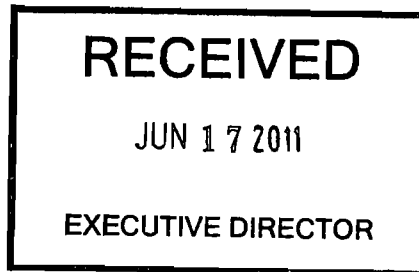


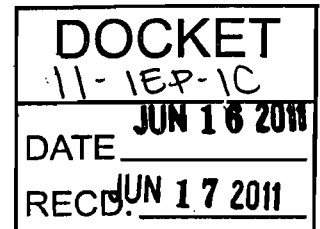


COMPLETED



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June 16, 2011

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

RE: DOCKET #11-IEP-1C – Integrated Energy Policy Report (IEPR) Retail Price Forecast of San Diego Gas & Electric

Dear Ms. Jones:

Enclosed please find San Diego Gas & Electric's (SDG&E's) "Application for Confidential Designation" and "Declaration Under Penalty of Perjury" regarding the California Energy Commission's prior confidential designation for Form 8.1(a) of the Retail Price Forecast. Please note line 21 of Form 8.1(a) (highlighted in yellow) has been granted confidential designation in the previous two IEPR cycles.

Forms 8.1(b) and 8.2 are not confidential.

Please note, all the retail price forecast forms along with an electronic copy of the above will be submitted electronically under separate cover on June 17, 2011.

If you have any questions regarding the forms, please contact Rob Anderson (858) 650-6183.

Sincerely,

Linda Wrazen

Regulatory Case Administrator, CA Regulatory Affairs

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

**2011 INTEGRATED ENERGY POLICY REPORT
Docket Number 11-IEP-1C**

Applicant: San Diego Gas & Electric Company (SDG&E)

Attorney for Applicant: Paul A. Szymanski
Address of Applicant: 101 Ash Street, HQ 12
San Diego, CA 92101-3017
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(619) 699-5078

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

SDG&E seeks confidential designation for data provided to the California Energy Commission (Commission) as part of the 2011 Integrated Energy Policy Report (IEPR). The information for which confidential designation is requested pertains to SDG&E's natural-gas fired average fuel price, as set forth in Part 1 (b), below.

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

IEPR Form 8.1(a), Line 21: Natural Gas-Fired Average Fuel Price

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

SDG&E requests that the forecast data indicated be kept confidential for a period of three years, or through December 31, 2013. This length of protection is required to ensure that SDG&E's detailed demand forecast data remains secure from market participants who could otherwise make competitive use of this information to the detriment of utility ratepayers. The three-year confidential period requested by SDG&E is consistent with the protection given to this same data by the California Public Utilities Commission (CPUC), as noted below. Three years is adequate time for the demand forecast data to become "stale" in terms of price movement in the electricity and gas markets, and SDG&E has no objection to the data being made public after that time.

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.

These forms 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 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., Klatnath-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 CPUC also recognizes that utility trade secret information may be kept confidential under appropriate circumstances. *See generally, e.g., R.97-04-010*, 71 CPUC 2d 485; *D.02-12-074*, 2002 Cal. PUC LEXIS 905; *D.98-02-041*, 78 CPUC 2d 486. Of particular relevance here, the CPUC has adopted a “materiality” standard that affords confidential status to procurement-related information that, if revealed, “[a]ffects the market price [that] an energy buyer pays for electricity.” *D.06-06-066* at 42. The CPUC materiality standard was adopted in response to the legislative directive given to the CPUC to re-examine its practices with regard to protection of confidential, procurement-related data and to revise, where appropriate, its practices in this regard.¹ The CPUC has issued three decisions regarding what information is deemed to be confidential, commercially sensitive, or trade secrets and for what period of time such information is to be kept confidential. *See D.06-06-066*, *D.06-12-030* and *D.08-04-023*.

Section 454.5 of the Public Utilities Code is also pertinent. That section requires the CPUC to maintain as confidential certain market sensitive information related to a distribution utility’s procurement plan. Significantly, that code section does not even require any demonstration of “ratepayer” harm, even though that risk is clearly present here. It is important as a matter of public policy that this Commission not publicly disclose information that the CPUC has deemed to be confidential for the sake of protecting ratepayers from potentially higher costs. Attachment A provides a copy of the CPUC’s “Matrix” to *D.06-06-066* outlining the various classes of information protected by the CPUC and the period for which such information will be protected. The utility gas price forecast noted in Part 1.(b)., above, is specifically accorded confidential treatment in the Matrix, Item 1.A.2.

