

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

June 20, 2005

03-RPS-1078

**DOCKET**

02-REN-1038

DATE JUN 20 2005

RECD JUN 21 2005

Les Guliasi  
State Agency Relations  
Pacific Gas and Electric Company  
P. O. Box 770000  
San Francisco, CA 94177

RE: **Application for Confidential Designation,  
Response to RPS Short List Data Request,  
Docket Nos. 03-RPS-1078 and 02-REN-1038**

Dear Mr. Guliasi:

On June 1, 2005, the Pacific Gas and Electric Company (PG&E) submitted information in response to the Energy Commission's April 22, 2005, RPS Short List Data Request (SLDR), together with an Application for Confidentiality (Application). This Application was submitted pursuant to the California Code of Regulations, Title 20, section 2505, and seeks the confidential designation of various information submitted by PG&E. Energy Commission staff have reviewed PG&E's Application in light of its SLDR responses and seeks additional information as identified below in order to fully evaluate the Application. This information is broken out by the SLDR number for Bids Below and Above the MPR and is requested pursuant to Title 20, section 2505(a)(3)(A). In responding to this request for additional information please refer to the enclosed tables, which summarize PG&E's SLDR responses and the basis for keeping these responses confidential.

**For Bids Below The MPR**

Question 2 – Estimated aggregate annual generation for all bids.

PG&E has requested this data be kept confidential until it has filed each of the contracts for the short listed bids with the California Public Utilities Commission (CPUC). By what date does PG&E expect to have all such contracts filed with the CPUC? Is there a final date upon which PG&E will terminate pending negotiations? What if pending negotiations fail to result in final contracts with the remaining short listed bidders? How long should the data for these short listed bidders be kept confidential?

PG&E requests this data be kept confidential because it indicates that disclosure could be used to estimate the size and robustness of the renewable market and enable market participants to determine whether potential renewable supplies are sufficient to meet PG&E's needs and could thereby price their products in the most profit-maximizing manner. Please explain how this is possible. The data provided by PG&E shows only a picture of those sellers that bid into PG&E's RFO and were selected as part of its short list. This is not the entire universe of prospective sellers that could supply renewable power to PG&E.

PG&E also claims that disclosure of this data would enable market participants to analyze a short listed bidder's commercial strategy by comparing the bidder's initial and final negotiation positions, thereby causing the bidder to lose competitive advantage. Please explain how this is possible. If no contract is executed with a short listed bidder then only the bidder's initial position is known (via PG&E response to the SDLR). However, this bid data is not linked to any identified bidder. If a contract is executed with a short listed bidder then the bidder has no need to sell its generation elsewhere or in future RFO.

In addition, PG&E claims that if data is disclosed market participants would be able to estimate whether the utility would need to take all of the generation from prospective bidders in following years in order to avoid a penalty. How is this possible if participants do not know how much generation, or by whom, will be proposed in future years. In addition, wouldn't the CPUC's flexible rules of compliance provide some relief from such procurement pressure?

Question 3 – Total number of short listed bids.

What is the basis for keeping this information confidential? PG&E has already identified three of the short listed bids and entered into contracts for these bids, which it has submitted to the CPUC for approval.

Question 4 – Percentage of utility's 2004 APT that utility anticipates meeting with short listed bids.

PG&E indicates that disclosure of this data would enable a bidder to determine whether it could incorporate the cost of a "transmission adder" into a bid and still remain competitive in relation to actual costs that emerged in PG&E's RFO. Please explain how this is possible.

Question 5 – What percentage of generation in short listed bids represent projects that required transmission development beyond installing gen-ties?

What is the basis for keeping this information confidential?

Question 6 – Single, aggregate weighted-average price for all short listed bids.

PG&E requests this data be kept confidential until June 1, 2008, on page 3 of its Application. On page 11 of its Application, PG&E requests this data be kept confidential until June 2010. Please clarify which date applies.

PG&E requests this data be kept confidential because its disclosure would provide market participants with information on the volume of bids below the MPR versus utility

demand and would encourage bidders to consider bidding above the MPR instead of at their costs. Please explain how this is possible.

