acceptable agreement.

SDG&E requests that the response to question 5 in regard to the year energy delivery would begin for bids above the market price referent be kept confidential until the project(s) comes online. This length of protection is necessary during the RFO for the reasons set forth above and thereafter because releasing this information prematurely may impact negotiations that bidders may be having regarding fuel and/or land rights, interconnection, CAISO-related agreements and permits.

SDG&E requests that the response to question 2 for bids below the market price referent and question 10 for bids above the market referent be kept confidential for the entire period. This information should be only disclosed as part of the actual aggregated generation data released in the annual compliance filings with the

CPUC. For example, aggregated 2006 generation data will be released in SDG&E's first compliance filing with the CPUC in 2006 but future years estimates would be kept confidential. This annual generation data, even if aggregated, should otherwise be kept confidential because it could be used to derive SDG&E's annual renewable net short for future years. This approach strikes the appropriate balance between providing the public with information concerning SDG&E's efforts to reach its renewable procurement goals and protecting market sensitive net short information. In addition, SDG&E is presently in contract negotiations with short-listed bidders. If information relating to SDG&E's RFO is released, SDG&E will be disadvantaged in its negotiations with bidders to the detriment of SDG&E and its customers. For the bid specific information requested in question 10, the bidders to SDG&E's RFO have requested that this information remain confidential. If this condition of SDG&E's RFO is not respected, SDG&E is concerned that prospective bidders will be reluctant to deal candidly with SDG&E, which could prevent the parties from reaching the best mutually acceptable agreement. Further, SDG&E will only publicly release the overall size of particular projects in MWs in its filings for contract approval at the CPUC. Project specific annual generation data should only be disclosed in a manner consistent with the CEC's requirements for tracking historical generation for RPS compliance.

SDG&E requests that the pricing information provided in response to questions 6 for bids below the market price referent and questions 4 and 10 for bids above the MPR never be disclosed. Disclosure of this information would harm SDG&E and its customers in the 2004 RFO and later procurement efforts, because it would provide the market with information concerning the price SDG&E is willing to pay for renewable energy and the bid prices offered by other suppliers. For example, SDG&E is concerned that the average weighted average price requested in question 6 could become a floor in future solicitations. In addition, SDG&E is presently in contract negotiations with short-listed bidders. If information relating to SDG&E's RFO is released, SDG&E will be disadvantaged in its negotiations with bidders to the detriment of SDG&E and its customers. For example, bidders could use this information to determine where they are in comparison to the average or other bidders' prices and then use that information to their advantage in negotiations with SDG&E. In addition, bidders to SDG&E's RFO have requested that their bid information be kept confidential and SDG&E is concerned that if this requirement is not respected, bidders will not be candid with SDG&E reducing the opportunity for the best mutually agreeable bargain. The standard terms and conditions for RPS contracts also allow bid pricing to be kept confidential. This information, therefore, will likely need to be kept confidential pursuant to the terms of the contract.

3. **(a) State the provision(s) of the Public Records Act or other law that allows the Commission to keep the record confidential, and explain why the provision(s) applies to the record.**

The responses discussed above provide competitively and commercially sensitive business and procurement information and trade secrets. Under the Public Records Act, Govt. Code Section 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed. See also Govt. Code Section 6254.7(d). Evidence Code Section 1060 provides a privilege for trade secrets, which is defined in Civil Code Section 3426.1 as information, including a formula, technique, and process, that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure. It is well established that the Courts protect trade secret information from disclosure where disclosure would be harmful (see, e.g., *Klamath-Orleans Lumber v. Miller* (1978), 87 Cal. App. 3d 458). Among the harm that disclosure causes is the ability of competitors to gain knowledge at the expense of the privilege holder (*Pepsico v. Raymond* (9<sup>th</sup> Cir. 1995) 54 F. 3d 1262). In addition to the Courts regularly protecting trade secret information, the California Public Utilities Commission also recognizes that utility trade secret information may be kept confidential under appropriate circumstances (see generally, e.g., R.97-04-010, 71 CPUC 2d 485; D.02-12-074, 2002 Cal. PUC LEXIS 905; D.98-02-041, 78 CPUC 2d 486). The CPUC has stated, for example: “The utility may file [a motion for protective order] to protect either its own trade secrets or those of its customers...” (D.93-02-058, 1993 Cal. PUC LEXIS 118, \*25)).

Section 454.5 of the Public Utilities Code is also pertinent here. That section requires the CPUC to maintain on a confidential basis market sensitive information related to a distribution utility’s procurement plan. Significantly, that code section does not even require any demonstration of “ratepayer” harm, even though that risk is clearly present here.

