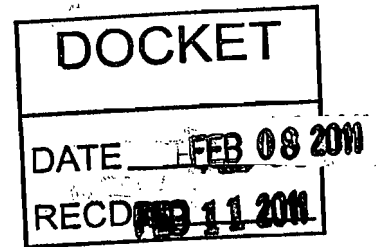




By Federal Express

February 8, 2011



Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, CA 95814-5512

RE: Application for Confidential Designation (revised to include docket number)

Dear Ms. Jones:

Enclosed please find a revised Application for Confidential Designation of San Diego Gas & Electric Company (SDG&E) submitted pursuant to Title 20 Cal. Code Regs., § 2505 et seq. The application is being resubmitted to include the docket number pursuant to instruction by the CEC.

Specifically, SDG&E requests confidential treatment of (i) monthly procurement data for 2008 including in the CEC-RPS Track Form; and (ii) data regarding the monthly retirement of certificates in the WREGIS State/Provincial/Voluntary Compliance Report as submitted on December 21, 2010. Documents containing these confidential data were attached to the original submission. As is discussed in detail herein, the subject data are confidential and warrant the Commission's Confidential Designation.

If you have any questions regarding the forms, please feel free to contact me.

Sincerely,

Signed/

Hannon J. Rasool
Regulatory Case Administrator
San Diego Gas & Electric Company
(858) 654-1590
HRasool@semprautilities.com

APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)

TO: ENERGY COMMISSION EXECUTIVE DIRECTOR, MS-39

ENERGY COMMISSION CONTRACT/DOCKET NO. 03-RPS-1078:

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

ATTORNEY FOR APPLICANT: Aimee M. Smith
ADDRESS OF ATTORNEY: 101 Ash Street
San Diego, California 92101
AMSmith@semprautilities.com
(619-699-5042)

1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. Information or data seeking a designation of confidentiality must be included with this application.

San Diego Gas & Electric Company ("SDG&E") respectfully requests confidential treatment of certain data provided to the California Energy Commission ("Commission") in connection with SDG&E's retirement of renewable energy certificates ("certificates") in WREGIS and on the Interim Tracking System for purposes of compliance with the Renewable Portfolio Standard ("RPS") program. Specifically, SDG&E requests protection from disclosure of: (i) monthly procurement data for 2008 included in the CEC-RPS Track Form (CONFIDENTIAL "ATTACHMENT A"); and (ii) data regarding monthly retirement of certificates in the WREGIS State/Provincial/Voluntary Compliance Report submitted on 12/21/2010 (CONFIDENTIAL "ATTACHMENT B").

SDG&E's request for confidential treatment seeks to strike a reasonable balance between the twin goals of promoting transparency and protecting ratepayer interests. SDG&E remains willing to work with the Commission to identify potential methods for achieving these objectives, including aggregation of data.

1(b). Specify the part(s) of the information or data for which you request confidential designation.

As noted above, SDG&E requests confidential treatment of (i) 2008 monthly procurement data included in the CEC-RPS Track Form (see ATTACHMENT A); and (ii) retired certificates identified in the WREGIS State/Provincial/Voluntary Compliance Report (see ATTACHMENT B) (together, the "Confidential Information").

Attachment A: CEC-RPS Track Form, CEC-RPS-Track Schedule 2 Tab – January – April 2008 monthly deliveries in kWh, delivered by renewable resources.

Attachment B: State/Provincial/Voluntary Compliance Report – May – December 2008
monthly retired deliveries in MWh, delivered by renewable resources.

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

SDG&E requests the information in Attachments A and B be kept confidential for a period of one year through December 31, 2011.

This period of protection is required to ensure that the Confidential Information remains secure from market participants who could otherwise make competitive use of this information to the detriment of utility ratepayers.

3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

The Confidential Information provides competitively and commercially sensitive business and procurement information and constitutes a trade secret. 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.

Public Utility Code section 398.5(b) provides: “Information submitted to the California Energy Conservation and Development Commission pursuant to this section that is a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code shall not be released except in an aggregated form such that trade secrets cannot be discerned.” It is well established that the Courts protect trade secret information from disclosure where disclosure would be harmful (*see, e.g., Klatnath-Orleans Lumber v. Miller*, 87 Cal. App. 3d 458 (1978)). Among the harm that disclosure causes is the ability of competitors to gain knowledge at the expense of the privilege holder (*Pepsico v. Ravmond* 54 F. 3d 1262 (9th Cir. 1995)).