### **For Bids Above The MPR**

#### **Question 2** – Type of product bid by individual bidders.

PG&E has requested this data be kept confidential for five years, until June 1, 2010. Will this data be disclosed when PG&E files the contracts for these bids with the CPUC for approval? Is it possible that this data may be publicly disclosed by PG&E and/or the bidders prior to June 1, 2010, for example, as part of the regulatory permitting process, if any, required to develop and/or operate the project?

PG&E requests this data be kept confidential for the same reasons discussed in Question 2 above for bids above the MPR. It indicates that disclosure could be used to estimate the size and robustness of the renewable market and enable market participants to determine whether potential renewable supplies are sufficient to meet PG&E's needs and could thereby price their products in the most profit-maximizing manner. Please explain how this is possible. This data shows only a picture of those sellers that bid into PG&E's RFO and were selected as part of its short list. This is not the entire universe of prospective sellers that could supply renewable power to PG&E.

PG&E also claims that disclosure of this data would enable market participants to analyze a short listed bidder's commercial strategy by comparing the bidder's initial and final negotiation positions, thereby causing the bidder to lose competitive advantage. Please explain how this is possible. If no contract is executed with a short listed bidder then only the bidder's initial position is known (via PG&E response to the SDLR). However, this bid data is not linked to any identified bidder. If a contract is executed with a short listed bidder then the bidder has no need to sell its generation elsewhere or in future RFO.

In addition, PG&E claims that if data is disclosed market participants would be able to estimate whether utility would need to take all of the generation from prospective bidders in following years in order to avoid a penalty. How is this possible if participants do not know how much generation, or by whom, will be proposed in future years. In addition, wouldn't the CPUC's flexible rules of compliance provide some relief from such procurement pressure?

#### **Question 3** – Number of years of energy delivery for individual projects.

PG&E has requested this data be kept confidential for five years, until June 1, 2010. Will this data be disclosed publicly when PG&E files the contracts for these projects with the CPUC for approval? If so, why is PG&E seeking confidentiality for five years? Is

it possible that this data may be publicly disclosed by PG&E and/or the bidder prior to June 1, 2010, for example, as part of the regulatory permitting process, if any, required to develop and/or operate the project?

PG&E requests this data be kept confidential for the same reasons discussed in Question 2 above. Please response to each of the inquiries in Question 2 above as applied to this Question 3 data.

Question 4 – Contract price for individual projects levelized over the contract term.

PG&E has requested this data be kept confidential for five years, until June 1, 2010. Will this data be publicly discernable before June 1, 2010, if a project receives Supplement Energy Payments (SEP), the award and payment of which will be public? If so, why is PG&E is seeking confidentiality for five years?

PG&E requests this data be kept confidential for the same reasons discussed in Question 2 above. Please response to each of the inquiries in Question 2 above as applied to this Question 4 data.

Question 5 – Year energy deliveries are expected to begin for each project.

PG&E has requested this data be kept confidential for five years, until June 1, 2010. Will this data be disclosed publicly when PG&E files the contracts for these projects with the CPUC for approval? If so, why is PG&E is seeking confidentiality for five years? Is it possible that this data may be publicly disclosed by PG&E and/or the bidder prior to June 1, 2010, for example, as part of the regulatory permitting process, if any, required to develop and/or operate the project? Will this data be publicly discernable before June 1, 2010, if a project receives SEPs, the award and payment of which will be public?

PG&E requests this data be kept confidential for the same reasons discussed in Question 2 above. Please response to each of the inquiries in Question 2 above as applied to this Question 5 data.

Question 6 – MPR for each project, adjusted to year's dollars for which delivery is expected to begin.

PG&E has requested this data be kept confidential for five years, until June 1, 2010. Can this data be calculated based on information that is publicly available at this time? If so, why is PG&E is seeking confidentiality for five years? If this data can not be calculated based information that is publicly available at this time, can it be determined before June 1, 2010, if a project receives SEPs, the award and payment of which will be public?

PG&E requests this data be kept confidential for the same reasons discussed in Question 2 above. Please response to each of the inquiries in Question 2 above as applied to this Question 6 data.

Question 9 – Is new transmission beyond a gen-tie addition or upgrade needed to connect each project to grid?

