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**Re: Application for Confidential Designation,  
CEC-SEP-3 (Utility) Data Request for SEP Application  
Docket No. 03-RPS-1078;  
Esmeralda Truckhaven Geothermal, LLC (Esmeralda) Project**

Dear Mr. Herrera:

We are in receipt of your correspondence sent via facsimile on July 18, 2006, requesting additional information to support the above-referenced Application for Confidential Designation, submitted June 15, 2006 (the "Application"). Responses to the questions set forth in your letter are provided below (the questions are not repeated in full) and correspond directly to the order of questions appearing in your letter.

SDG&E notes generally that requiring disclosure of confidential trade secret information of the utility and/or project developers in order to obtain supplemental energy payment ("SEP") funds would undermine rather than promote the goals of the renewable portfolio standard ("RPS") program. Requiring disclosure of the market sensitive information of developers, for example, could have the unintended negative consequence of disincenitng developers from participating in future RPS solicitations and seeking SEP funds, which could hamper their ability to complete projects since approval of a power purchase agreements ("PPAs") between developers and the utility, and the award of SEP funds, are often prerequisites to the significant investment that is required in order to develop a renewable energy project. Disclosure of confidential information would also harm SDG&E and its ratepayer customers by diminishing SDG&E's ability to cost effectively meet RPS targets.

**Information Provided in CEC-SEP-3 Form**

**Question 6 – Contract Price**

SDG&E requests that the beginning date of the three-year period of confidentiality be the date the Application was filed, June 15, 2006, with an end-date of June 14, 2009. As SDG&E explained in the Application, after this period, the commercial relevance of this information is diminished and its disclosure does not present the same risk of harm.

**Information Provided in Supporting Excel Spreadsheets**

SDG&E requests that the beginning date of the three-year period of confidentiality be the date the Application was filed, June 15, 2006, with an end-date of June 14, 2009. As SDG&E explained in the Application, after this period, the commercial relevance of this information is diminished and its disclosure does not present the same risk of harm.

**Information Provided in Advice Letter 1795-E**

SDG&E requests that the beginning date of the three-year period of confidentiality be the date the Application was filed, June 15, 2006, with an end-date of June 14, 2009. As SDG&E explained in the Application, after this period, the commercial relevance of this information is diminished and its disclosure does not present the same risk of harm.

**Appendix A, Proposed Project's Contribution Towards SDG&E's RPS Goals**

*Please provide the legal justification for doing so and explain whether any of this information will be publicly available in the near future.*

As explained below, information concerning the proposed projects' contribution towards SDG&E's RPS goals will provide insight into SDG&E's procurement strategy. If SDG&E is close to meeting its RPS requirements and potential bidders have knowledge of the proposed project's contribution towards SDG&E's satisfaction of its RPS requirements, they may assume that SDG&E has filled a "quota" from the project's geographic area and may decline to bid into future RPS solicitations. Alternately, if SDG&E has not satisfied its RPS target and the proposed project would not remedy the deficit, potential bidders may perceive that SDG&E has limited ability to negotiate and may increase bid prices in order to take advantage of this circumstance. Thus, information concerning the proposed project's contribution towards SDG&E's RPS goals is commercially sensitive information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure, and as such falls squarely within the definition of "trade secrets" that

are protected under the Public Records Act, Govt. Code Section 6254(k), as explained in more detail in the Application. SDG&E does not intend to disclose this information in non-aggregated form within the next three years to any party other than its Procurement Review Group ("PRG"), subject to applicable non-disclosure agreement ("NDA"), and the California Public Utilities Commission ("CPUC") subject to a request for confidential treatment.

*Please indicate whether the public disclosure of any of the information in the appendix could adversely affect the development of the Esmeralda Project.*

This information should not adversely affect the development of the Esmeralda Project.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect the willingness of other project developers to participate in future RPS contract solicitations.*

As SDG&E approaches satisfaction of its RPS target, generators in the vicinity of a specific project may elect not to participate in future RPS solicitations, as they may believe that SDG&E has filled a "quota" from that area or that the project will satisfy SDG&E's RPS goal and that SDG&E will therefore be less likely to pursue additional contracts.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect SDG&E's costs and its ability to comply with the RPS.*

If SDG&E has not satisfied its RPS requirements by the December 31, 2010, deadline and the proposed project's contribution towards SDG&E's RPS goal is not adequate to remedy the deficit, generators may tend to ignore pricing on a cost plus basis in favor of higher electricity prices to the extent that they perceive SDG&E as having little room to negotiate and no choice other than to accept higher-priced renewable energy in order to avoid non-compliance with RPS mandates.