Even under the catch-all provision in Public Records Act, Govt. Code Section 6255, this market sensitive information should be protected, because the public interest served by not disclosing the information outweighs the interest served by disclosing the information, as discussed below.

As discussed above, the responses to the relevant questions contain detailed market sensitive procurement information that provides a picture of SDG&E’s demand and strategies for conducting RPS procurement. SDG&E believes that this data thus satisfies the trade secret standard as discussed further herein.

Furthermore, to publicly release this information would allow market participants to have access to competitively sensitive information that would normally not be available to them. As a matter of law and public policy, the CEC should ensure that it does not facilitate availability of such data.

**(b) Discuss the public interest in nondisclosure of the record. If the record contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please also state how it would be lost, the value of the**

**information to the Applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.**

SDG&E believes that there is a compelling public interest in protecting this information, as described above. The primary public interest to be protected here is, among other risks, that SDG&E will be disadvantaged in RPS procurement negotiations and renewable power prices for consumers may well increase. It is apparent that where parties have “unequal information” and where the seller knows the buyer’s needs and details concerning other suppliers’ bids, in SDG&E’s case customers stand to be disadvantaged.

In particular, SDG&E’s RPS procurement-related information is a prime candidate for confidential treatment because SDG&E has publicly committed to trying to achieve the aggressive goal of 20% by 2010. In order to achieve this goal, SDG&E will need to conduct procurement by a specified time. If the market sensitive details requested in the questions discussed above are made public, SDG&E would be placed in an unfair bargaining position by sellers resulting in higher costs for SDG&E’s customers in order to achieve this goal. If buyers know when SDG&E has to buy power and other details of SDG&E’s RPS procurement efforts, SDG&E could have to pay a higher price than if the market assumed the utility had discretion over whether or not to buy.

Moreover, the State has determined that the public interest is served by the utilities achieving the RPS goals. SDG&E is concerned that disclosure of market sensitive information would not advance these interests for the reasons discussed herein.

- 4. State whether the record may be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the Applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if it is aggregated or masked, explain why.**

The aggregated information provided in response to questions 2 and 6 relating to bids below the market price referent should remain confidential. The aggregated annual generation data could be used to determine SDG&E’s future renewable needs. This information is particularly sensitive given SDG&E’s commitment to try to achieve the aggressive goal of 20% by 2010, because the market knows that SDG&E must conduct procurement by a specified time in order to achieve this goal. Aggregated annual generation data, therefore, should only be disclosed when it is made available in SDG&E’s annual compliance filings with the CPUC. The aggregated pricing information requested in question 6 could be used by bidders to the disadvantage of SDG&E’s customers in this RFO and SDG&E’s later procurement efforts because it provides market sensitive information concerning the amount SDG&E is willing to pay for renewable energy and the bid prices offered by other suppliers. This pricing information should therefore never be disclosed.

The aggregated information provided in response to questions 3 and 5 relating to bids below the market price referent should remain confidential until SDG&E has filed all of its contracts resulting from the 2004 solicitation with the CPUC because releasing this information during contract negotiations could disadvantage SDG&E.

The information sought in regard to bids above the market price referent is not aggregated. The information concerning price and annual generation, even if aggregated, could not be disclosed for the reasons set forth above. The remaining information requested, even if aggregated, could not be released until SDG&E filed all of its contracts resulting from the 2004 solicitation with the CPUC or the projects came online, as discussed above.

SDG&E remains willing to continue to work with CEC staff to further assemble data that could be revealed publicly.

- 5. 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.**

As explained above, SDG&E maintains access to this information on a confidential basis. It is only available by hard copy and electronically on a limited basis within certain departments that must have access to the information to conduct their procurement and regulatory activities. The information is password protected on computer systems or in hard copy form kept in secure locations. Only certain individuals with key card access are able to enter areas of the Company where the information is available and utilized.

The CEC should also be aware that under Standard of Conduct #2 adopted by the CPUC for the utilities' procurement activities, utility employees are obligated to protect the Company's trade secrets:

2. Each utility must adopt, actively monitor, and enforce compliance with a comprehensive code of conduct for all employees engaged in the procurement process that: 1) identifies trade secrets and other confidential information; 2) specifies procedures for ensuring that such information retains its trade secret and/or confidential status [e.g., limiting access to such information to individuals with a need to know, limiting locations at which such information may be accessed, etc.]; ... (See D.02-12-074, pp. 57-58.)

SDG&E has not to the best of its knowledge previously publicly released this information in precisely this format or projecting out over this duration of time.

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: June 1, 2005

Signed: \_\_\_\_\_  
Name: Meredith E. Allen  
Title: Senior Regulatory Counsel