PG&E has requested this data be kept confidential for five years, until June 1, 2010. Will this data be disclosed publicly when PG&E files the contracts for these projects with the CPUC for approval? If so, why is PG&E is seeking confidentiality for five years? Is it possible that this data may be publicly disclosed by PG&E and/or the bidder prior to June 1, 2010, for example, as part of the regulatory permitting process, if any, required to develop and/or operate the project?

PG&E requests this data be kept confidential for the same reasons discussed in Question 2 above. Please response to each of the inquiries in Question 2 above as applied to this Question 9 data.

Question 10 – Weighted-average bid price in nominal ¢/kWh for each year of a project's expected delivery.

PG&E has requested this data be kept confidential for five years, until June 1, 2010. Will this data be publicly discernable before June 1, 2010, if a project receives SEPs, the award and payment of which will be public? If so, why is PG&E is seeking confidentiality for five years?

PG&E requests this data be kept confidential for the same reasons discussed in Question 2 above. Please response to each of the inquiries in Question 2 above as applied to this Question 10 data.

Question 10 – Estimated annual generation for each project.

PG&E has requested this data be kept confidential for five years, until June 1, 2010. Will this data be publicly discernable before June 1, 2010, if a project receives SEPs, the award and payment of which will be public? If so, why is PG&E is seeking confidentiality for five years?

PG&E requests this data be kept confidential for the same reasons discussed in Question 2 above. Please response to each of the inquiries in Question 2 above as applied to this Question 10 data.

**For All Bids**

Regarding efforts by PG&E to keep the SLDR response data confidential, PG&E indicates that it has executed standard confidentiality agreements with each of the short listed bidders that obligate the parties to keep the data confidential. A copy of the standard confidentiality agreement was included with PG&E's Application. This agreement, however, appears to address only PG&E-furnished data and obligates the bidders to keep such data confidential. The agreement does not address data the bidders furnished to PG&E. Is there a separate agreement for bidder-furnished data? If so, please provide a copy of this separate agreement. In addition, please explain how PG&E limits access internally to data in its SLDR response. Specifically, how is access to hard and electronic copies of this data restricted?

Please provide additional information as discussed herein within 10 business days of the date of this letter. Your response should be filed with the Energy Commission's Docket Unit with copies to the Energy Commission's Executive Director and Legal Office. If you have any questions concerning this matter, please contact me at (916) 654-5141.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gabriel Herrera', with a stylized flourish at the end.

GABRIEL HERRERA  
Senior Staff Counsel

Enclosures

cc: Docket Unit  
Scott Matthews  
Heather Raitt  
Marwan Masri  
Mike Jaske

PG&E Application for Confidential Designation  
RPS Short List Data Request  
For Bids Below the MPR

SLDR No.	Information/Data Requested	Length of Time Confidentiality Requested	Basis for Requesting Confidential Designation	Public Interest in Not Disclosing	Effort Taken to Keep Confidential	Notes
2	Estimated aggregate annual generation for all bids below MPR	Confidential until utility has filed each of the contracts for these projects w/ CPUC.	<p>Data could be used to estimate the size and robustness of renewable market and allow market participants to determine whether potential renewable supplies are sufficient to meet utility needs and could thereby price their products in the most profit-maximizing manner.</p> <p>Disclosure would allow market participants to analyze bidder's commercial strategy by comparing initial and final negotiation positions, thereby causing bidder to lose competitive advantage.</p> <p>If data disclosed market participants would be able to estimate whether utility would need to take all of the generation from prospective bidders in following years in order to avoid a penalty.</p> <p>CPUC standard T&amp;Cs require data to be kept confidential.</p> <p>Gov § 6254(a) – preliminary draft</p> <p>Gov § 6254.15 – trade secret</p>	Disclosure will disadvantage utility during pending negotiations and future solicitations resulting in higher power prices to utility customers.	Access maintained on a confidential basis. CPUC-approved solicitation protocol require contract terms be held confidentially. Utility/bidder agreement on confidentiality obligates parties to keep data confidential. Utility and bidder agree to maintain terms of negotiations in strict confidence, and to transmit confidential data only to such employees, agents, etc. who have a need know for sole purpose of evaluating contracts.	
3	Total number of projects below MPR	Confidential until utility has filed each of the contracts for these projects w/ CPUC.	Rationale for keeping this data confidential?	See above	See above	

