

APPLICATION FOR CONFIDENTIAL DESIGNATION
(20 CCR SECTION 2505)

COMPLETED

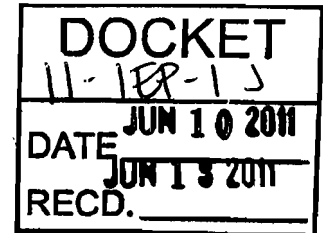
2011 INTEGRATED ENERGY POLICY REPORT
Docket Number 11-IEP-123
Nuclear Power Plant Data Request



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

Applicant: Southern California Edison Company ("SCE")

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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 (Energy Commission) for the 2011 Integrated Energy Policy Report (IEPR).

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

SCE has provided, concurrent with this application, written responses to the Energy Commission's Nuclear Power Plant Data Request. This information is available to all Commissioners and to staff members on the 2011 Integrated Energy Policy Report Committee solely for its own use in the IEPR proceeding. SCE is requesting confidential designation for certain confidential documents relating to the Institute for Nuclear Power Operations (INPO) that SCE identified in its response to the following questions:

1. Question No. A.15, which seeks proprietary plant evaluations issued by INPO. SCE identified INPO plant evaluations for SONGS from 2009 – 2011.
2. Question No. B.01, which seeks a description of studies regarding the implications for California operating plants resulting from the March 11, 2011 earthquake in Japan. SCE identified in its written response that it had prepared an INPO event report (IER) concerning these issues.

The reasons for this confidential designation are provided below. SCE cannot provide copies of the confidential INPO plant evaluations and IER.¹ The information will be made available separately for inspection at SCE's Sacramento offices, subject to an appropriate non-disclosure agreement executed by Energy Commission personnel reviewing the information.

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

SCE requests that the information be kept confidential for as long as INPO's policies require that it be kept confidential. SCE believes that the confidentiality of this information is required to ensure that 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.

At the same time, the public interest in ensuring that the State's energy policy plans reflect 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.

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 information relating to SONGS-related INPO documents, which SCE identified in its response to Question Nos. A.15 and B.01, should be kept confidential pursuant to confidentiality requirements between SCE and INPO as well as court decisions upholding the confidentiality of INPO documents. 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 nuclear power plant operators with critical evaluations and analyses. As a nuclear power plant operator, SCE has agreed to hold INPO evaluations and IERs provided to INPO as confidential, and INPO is the copyright holder and owner of such evaluations and IERs. INPO does not distribute its evaluations or IERs to the public, and has only made such evaluations and IERs available to third parties under confidentiality agreements or commitments.

The reason for these confidentiality protections for INPO evaluations and IERs 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

¹ The Energy Commission's process for applying for confidential designation asks parties seeking a confidentiality designation to provide the materials at issue with the application. SCE cannot provide the materials with this application due to SCE's confidentiality requirements with INPO.

that such information will be used against the operators.² Although SCE is unable to provide copies of INPO evaluations and IERs because of INPO's copyright and ownership protections, SCE can request that such INPO evaluations and IERs be made available to the Energy Commission for inspection at SCE's Sacramento office, subject to a non-disclosure agreement executed by the Energy Commission's personnel reviewing the information. Copies and notes will not be able to be taken.

Further, the Energy Commission expressly acknowledged that confidentiality protection will be provided for this type of information as needed upon identification by the respondent.³ This statement was made specifically in regard to INPO 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 case or difficulty with which the information could be legitimately acquired or duplicated by others.

For the reasons stated above, the public and SCE's customers have a compelling interest in protecting INPO evaluation information, the disclosure of which would disincite and deter improvements in nuclear power plant operations that benefit SCE and its customers.

SCE 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 to the Energy Commission staff, consultants and all Commissioners for their internal use in the IEPR proceeding. Second, SCE is providing public information in response to the vast majority of the Energy Commission's data requests. 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.**

SCE 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.

² 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).

³ 11-IEPR, Question No. A.15.

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.

SCE 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 SCE'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, SCE 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, SCE 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, SCE has not to the best of its knowledge previously publicly disclosed this data in this disaggregated format.

For all these reasons, SCE requests that the CEC protect this information from disclosure to the public, SCE's suppliers, or SCE'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: June 10, 2011

Signed: /s/ Walker Matthews, III
Name: Walker Matthews, III
Title: Senior Attorney
Southern California Edison Company