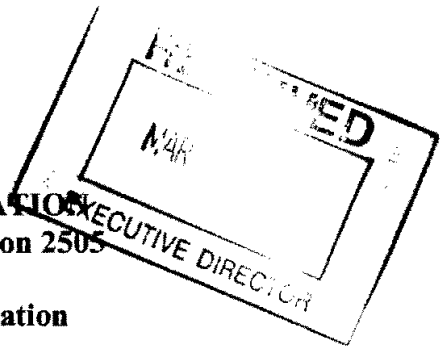


APPLICATION FOR CONFIDENTIAL DESIGNATION
Pursuant to 20 California Administrative Code Section 2505



CEC-SEP-3 (utility) Data Request for SEP Application

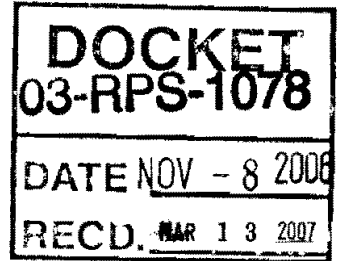
Docket No. 03-RPS-1078

RPS Proceeding

Applicant: Pacific Gas and Electric Company ("PG&E")

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COMPLETED

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

PG&E's data in support of the application of Military Pass Road – Newberry Volcano LLC ("Military Pass" or Seller) for SEP funds tendered in CEC Docket No. 03-RPS-1078 on November 6, 2006, specifically, PG&E's responses to:

- CEC-SEP-1 Bid Data Request (Bids Below the MPR)
- CEC-SEP-2 Bid Data Request (Bids Above the MPR)
- CEC-SEP-3 (Utility) Data Request for SEP Application and CEC-SEP Worksheet

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

PG&E seeks confidential designation of the following information:

CEC-SEP-1 Bid Data Request (Bids Below the MPR) and CEC-SEP-2 Bid Data Request (Bids Above the MPR)

PG&E's response to these data requests includes project-specific bid information about every project that participated in the solicitation in which the applicant for SEP funds participated. PG&E requests confidential treatment of each project's name, its contract start year, the contract term, the Market Price Referent for the contract start year, the levelized bid price, levelized contract price, and levelized above market costs over the contract term, total above market costs over the contract term, levelized TOD-adjusted MPR over the contract term, and an indication of whether the bid is on the IOU's short list. The indication of

whether negotiations have begun can be provided in aggregate form so as to avoid disclosing the number of projects bid into the solicitation.

CEC-SEP-3 (Utility) Data Request for SEP Application

All of the following information should be treated as confidential:

1. Line (6) Contract Price

2. Line (8) Supplemental Information -- Unredacted material submitted with the Vulcan Advice Letter dated July 14, 2006, PG&E Advice No. 2860-E requesting CPUC approval of the subject contract, and the supplemental filing, Advice No. 2860-E-A, dated October 30, 2006, specifically,
 - Advice No. 2860-E Appendix A – Power Purchase Agreement,
 - Advice No. 2860-E Appendix B -- SEP/MPR worksheet,
 - Advice No. 2860-E Appendix C – Contract Summary- Confidential Terms and Conditions, and
 - Advice No. 2860-E-A, Appendix A – First Amendment to the Power Purchase and Sale Agreement.

CEC-SEP Worksheet

Generally, all of the information in the CEC-SEP Worksheet, which is identical to the SEP/MPR worksheet provided as Appendix B to the Advice Letter, should be confidential since it constitutes project-specific information about the Vulcan Military Pass project, including its contract price, its annual sales by time of delivery (TOD) period, annual revenues by time of delivery period, annual contract payments, and above-market revenues, for a period of twenty years. However, terms that are required to be public by the recent CPUC decision on the confidentiality of electric procurement information cannot be maintained as confidential. To distinguish these two categories of information, PG&E has identified the price and bid terms that should be treated as confidential in the matrix, below,

Subject – Contract Price	Excel Worksheet Tab and Cell Address
Contract Price	Input Bid Data C45
Annual Contract Price by TOD Period (cents/kWh Nominal) for Contract Years 1-20 and itemized by every TOD period	Input Bid Data C49-K68