PG&E Application for Confidential Designation  
RPS Short List Data Request  
For Bids Below the MPR

SLDR No.	Information/Data Requested	Length of Time Confidentiality Requested	Basis for Requesting Confidential Designation	Public Interest in Not Disclosing	Effort Taken to Keep Confidential	Notes
4	% of 2004 APT to be met w/ projects	Confidential until utility has filed each of the contracts for these projects w/ CPUC.	Disclosure would enable a bidder to determine whether it could incorporate the cost of a "transmission adder" into a bid and still remain competitive in relation to actual costs that emerged in the utility RFO.	See above	See above	
5	What % of generation in bids represents projects that require trans. development beyond installing gen-ties	Confidential until utility has filed each of the contracts for these projects w/ CPUC.	Rationale for keeping this data confidential?	See above.	See above.	
6	Single, aggregate, weighted-average price for all bids	Confidential until 6/1/08, per pg. 3 Confidential until 6/1/10, per pg. 11	Disclosing data would provide market participants w/ information of volume of bids below MPR vs. utility demand and would encourage bidders to consider bidding above MPR instead of at their costs. Aggregate weighted-average price could become floor in future RFOs. CPUC standard T&Cs require data be kept confidential.	See above	See above.	
7	Response data current as of what date	None	N/A	N/A	N/A	



PG&E Application for Confidential Designation  
RPS Short List Data Request  
For Bids Above the MPR

SLDR No.	Information/Data Requested	Length of Time Confidentiality Requested	Basis for Requesting Confidential Designation	Public Interest in Not Disclosing	Effort Taken to Keep Confidential	Notes
2	Type of product bid by project	Confidential for 5 years, until 6/1/10.	<p>Data could be used to estimate the size and robustness of renewable market and allow market participants to determine whether potential renewable supplies are sufficient to meet utility needs and could thereby price their products in the most profit-maximizing manner.</p> <p>Disclosure would allow market participants to analyze bidder's commercial strategy by comparing initial and final negotiation positions, thereby causing bidder to lose competitive advantage.</p> <p>If data disclosed market participants would be able to estimate whether utility would need to take all of the generation from prospective bidders in following years in order to avoid a penalty.</p> <p>CPUC standard T&amp;Cs require data to be kept confidential.</p> <p>Gov § 6254(a) – preliminary draft</p> <p>Gov § 6254.15 – trade secret</p>	Disclosure will disadvantage utility during pending negotiations and future solicitations resulting in higher power prices to utility customers.	Access maintained on a confidential basis. CPUC-approved solicitation protocol require contract terms be held confidentially. Utility/bidder agreement on confidentiality obligates parties to keep data confidential. Utility and bidder agree to maintain terms of negotiations in strict confidence, and to transmit confidential data only to such employees, agents, etc. who have a need know for sole purpose of evaluating contracts.	
3	Number of years of energy delivery for project	Confidential for 5 years, until 6/1/10.	See above	See above	See above	

PG&E Application for Confidential Designation  
RPS Short List Data Request  
For Bids Above the MPR

SLDR No.	Information/Data Requested	Length of Time Confidentiality Requested	Basis for Requesting Confidential Designation	Public Interest in Not Disclosing	Effort Taken to Keep Confidential	Notes
4	Contract price for project levelized over the contract term	Confidential for 5 years, until 6/1/10.	See above	See above	See above	
5	Year energy deliveries from project are expected to begin	Confidential for 5 years, until 6/1/10.	See above	See above.	See above.	
6	Adjusted MPR used for project's contract	Confidential for 5 years, until 6/1/10.	See above	See above	See above	
7	Have Negotiation Begun	N/A	N/A	N/A	N/A	
8	Estimated date to complete negotiations w/ project	Confidentiality is not requested.	N/A	N/A	N/A	
9	Is new transmission beyond a gen-tie addition or upgrade needed to connect project to grid	Confidential for 5 years, until 6/1/10.	See above	See above	See above	
10	Weighted-average bid price in nominal ¢/kWh for each year of expected delivery	Confidential for 5 years, until 6/1/10.	See above	See above	See above	
10	Estimated annual generation.	Confidential for 5 years, until 6/1/10.	See above	See above	See above	