If, on the other hand, SDG&E is close to meeting its RPS goal by the December 31, 2010, deadline, generators in the vicinity of a specific project may elect not to participate in future RPS solicitations as they may believe that SDG&E filled a "quota" from that area or that SDG&E is close to meeting its RPS goals and as such will not be likely to pursue additional contracts. To the extent that this result in fewer bids received by SDG&E, costs may be higher and SDG&E's ability to comply with RPS requirements may be compromised.

## **Appendix B. Project Viability Matrix**

*Please provide the legal justification for doing so and explain whether any of this information will be publicly available in the near future.*

The Project Viability Matrix provides SDG&E's assessment of the project's strengths and weaknesses based upon operational and construction information provided by Esmeralda. As noted below, Esmeralda's competitors could attempt to use information contained in the Project Viability Matrix in order to interfere with Esmeralda's ability to complete development activities in a timely and cost effective manner. Thus, the information contained in the Project Viability Matrix is commercially sensitive information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure, and as such falls squarely within the definition of "trade secrets" that are protected under the Public Records Act, Govt. Code Section 6254(k), as explained in more detail in the Application. SDG&E does not intend to disclose this information in non-aggregated form within the next three years to any party other than its PRG, subject to applicable NDA, and the CPUC subject to a request for confidential treatment.<sup>1/</sup>

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect pending or future contract negotiations by the developer of the Esmeralda Project and thereby affect the project's development.*

The Project Viability Matrix contains details of Esmeralda's operational and construction plans, as well as SDG&E's assessment of the plans. Competitors could use this information to identify weaknesses in Esmeralda's project in order to attempt to interfere with Esmeralda's ability to complete development activities in a timely and cost effective manner.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect the willingness of other project developers to participate in future RPS contract solicitations.*

Developers are likely to be deterred from participating in future RPS solicitations to the extent that they wish to prevent disclosure of commercially sensitive information that may be used to their disadvantage by competitors.

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<sup>1/</sup> SDG&E also notes that information contained in the Project Viability Matrix appears to be protected for a period of three years under the CPUC's recently adopted Confidentiality Decision. (D.06-06-066, *memo*, Appendix I, Sec. VII.F/G; VIII.B)

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect SDG&E's costs and its ability to comply with the RPS.*

If the number of competitive bids received in future RPS solicitations decreases because developers opt not to participate in order to avoid disclosure of information contained in the Project Viability Matrix, SDG&E's will have fewer competitive choices and its costs and ability to comply with RPS requirement will be adversely affected.

**Appendix B-1, Project Pricing Details**

*Please indicate whether all of the information or only the project price information in this appendix should be kept confidential.*

Project price information should be kept confidential.

*Please provide the legal justification for doing so and explain whether any of this information will be publicly available in the near future.*

Disclosure of pricing information would harm both SDG&E and Esmeralda. It would provide the market with relevant information concerning the price SDG&E is willing to pay for renewable energy and, as explained below, would allow competitors to unfairly compete with Esmeralda. This information is commercially sensitive information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure. As such, it falls squarely within the definition of "trade secrets" that are protected under the Public Records Act, Govt. Code Section 6254(k), as explained in more detail in the Application. SDG&E does not intend to disclose this information in non-aggregated form within the next three years to any party other than its PRG, subject to applicable NDA, and the CPUC subject to a request for confidential treatment.<sup>2</sup>

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect pending or future contract negotiations by the developer of the Esmeralda Project and thereby affect the project's development.*

Project pricing information is closely guarded by developers and is generally viewed by them as trade secret information. Awareness of Esmeralda's pricing information would confer an unfair advantage upon Esmeralda's competitors in future competitive bid situations. In addition, disclosure of Esmeralda's pricing information could permit Esmeralda's competitors to reverse-engineer Esmeralda's bid in order to determine its costs, resource adequacy and bidding

<sup>2</sup> SDG&E also notes that pricing information is protected for a period of three years or one year following expiration of the contract, whichever comes first, under the CPUC's recently adopted Confidentiality Decision. (D.06-06-066, *memo*, Appendix I, Sec. VII.G)

strategy. Competitors could then use this information to attempt to interfere with or frustrate Esmeralda's ability to complete development activities in a timely manner by, among other things, hindering Esmeralda's efforts to obtain necessary equipment or interfering with land acquisition activities.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect the willingness of other project developers to participate in future RPS contract solicitations.*

