



By Federal Express

April 29, 2011

COMPLETED

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

**RE: Application for Confidential Designation**

Dear Ms. Jones:

Enclosed please find an Application for Confidential Designation of San Diego Gas & Electric Company (SDG&E) submitted pursuant to Title 20 Cal. Code. Regs., § 2505 et seq. Specifically, SDG&E requests confidential treatment of (i) monthly procurement data in the retirement of certificates in the 2009 WREGIS CA RPS State/Provincial/Voluntary Compliance Report (CONFIDENTIAL "ATTACHMENT A"); and (ii) monthly data on the 2009 NERC E-Tag Summary Report (CONFIDENTIAL "ATTACHMENT B") as submitted on April 29, 2011. Documents containing these confidential data are attached to the enclosed Application for Confidential Designation as ATTACHMENT A and ATTACHMENT B, respectively. 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,

Sue Garcia  
Settlements & Administration Manager  
San Diego Gas & Electric Company  
(858) 650-6189  
SGarcia@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, HQ-12  
San Diego, California 92101  
[AMSmith@semprautilities.com](mailto: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 for purposes of compliance with the Renewable Portfolio Standard ("RPS") program. Specifically, SDG&E requests protection from disclosure of monthly procurement data in the retirement of certificates in the (i) 2009 WREGIS CA RPS State/Provincial/Voluntary Compliance Report (CONFIDENTIAL "ATTACHMENT A"); and (ii) monthly data on the 2009 NERC E-Tag Summary Report (CONFIDENTIAL "ATTACHMENT B") submitted on April 29, 2011.

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 monthly procurement data included in the retired certificates identified in the (i) 2009 WREGIS CA RPS State/Provincial/Voluntary Compliance Report (see ATTACHMENT A); and (ii) monthly data on the 2009 NERC E-Tag Summary Report (together, the "Confidential Information")

Attachment A: 2009 WREGIS CA RPS State/Provincial/Voluntary Compliance Report – January - December 2009 monthly retired deliveries in MWh, delivered by renewable resources.

Attachment B: 2009 NERC E-Tag Summary Report – January – December 2009 monthly data on tag in MWh.

**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 Attachment B kept confidential for a period of three years through December 31, 2014 (see Section 3(a) for additional discussion of requested period of confidential treatment).

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. Raymond* 54 F. 3d 1262 (9<sup>th</sup> 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.<sup>1/</sup> Here, it is clear that disclosure of the Confidential Information will lead to imposition of higher RPS 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.

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<sup>1/</sup> *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.

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"). Under Matrix category XI, monthly procurement cost data is protected for a period of three years.<sup>2/</sup> SDG&E requests similar treatment by the CEC here so as to maintain consistency among State agencies in treatment of this sensitive data. As explained in Section 3(b), doing so serves to protect ratepayers and the public.

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<sup>2/</sup> 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 has established procedures designed to maintain the confidentiality of the Confidential Information. 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: 4/29/2011

Signed:

Sue Garcia

Name (print or type): Sue Garcia

Title (print or type): Settlements & Administration Manager

Representing: San Diego Gas & Electric

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

**TO BE COMPLETED BY RETAIL SELLERS**  
**REPORT TO THE ENERGY COMMISSION**  
**WREGIS STATE/PROVINCIAL/VOLUNTARY COMPLIANCE REPORT**  
**ATTESTATION FORM**

I, (print name and title) Sue Garcia, Settlements & Administration Manager, declare under penalty of perjury that the statements contained in all WREGIS State/Provincial/Voluntary Compliance report attachments and supporting energy delivery documentation, and or other related attachments are true and correct and that I, as an authorized agent of San Diego Gas & Electric, have authority to submit this report on the company's behalf.

I further declare that the amounts claimed in the WREGIS report attachments, are to the best of my knowledge, sold once and only once to retail consumers. The renewable electricity and associated renewable energy credits used for RPS compliance have not otherwise been, nor will be, sold, retired, claimed, or represented as part of electrical energy output or sales, or used to satisfy obligations or claims in any other jurisdiction or renewable energy program (including voluntary programs), or for reasons other than to comply with California's Renewables Portfolio Standard.

To count procurement from out-of-state facilities for purposes of RPS compliance, the facility must enter a power purchase agreement with the retail seller or procurement entity and electricity must be delivered to an in-state market hub (also referred to as "zone") or in-state point of delivery (also referred to as "node") located within California. The requirements of the foregoing sentence do not apply to retail sellers subject to Public Utilities Code Section 399.17.

Signed: Sue Garcia

Dated: 4-29-11

Executed at: San Diego, CA

**CONTACT INFORMATION**

NAME: Sue Garcia

TITLE: Settlements & Administration Manager

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Jan-2011