

COMPLETED



**Pacific Gas and
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July 22, 2009

ELECTRONIC DELIVERY

California Energy Commission
Docket Office, MS-4
Re: Docket No. 09-IEP-1L
1516 Ninth Street
Sacramento, CA 95814

DOCKET

09-IEP-1L

DATE JUL 22 2009

RECD JUL 27 2009

**RE: Docket 09-IEP-1L, Nuclear Data Request in the 2009 Integrated
Energy Policy Report**

In response to your June 2009 data request regarding existing nuclear power plants, we have attached our response in the form of a narrative with numerous spreadsheets and documented files referenced on a set of CDs. The responses have been separated into two groups; the larger group, which you are receiving, that comprises the bulk of our response; and a smaller set of information that is sensitive. The latter information has been sent to Melissa Jones and Barbara Byron along with our recommendations for confidential treatment and a formal confidentiality application.

Please feel free to call me or Kathy Treleven, (415) 973-4185, with any questions or concerns.

Sincerely,

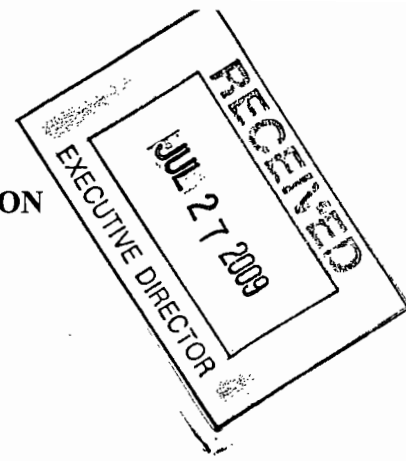
MARK KRAUSSE
Pacific Gas and Electric Company

Mark Krausse
Cc: (cover letter, narrative and CDs)
Melissa Jones, CEC, by UPS overnight
Barbara Byron, CEC, by UPS overnight

**APPLICATION FOR CONFIDENTIAL DESIGNATION
(20 CCR SECTION 2505)**

2009 INTEGRATED ENERGY POLICY REPORT

**Docket Number 09-IEP-1L
Nuclear Power Plant Data Request**



To: Melissa Jones, Energy Commission Executive Director, MS-39
Barbara Byron, Energy Commission Project Manager

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

Attorney for Applicant: Christopher J. Warner
Address of Attorney: Chief Counsel
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1. (a) Title, data, and description of the record.

Nuclear Power Plant Data Request forms issued by the California Energy Commission (CEC) for the 2009 Integrated Energy Policy Report.

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

PG&E is providing in full all the information requested in the Nuclear Power Plant Data Request. This information is available to all Commissioners and to staff members on the 2009 Integrated Energy Policy Report Committee solely for its own use in the IEPR proceeding. However, PG&E is requesting confidential designation for Nuclear Power Plant Data Request questions I.8 (proprietary INPO evaluations subject to confidentiality pursuant to the terms of I.8 and other requirements), J.1 (trade secret information on nuclear fuel contracts), and J.3 (trade secret information on forecast nuclear fuel prices). The reasons for this confidential designation are provided below, and the information subject to confidentiality is being made available separately in electronic form on separate CDs labeled as confidential or for inspection at the Energy Commission's offices (INPO evaluations only). This confidential designation is consistent with the Commission's May 4, 2007, letter granting confidentiality to comparable nuclear power plant information in response to PG&E's April 6, 2007, application for confidentiality in Docket No. 06-IEP-1N.

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

PG&E requests that the information relating to self-assessment evaluations by the Institute for Nuclear Power Operations (INPO) (Question I.8) be kept confidential for as long as INPO's policies require that it be kept confidential. PG&E requests that all of the nuclear fuel contract and pricing forecast information (Questions J.1 and J.3) be kept confidential permanently.

PG&E believes that the confidentiality of this information is required to ensure that (a) for its nuclear fuel costs, prices, and strategies are not revealed, thereby compromising PG&E's ability to secure the most favorable prices for nuclear fuel supplies for customers; and (b) as acknowledged by Question I.8, information owned and possessed by INPO as part of self-assessments performed by INPO is not revealed, thereby compromising and adversely affecting the benefits of such self-assessments.

It is in the public interest to protect trade secret information relating to PG&E's nuclear fuel costs, contracts and procurement strategies from disclosure to market participants and competitors, in order that such market participants and competitors not manipulate or misuse the information in order to raise prices during a period when real or perceived imbalances in supply and demand for nuclear fuel or power may exist. This competitive and market sensitive information should remain confidential, as knowledge about PG&E's specific procurement needs and patterns could undermine its competitive position and current business plans. At the same time, the public interest in ensuring that the State's energy policy plans and forecasts include this information is protected, because the information is being made available to the Commission staff and all Commissioners for internal use in the IEPR proceeding without restriction.