Annual Weighted Average Bid Price (cents/kWh Nominal) for Contract Years 1-20,	Input Bid Data C72-C91
Levelized Contract Price over the term of the contract,	Results D15
Levelized Above market costs over the term of the contract	Results D16
Total Amount of above market costs (dollar amount) over the term of the contract	Results D17
Annual Weighted Average Contract Price, for years 1-20	Contract Price E14-E33
NPV Annual Weighted Average Contract Price, for years 1-20 (2008)	Contract Price D34
Annual Contract Payments for years 1-20	Contract Price F14-F33
NPV Annual Contract Payments for years 1-20 (2008)	Contract Price F34
Lump Sum SEP payments if paid over full contract term	Contract Price G14-G34
NPV Lump Sum SEP payments if paid over full contract term over 20 years (2008)	Contract Price G34
Total Sum of Above Market Costs over Contract Term	G35
Levelized Contract Price Levelized over contract term,	Contract Price F38
Levelized Above Market Costs (cents/kWh) levelized above market costs over contract term	Contract Price F40
Annual weighted Average Contract Price (cents/kWh)	Weighted Average contract Price E11-E-30
Annual Contract Payment by TOD Period (cents/kWh Nominal) for years 1-20	Weighted Average Contract Price H11-P30
Annual Contract Payment by TOD Period for years 1-20	Weighted Average Contract Price H59-Q78
Levelized Contract price	Bid Data Request Transfer Sheet G17

Levelized Above Market Costs	Bid Data Request Transfer Sheet H17
Total Above Market Costs	Bid Data Request Transfer Sheet I17

Subject – Bid Price	Excel Worksheet Tab and Cell Address
Annual Weighted Average Bid Price	Data Input Sheet C72-C91
Levelized Bid Price over the term of the contract,	Results D14
Annual Weighted Average Bid Price	Bid Price E14-E33
Annual Contract Payments	Bid Price F14-F33
NPV Contract Payments over 20 years (2008)	Bid Price F34
Levelized Bid Price over contract term	Bid Price F37
Levelized Bid Price	Bid Data Request Transfer Sheet F17

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

(a) Contract

The Power Purchase Agreement (PPA) provided as Appendix A to the Vulcan Advice Letter, as supplemented, comprise the contract between the utility and the seller. PG&E requests that the contract be protected from disclosure for three years in keeping with the terms of the parties' contractual agreements and to avoid harm to both the Seller and the utility's customers.

Vulcan and PG&E have consistently agreed to, and maintained, the confidentiality of the terms of their negotiations and resultant contract. Prior to entering into negotiations, Vulcan and PG&E executed a confidentiality agreement to mutually protect proprietary information to be shared during contract formation. The executed PPA prohibits each party from disclosing any terms or conditions of the agreement, except for terms required to be public

by CPUC decision, i.e., the parties' names, resource type, delivery term, project location, and project capacity, and as required by law. (PPA section 10.11.)

The CEC and CPUC have adopted a Workplan and Collaboration Guidelines to govern their joint implementation of the RPS program. To further this work, the CEC and CPUC concurred that documents designated as confidential by the PUC should be afforded confidential treatment and be exempt from public disclosure by both agencies. (See, "Administrative Law Judge's Ruling Issuing Workplan and Collaboration Guidelines," issued May 3, 2003, in R.01-10-023.) The CPUC has recently issued a decision relating to the confidentiality of electric procurement data submitted to the CPUC that contains specific provisions regarding RPS procurement information. PG&E has established the confidentiality of the three Appendices to the Advice Letter at the CPUC based on the terms of this decision.

In the recent confidentiality decision, the Commission adopted the matrix of "Allowed Confidential Treatment of Investor Owned Utility (IOU) Data" negotiated by representatives of diverse interests affected by utility electric procurement (IOU Matrix).¹ The CPUC concurrently confirmed the existence of heightened public interest in the utilities' procurement to fulfill the state's renewables needs. Accordingly, the CPUC determined that certain normally confidential contract terms should be publicly disclosed. The CPUC added the volume of expected deliveries, delivery point, length of contract, and online date to the list of public terms which had been stipulated by prior CPUC decision. The CPUC found that all other contract terms should be protected for three years.

PG&E urges the CEC to find that this partial disclosure of RPS contract terms is adequate to satisfy the public interest in monitoring the progress of renewable development and to protect the confidentiality of the remaining contract terms, and the body of the contract itself. Disclosure of the entire contract may unfairly disadvantage the utility and may increase the difficulty and delay associated with future contract negotiations to the extent developers attempt to "cherry-pick" non-standard, negotiated contract terms that were mutually agreed to as the result of a comprehensive negotiation and agreement.

(b) Contract and Bid Prices.

The contract and bid prices are presented in Appendix B of the Vulcan Advice Letter. Appendix B specifically consists of the Excel Spreadsheet file named "CEC-SEP Worksheet" within the CEC's SEP/MPR data request. These prices should be kept confidential for three years from the date of the contract, consistent with CPUC decision D.06-06-066.

The contract price indicates how much the utility is willing to pay in order to meet its RPS obligation. If the contract price is not revealed, a seller will be required to bid a price that

¹ See, D.06-06-066. Parties that contributed to the IOU Matrix which was filed on January 17, 2006 included IEP, CAC/EPUC, Calpine, TURN, CARE, CPUC's Energy Division, SCE, PG&E, and PG&E.

reflects its true cost of production, not a potentially higher price floor. This would preserve the benefits of a competitive solicitation for consumers, as intended by the Legislature. If the seller knew what the utility had paid, the seller would have no incentive to bid its product for a lesser amount. Any difference between the sellers's cost and the previous sale price, representing potential savings to the consumer, would be lost.