The Confidential Information is detailed market sensitive procurement information that provides a picture of SDG&E’s demand and strategies for conducting procurement. Disclosure of monthly procurement information and certificate retirement information would provide market participants access to competitively sensitive information that would be otherwise unavailable. Possession of this information would confer an unfair advantage on counterparties in procurement-related negotiations, which would ultimately result in higher costs to ratepayers. The Commission has acknowledged that a key consideration in the trade secret analysis is potential harm to ratepayers.^{1/} Here, it is clear that disclosure of the Confidential Information will lead to imposition of higher RPS

^{1/} *Commission Order Denying Appeals of San Diego Gas and [sic] Electric Company, Southern California Edison Company and Pacific Gas and Electric Company of the Executive Director’s Notice of Intent to Release Aggregated Data*, dated September 7, 2005 in Docket No. 04-IEP-1D, p. 15.

compliance costs on ratepayer. Thus, as a matter of law and public policy, the CEC should ensure that it does not facilitate availability of such data.

Section 454.5 of the Public Utilities Code is also pertinent to consideration of the instant request for confidential treatment. That provision requires the California Public Utilities Commission ("CPUC") to maintain as confidential certain market-sensitive information related to procurement plans submitted by the Investor-Owned Utilities ("IOUs"). Significantly, Section 454.5 does not require a demonstration of ratepayer harm.

Moreover, in D.06-06-066, *et seq.*, the CPUC established certain categories of procurement data that are protected from disclosure pursuant to Section 454.5 and other provisions, and specified the relevant period of protection for each (*see* Appendix 1 to D.06-06-066, the "Matrix"). SDG&E submits that in the CPUC arena, such as in the Energy Resource Recovery Account (ERRA) proceedings, the Confidential Information is protected under Matrix category XI which protects monthly procurement costs.^{2/} SDG&E seeks similar treatment by the CEC here so as to keep consistency among State agencies in treatment of this sensitive data. As stated in 3(b), doing so serves to protect ratepayers and the public.

^{2/} D.06-06-066, as amended, *mimeo*, Appendix 1, Section XI.

3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please 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.

Although sellers often have access to historical sales information and may have a generalized knowledge of the resources in SDG&E's power supply portfolio, they do not have access to the specific operating characteristics of SDG&E's utility retained generation and least-cost dispatch, SDG&E's hedging of fuel price and supply, the specific terms of SDG&E's power supply contracts, or other competitive information that would be necessary in order to more precisely calculate SDG&E's hourly and monthly power needs. This inability to predict precisely what SDG&E needs (on either the buy or sell side) prevents both buyers and sellers from gaining an unfair advantage in the marketplace, and keeps competitive pressure on prices for both sales and purchases.

Information related to monthly generation, for example, provides insight into SDG&E's position on a seasonal basis. Hedging and dispatching strategies are sensitive to variations in seasonal availability. Sellers may use granular, monthly information to derive seasonal procurement impact and adjust, to the seller's advantage, market prices accordingly.

In addition to protecting detailed information related to SDG&E's hedging and dispatching strategy, monthly generation amounts are operational trade secrets that are specific to the resources being presented. Counterparties are sensitive to disclosure of this information. Hence, the Power Purchase Agreements ("PPAs") SDG&E enters into with third-party generators typically restrict disclosure of generation amounts to year-end values only. The CPUC has also recognized the sensitive nature of monthly values by (a) establishing within its RPS program that only annual estimated generation amounts are public; and (b) specifying within the Confidentiality Matrix Category XI that "detail of monthly variable cost on energy and utility operation" are confidential. Accordingly, SDG&E respectfully requests that the Confidential Information be protected.

4. State whether the information or data can 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 aggregated or masked, explain why.

Data aggregated on an annual basis may be publicly disclosed. As noted above, this is consistent with the approach taken by the CPUC to protection of RPS generation data. However, the Confidential Information for which confidential protection is sought is monthly data and should not be publicly disclosed.

SDG&E remains willing to work with Commission staff to explore potential means of aggregating the Confidential Information to permit public disclosure.

5. State how the material 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.

SDG&E maintains access to this information on a confidential basis. It is available only on a limited basis within certain departments that must have access to the information in order to conduct necessary procurement and regulatory activities. The information is password-protected on computer systems or in hard copy form, and is 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.

SDG&E has not, to the best of its knowledge, previously publicly released this Confidential Information discussed in this Application for Confidential Designation.

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: 2/8/11

Signed: *Sue Garcia*

Name (print or type): Sue Garcia

Title: (print or type) Settlements and Administration Manager

Representing: San Diego Gas & Electric Company

Include additional signature blocks if there are multiple partners in the project with shared responsibilities for making the request.