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 response to Question I.8 regarding INPO evaluation should be confidential as acknowledged by Question I.8 itself. INPO is an industry organization established to provide nuclear power operators with critical evaluations of their performance compared to industry-wide standards of excellence. The purpose of INPO is to improve nuclear operating performance and safety by providing operators with critical evaluations and analyses. PG&E as a nuclear power plant operator has agreed to hold INPO evaluations and analyses as confidential, and INPO is the copyright holder and owner of such evaluations and analyses. INPO does not distribute its evaluations or analyses to the public, and has only made such evaluations and analyses available to third parties under confidentiality agreements or commitments.

The reason for these confidentiality protections for INPO evaluations is to maximize the incentives for nuclear power plant operators to make information available to INPO that will help improve nuclear power plant operations without fear that such information will be used against the operators.¹ Although PG&E is unable to provide copies of INPO evaluations because of INPO's copyright and ownership protections, PG&E can request that such INPO evaluations be made available to the Energy Commission and its consultants for inspection at Energy Commission offices in Sacramento or other convenient location, subject to an appropriate confidentiality commitment and non-disclosure agreement executed by the Energy Commission's consultants. Copies and notes will not be able to be taken, but PG&E is willing to work with the Commission, its consultants and INPO to permit non-confidential facts relating to the INPO evaluations to be included in the public versions of relevant IEPR documents and reports.

Questions J.1 (nuclear fuel contracting strategies) and J.3 (nuclear fuel cost forecasts) provide competitively and commercially sensitive business and resource planning 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. That definition includes 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.

These questions contain detailed disaggregated forecast information that relatively easily allows a party to calculate PG&E's current nuclear fuel prices and costs on a disaggregated basis. Using this information, potential suppliers achieve a competitive advantage that potentially harms PG&E's customers who may end up paying higher power prices. Second, to release this information publicly would allow market participants to have access to competitively sensitive information that would normally not be available to them in this form or format. 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 case or difficulty with which the information could be legitimately acquired or duplicated by others.

¹ The courts have upheld the confidentiality of INPO evaluations under the Freedom of Information Act, the federal version of the Public Records Act. *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 830 F. 2d 278, 282 (D.C. Cir. 1987), *app.den.* 975 F. 2d 871 (D.C. Cir. 1992).

For the reasons stated above, the public and PG&E's customers have a compelling interest in protecting (a) nuclear fuel cost forecasts and fuel price and contracting information, disclosure of which to competitors or suppliers could result in the use of the information to manipulate the costs of energy supplies procured by PG&E and other utilities on behalf of their customers, and (b) INPO evaluation information, the disclosure of which would disincite and deter improvements in nuclear power plant operations that benefit PG&E and its customers.

PG&E believes that the public interest in favor of disclosure of this nuclear-related information can be promoted without disclosure to the public. First, the information is being provided without restriction to the Commission staff, consultants and all Commissioners for their internal use in the IEPR proceeding. Second, PG&E is providing massive amounts of already public information on its nuclear facilities and operations on a non-confidential form the response to the other data requests for the use and access of the public and third-parties. In this manner, the public interest in favor of disclosure is balanced with the public interest against disclosure.

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.**

PG&E does not believe this information can be aggregated or "masked" sufficiently to avoid the economic, competitive and ratepayer harms that would occur in the event the disaggregated information were disclosed to market participants or the public.

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 all 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 safety, procurement, regulatory, and business planning and forecasting activities. 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:

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 assessed, etc.]; . . . (See D.02-12-074, pp. 57-58.)

With the exception of disclosure under non-disclosure agreements, and/or protective orders or commitments in Energy Commission, CPUC or NRC proceedings, 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 on an unlimited basis in this format or projecting out over this duration of time. While certain of the information here or similar categories of information may have been provided in part or in aggregated form previously under protective order or nondisclosure agreements in various state or federal regulatory filings, PG&E has not to the best of its knowledge previously publicly disclosed this data in this disaggregated format.

For all these reasons, PG&E requests that the CEC protect this information from disclosure to the public, PG&E's suppliers, or PG&E's competitors.

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: July 24, 2009

Signed: _____



Name: Christopher J. Warner
Title: Chief Counsel
Pacific Gas and Electric Company