The Commission has already articulated a similar standard of ratepayer protection when it discussed the definition of a “trade secret” in the 2005 IEPR proceeding.² The Commission determined there that, in order to qualify as a trade secret, it must be demonstrated that there will be harm to the utility’s ratepayers if the information for which confidential designation is sought is publicly released.³ Again, there is a demonstrable risk of harm to ratepayers if the information were to be released. Each category of data and the resultant harm is discussed in the following paragraphs.

IEPR Form 8.1(a): IOU Revenue Requirements by Major Cost Categories/Unbundled Rate Component, Line 21. Line 21, Average Fuel Price, is a utility-generated gas price forecast which is not publicly available. It is derived from the aggregate fuel cost of all natural gas-fired

¹ SB 1488, 2004 Cal. Stat., ch 690.

² *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 at 14-15.

³ *Id.* at 15.

resources in the dispatch model. As noted in the attached Declaration, in the 2007 IEPR, docket number 06-IEP-11, and in the 2009 IEPR, docket 09-IEP-1C, the Commission's Executive Director determined that similar data in the same forms qualified for confidential protection. The facts and circumstances relevant to confidentiality remain unchanged for the subject IEPR proceeding.

(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.

SDG&E believes that there is a compelling public interest in protecting its information, as described above. The primary public interest to be protected is, among other things, that SDG&E will be disadvantaged in procurement such that consumers may well pay higher energy prices than they would if the information was not publicly released. It is apparent that where parties have "unequal information" and where the seller knows that the buyer is in a position where it must procure seller's product, in those cases sellers have an unfair advantage. The CPUC has given protection to this information based on these same reasons. Although sellers have some access to historical sales information and 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 know 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.

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.**

SDG&E's submittal includes a great deal of aggregated data that the Commission can release immediately. In addition, it may be possible to aggregate certain of the data, e.g., on a statewide basis. SDG&E does not believe that the gas price forecast information provided in IEPR Form 8.1(a), Line 21, can be aggregated or masked in a manner that would render it useful. However, SDG&E remains willing to work with the Commission and its staff to further aggregate data, where possible, in a manner that could be revealed publicly.

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.**

As explained above, SDG&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 that

must have access to the information to conduct their procurement and regulatory activities. The information is password protected on computer systems or in hard copy form 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.

The Commission should also be aware that under Standard of Conduct #2 adopted by the CPUC for the utilities' procurement activities, utility 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 accessed etc. (*See D.02-12-074 at 57-58*)

6. Certification

SDG&E has not, to the best of its knowledge, previously publicly released this information in precisely this format or projected over this duration of time.

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. Applicant is a California corporation, and I am authorized to make the application and certification on behalf of the Applicant.

Dated: June 16, 2011

Signed:

Name:

Title:



Paul A. Szymanski

Senior Counsel, SDG&E

**DECLARATION REGARDING THE COMMISSION'S PRIOR
CONFIDENTIALITY DESIGNATIONS
Docket Number 11-IEP-IC**

As described in the attached Application, San Diego Gas & Electric Company ("SDG&E") requests that certain information in Form 8.1a, line 21 (shown as highlighted on the attached forms) be designated as confidential by the Commission. SDG&E requests that the information be designated confidential for a period of three years. In the 2007 IEPR proceeding, docket number 06-IEP-I I, and in the 2009 IEPR, proceeding 09-IEP-IC, the Commission's Executive Director determined that substantially similar data in the same forms qualified for confidential protection for those same time periods under Government Code §6254 (k) and 20 CCR §2505 (see B.B. Blevins' decision dated May 2, 2007, and Melissa Jones' decision dated April 21, 2009). Accordingly, pursuant to 20 CCR §2505(a) (4), SDG&E submits the following certification regarding the Commission's prior confidentiality designations.

I. I certify under penalty of perjury that the information described above for which SDG&E seeks confidential treatment is substantially the same information as that which the Commission's Executive Directors have previously designated as confidential in dockets number 06-IEP-II and number 09-IEP-IC, and that the facts and circumstances relevant to confidentiality remain unchanged; and

2. I am authorized to make this application and certification on behalf of SDG&E.

Date: 6/15/2011

Signed: Robert B. Anderson

Robert B. Anderson

Director of Resource Planning

San Diego Gas & Electric