A seller may assume that the utility would be willing to pay at least the same price for additional renewable deliveries, particularly if the utility's net short position is compared against the state's RPS goals.² Such knowledge may confer bargaining power over the utility and encourage the seller to seek a price that is, at a minimum, equal to the price of alternatives available to the utility. If the contract price or bid price of projects with which the utility has contracted is disclosed, those prices will effectively become the floor for bids. The contract and bid prices should be protected for three years from the date of contract execution.

(c) Contract Summary

The "Contract Summary" submitted as Appendix C to the Vulcan Advice Letter contains an analysis of the terms which make the subject contract particularly valuable to PG&E. This evaluation should remain confidential for three years, as provided by the CPUC's IOU Matrix, to allow market conditions to change so that prospective sellers may be less likely to exact a non-cost based premium for offers based upon PG&E's current needs.

Far from being the type of contract summary described in the IOU Matrix as public information, Appendix C describes terms entitled to confidential protection under the matrix. It compares the contract price against a range of prices, it analyzes the value of the bid in terms of market value, portfolio fit, transmission, and delivery issues, and it discusses project viability and developer contingencies, security and credit terms, and other major contract terms that reveal the business plan of the project. This constitutes commercially sensitive information, the disclosure of which could foreseeably harm the developer.

The release of bidders' commercially sensitive pricing information and the information contained in this analysis may prompt developers to refrain from bidding into future solicitations or from participating in the California RPS program, so as to avoid the risk of disclosure of their confidential information. Least-cost developments may no longer be submitted in response to PG&E's RPS solicitation. To avoid this harm, the confidentiality of Appendix C must be protected for three years from the date on which deliveries are stated by the PPA to begin. At that time, the protected information will not be as commercially relevant to Vulcan and PG&E.

² Information about the utility's net short position is available from the utility's semi-annual RPS compliance reports filed at the CPUC.

(d) CEC-SEP-1 Bid Data Request (Bids Below the MPR) and CEC-SEP-2 Bid Data Request (Bids Above the MPR)

The information in these two documents identifies the projects that bid into PG&E's 2004 RPS solicitation; this includes the number of developers, capacity offered, potential deliveries, and price, among other things.

Information that could enable a market participant to know how much competition it would face if it bid into PG&E's RPS solicitation should be kept confidential in order to prevent potential bidders from taking advantage of the PG&E's mandatory need to purchase power from renewable energy resources. This information should remain confidential for three years from June 30, 2005, which is when PG&E's 2004 RPS solicitation concluded.

The names of projects can signify the location and technology of potential competitors to a knowledgeable person. The contract start year, MPR for contract year, and contract term provide insight into when supply is likely to materialize, and conversely may indicate periods of shortage when PG&E would be compelled to pay a higher price to obtain needed supplies.

Pricing information, whether consisting of the levelized bid price, levelized contract price, levelized above market costs, or the levelized TOD-adjusted MPR over contract term, would provide potential competitors with benchmarks that could be used as a floor for their bids and deny customers the benefit of a competitive solicitation, since PG&E has a mandatory procurement obligation. The potential harm to consumers described exists here as well in section (b) "Contract and Bid Prices", above.

The total above market costs over contract term (\$) for each contract should also be treated as confidential, as this could reveal the price sought by each seller.

Information whether the bid is on the IOU's short list should also be protected, as this would enable a market observer or participant to discern the robustness of PG&E's RPS solicitation, and by extension, the bargaining strength that a bidder may have. The size of the short list should be protected for at least three years after the close of that year's solicitation. Finally, the answer to whether negotiations have begun should be confidential with respect to each of the listed projects during the pendency of the solicitation, but since the 2004 solicitation has concluded, PG&E would respond to the question in the aggregate.

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 Public Records Act, Govt. Code Section 6254(k), provides that records must be kept confidential where their disclosure is exempted or prohibited by federal or state law, including but not limited to provisions of the Evidence Code relating to privilege. *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* (9th 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.

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).

The information described in Sections 1 and 2 above constitute commercially sensitive business and pricing information of PG&E, the disclosure of which would allow third parties to gain knowledge at the expense of PG&E and its customers. The specific terms and conditions of the Vulcan PPA is evidence of a business process which derives its value to PG&E’s customers from not being publicly known. Accordingly, this information falls squarely within the definition of “trade secrets” and must therefore be protected under the Public Records Act, Govt. Code Section 6254(k).

As a matter of public policy, the Commission should ensure that it does not facilitate availability of confidential data, the disclosure of which could cause harm to PG&E, its customers, RPS bidders, and the RPS program in general, as described in Section 2, above.