Disclosure of pricing information would likely deter developers from participating in future RPS solicitations. As noted above, project pricing information is closely guarded by developers and is generally viewed by them as trade secret information. Developers who do not wish to have this information made public would likely opt out of future RPS solicitations and forego SEP funds, which could negatively impact the extent of renewable energy development in California.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect SDG&E's costs and its ability to comply with the RPS.*

If the number of competitive bids received in future RPS solicitations decreases because developers elect not to participate in order to avoid disclosure of pricing information, SDG&E's will have fewer competitive choices and its costs and ability to comply with the RPS will be adversely affected.

**Appendix B-2, Contract Summary, EEI Cover Sheets, EEI Confirmation Letters and Additional EEI Exhibits**

*Please confirm whether any of these documents are or will be publicly available through SDG&E, Esmeralda, or other parties during the "three year period" for which confidential designation is requested.*

Since the time SDG&E filed its Advice Letter 1795-E, the CPUC has issued its Confidentiality Decision, D.06-06-066, which indicates that certain information contained in the contract summary included in confidential Appendix B-2 to Advice Letter 1795-E will be treated as non-confidential public information. Specifically, information concerning counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and on-line date will be treated as public information.<sup>3</sup> Accordingly, SDG&E does not seek confidential treatment for this information contained in the contract summary. The remainder of the information contained in the contract summary should, however, be protected from disclosure.

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<sup>3</sup> D.06-06-066, *mimeo*, Appendix 1, Sec. VII.F.

SDG&E request that all project-specific and bidder-specific information contained in the EEI Cover Sheets, EEI Confirmation Letters and Additional EEI Exhibits, with the exception of counterparty name, resource type, location, capacity, expected deliveries, delivery point, length of contract and on-line date, be designated as confidential. SDG&E publishes drafts of the EEI Cover Sheets, EEI Confirmation Letters and Additional EEI Exhibits, *without specific information related to the bidder or the project*, as part of its RPS request-for-offer ("RFO") process.

SDG&E does not intend to disclose any of the information for which confidential treatment is sought to any party within the next three years other than the relevant bidder, SDG&E's PRG, subject to applicable NDA, and the CPUC subject to a request for confidential treatment.

**Appendix B-3, Selection of Esmeralda Project and Calculations of Supplemental Energy Payments**

*Appendix B-3 provides information on SDG&E's selection of the Esmeralda Project. It includes pricing information on the Esmeralda Project and other projects for comparison purposes. Appendix B-3 also includes information on the calculation of Supplemental Energy Payments (SEPs) needed for the Esmeralda Project. Please indicate whether all of the information or only the project pricing information should be kept confidential.*

All pricing information and descriptions of calculations derived from pricing information as highlighted in SDG&E's Application should be kept confidential.

*Please provide the legal justification for doing so and explain whether any of this information will be publicly available in the near future.*

As SDG&E explains above, disclosure of pricing information would harm SDG&E by providing the market with relevant information concerning the price SDG&E is willing to pay for renewable energy and would harm Esmeralda by allowing competitors to unfairly compete with Esmeralda. Because this information is commercially sensitive information 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 falls squarely within the definition of "trade secrets" that are protected under the Public Records Act, Govt. Code Section 6254(k). SDG&E does not intend to disclose this information in non-aggregated form within the next three years to any party other than its PRG, subject to applicable NDA, and the CPUC subject to a request for confidential treatment.<sup>4</sup>

<sup>4</sup> SDG&E also notes that pricing information is protected for a period of three years or one year following expiration of the contract, whichever comes first, under the CPUC's recently adopted Confidentiality Decision. (D.06-06-066, *mimeo*, Appendix 1, Sec. VII.G)

*Please indicate whether the public disclosure of any of the information in the appendix could adversely affect the development of the Esmeralda Project or other Projects.*