As noted above, the Workplan and Collaboration Guidelines developed by the Commission and the CPUC to guide joint implementation of the RPS program require that the Commission ensure that documents designated as confidential or proprietary by the CPUC be afforded confidential treatment and be exempted from public disclosure. Thus, to the extent the confidential appendices to the CPUC Advice Letter have been marked “confidential” pursuant to CPUC Decision D.06-06-066, General Order 66-C, and relevant sections of the Public Utilities Code, the Commission should recognize the designation and maintain the confidentiality of this information.

(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.

The public interest in nondisclosure of the record has been set forth in Section 2, above. It is clearly in the public interest to protect utility customers, who will bear the increased costs of

RPS procurement that would result if PG&E is disadvantaged in RPS procurement negotiations. The risk that PG&E will be placed at an unfair disadvantage in negotiations with RPS bidders is particularly high where, as is the case here, PG&E *must* conduct procurement by a specified time in order to comply with CPUC solicitation timelines and to achieve the aggressive goal of 20% renewable energy by 2010. Because of the ease with which PG&E's net short position can be derived, bidders would be uniquely positioned to use confidential pricing and business information to their advantage in RPS negotiations. These determinations need not be mathematically exact to cause harm; customers incur substantial risk of higher energy prices (or fewer revenues from sales) any time a potential supplier knows that a utility must buy or sell electricity on behalf of its customers at any given time.

Premature disclosure by the Commission of the confidential information described in Section 1 may also cause harm to bidders, who have requested that their confidential information be protected. If developers are reluctant to bid into future solicitations out of concern that their commercially sensitive confidential information will be disclosed, the success of the California RPS program could be placed in jeopardy. Accordingly, as explained in Section 2 above, the Commission should refrain from disclosing this information for three years. After this period, the commercial relevance of this information is diminished and its disclosure does not present the same risk of harm.

- 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 PPA provided as Appendix A to the Advice Letter establishes the value that PG&E places upon certain goods and services and cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure without incurring the risk of harm due to public knowledge of PG&E's bargaining position.

The contract price and bid price provided in Appendix B to the Advice Letter (and in response to the Utility Data Request) cannot be aggregated or masked to protect the identity of the applicant for SEP funds because the prices relate solely to the Vulcan project.

Likewise, the analysis and evaluation of the project contained in Appendix C to the Advice Letter cannot be aggregated or masked to avoid revealing commercially sensitive information about Vulcan's business any further than has been done in the publicly available main body of the Advice Letter.

However, the total above market costs over the contract term could be disclosed if the costs represented by each project received in the solicitation are aggregated, and no other information about the solicitation, i.e., the identity of the bidders, the number of bids, their prices, and the above market cost of each bid, is disclosed. In addition, the aggregate number of all bids on PG&E's 2004 short list (whether above or below the MPR) may be disclosed three years after the close of the 2004 solicitation in June 2005; fact that negotiations for all of the shortlisted bids have concluded may be disclosed.

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.**

PG&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 and corporate affiliates, such as PG&E's parent company, that must have access to the information to conduct their procurement, regulatory, and business planning activities. PG&E's procedures are set forth in Utility Standard Practice #8. In addition, under Standard of Conduct #2 adopted by the CPUC for the utilities' electric procurement activities, PG&E employees are obligated to protect the Company's trade secrets in this manner:

3. 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.)

CEC-SEP-1 Bid Data Request (Bids Below the MPR) and CEC-SEP-2 Bid Data Request (Bids Above the MPR).

This information has been provided to PG&E's Procurement Review Group (PRG) on a confidential basis. Each member of the PRG has executed a nondisclosure agreement that protects confidential utility information provided to the PRG from disclosure to unauthorized persons.

PG&E has not to the best of its knowledge previously released this information to the general public or to third parties or market participants. While a generalization of the information may have been provided as part of an aggregated regulatory report of PG&E's RPS procurement activities, PG&E has not to the best of its knowledge previously publicly disclosed this data in the terms described in Section 1, above.

Advice Letter No. 2915-E Appendix A – Power Purchase Agreement and Confirmation Letter, Appendix B -- SEP/MPR worksheet, and Appendix C – Contract Summary-Confidential Terms and Conditions.

This material was filed at the CPUC on July 14, 2006 subject to a request for confidential treatment pursuant to D.06-06-066. There has been no challenge to PG&E's assertion of confidentiality and it appears that the three appendices will not be subject to public disclosure.

Conclusion:

For all the above-stated reasons, PG&E respectfully requests that the CEC designate the material described in Section 1, above, as confidential.

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, PG&E.

Dated: November 7, 2006

Signed: 

Name: Evelyn C. Lee
Title: Attorney
Pacific Gas and Electric Company

**Confidential
Portion
Omitted**