As SDG&E explains above, project pricing information is closely guarded by developers and is generally viewed by them as trade secret information. Awareness of Esmeralda's pricing information would confer an unfair advantage upon Esmeralda's competitors in future competitive bid situations. In addition, disclosure of Esmeralda's pricing information could permit Esmeralda's competitors to reverse-engineer Esmeralda's bid in order to determine its costs, resource adequacy and bidding strategy. Competitors could then use this information to attempt to interfere with or frustrate Esmeralda's ability to complete development activities in a timely manner by, among other things, hindering Esmeralda's efforts to obtain necessary equipment or interfering with land acquisition activities.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect the willingness of other project developers to participate in future RPS contract solicitations.*

As SDG&E explains above, disclosure of pricing information would likely deter developers from participating in future RPS solicitations. As noted above, project pricing information is closely guarded by developers and is generally viewed by them as trade secret information. Developers who do not wish to have this information made public would likely opt out of future RPS solicitations and forego SEP funds, which could negatively impact the extent of renewable energy development in California.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect SDG&E's costs and its ability to comply with the RPS.*

As SDG&E explains above, if the number of competitive bids received in future RPS solicitations decreases because developers elect not to participate in order to avoid disclosure of pricing information, SDG&E's will have fewer competitive choices and its costs and ability to comply with the RPS will be adversely affected.

Moreover, SDG&E's costs may increase as generators will be able to forecast the MPR. Consequently these generators will base their bids on the MPR rather than traditional cost plus return calculations to the extent the MPR is higher.



### Appendix C. Summary of PRG Meetings

*Please indicate whether all of the information or only the project pricing information should be kept confidential.*

PRG meetings often involve wide-ranging discussion of many aspects of proposed projects including, but not limited to information on pricing, costs, calculation methodologies, negotiating strategies, development plans and other topics involving commercially sensitive information. The information included in Appendix C relates to Esmeralda, as well as to other bidders who may or may not have entered into a PPA with SDG&E and who are not seeking SEP funds. As noted above, members of the PRG are required to sign an NDA and to protect sensitive utility and bidder information in order to encourage information-sharing and the free exchange of ideas. Reduction or elimination of the confidential protection currently afforded to information shared with the PRG will undermine the effectiveness of that group. SDG&E therefore requests that all information contained in Appendix C be kept confidential.

*Please provide the legal justification for doing so and explain whether any of this information will be publicly available in the near future.*

The information discussed during PRG meetings and protected by NDA is commercially sensitive information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure. Thus, it falls squarely within the definition of "trade secrets" that are protected under the Public Records Act, Govt. Code Section 6254(k). SDG&E does not intend to disclose summaries of PRG meetings within the next three years to any party other than its PRG, subject to applicable NDA, and the CPUC subject to a request for confidential treatment.

*Please indicate whether the public disclosure of any of the information in the appendix could adversely affect the development of the Esmeralda Project or other Projects.*

As noted above, awareness of pricing, operational, construction and other commercially sensitive details of Esmeralda's project could provide competitors with a means of interfering with or frustrating Esmeralda's ability to complete development activities in a timely manner by, among other things, hindering Esmeralda's efforts to obtain necessary equipment or interfering with land acquisition activities. Moreover, awareness of project pricing and other commercially sensitive details related to Esmeralda's project discussed during PRG meetings would confer an unfair advantage upon Esmeralda's competitors in future competitive bid situations.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect the willingness of other project developers to participate in future RPS contract solicitations.*

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect the willingness of other project developers to participate in future RPS contract solicitations.*

Disclosure of pricing information, development plan information and other commercially sensitive information discussed at PRG meetings would likely deter developers from participating in future RPS solicitations, since developers generally seek to protect this information. Developers who do not wish to have this information made public would likely opt out of future RPS solicitations and forego SEP funds, which could negatively impact the extent of renewable energy development in California.

*Please indicate whether public disclosure of any of the information in this appendix could adversely affect SDG&E's costs and its ability to comply with the RPS.*

If the number of competitive bids received in future RPS solicitations decreases because developers elect not to participate in order to avoid disclosure of pricing and other commercially sensitive information, SDG&E's will have fewer competitive choices and its costs and ability to comply with the RPS will be adversely affected. SDG&E's costs may also increase to the extent generators are able to forecast the MPR and base their bids on the MPR rather than traditional cost plus return calculations. Moreover, to the extent PRG meetings often include discussion of negotiating strategies, pricing, development plans and special contract provisions, disclosure of PRG meeting summaries would permit this information to be used by bidders to the disadvantage of SDG&E and, ultimately, ratepayers.

Respectfully submitted this 1<sup>st</sup> day of August,

By: \_\_\_\_\_

  
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