

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2016, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account and Transition Cost Balancing Account in 2016 and (iii) Costs Recorded in Related Regulatory Accounts in 2016

Application 17-06-006
(Filed June 1, 2017)

**MOTION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO SEAL A
PORTION OF THE EVIDENTIARY RECORD**

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July 27, 2018

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I. INTRODUCTION

Pursuant to Rule 11.5(b) of the Rules of Practice and Procedure (Rules) of the California Public Utilities Commission (Commission), and Administrative Law Judge (ALJ) Kelly A. Hymes' July 20, 2018 email Ruling to parties in the above-captioned proceeding, San Diego Gas & Electric Company (SDG&E) respectfully files this Motion to Seal a Portion of the Evidentiary Record (Motion). Concurrently with this Motion, SDG&E is also filing a motion pursuant to Rule 13.8 to offer prepared testimony, appendices, and an exhibit into evidence in this proceeding.

By this Motion, SDG&E moves that the Commission issue an order granting confidential treatment of certain information identified by yellow shading in the confidential versions of the following exhibits:

- (1) Direct Testimony of Ana Garza-Beutz, dated June 1, 2017, Exhibit 1-C;
- (2) Direct Testimony of Sheri S. Miller, dated June 1, 2017, Exhibit 2-C;
- (3) Direct Testimony of Joseph Pasquito, dated June 1, 2017, Exhibit 3-C;
- (4) Direct Testimony of Daniel L. Sullivan, dated June 1, 2017, Exhibit 4-C;
- (5) Revised Attachment A – 2016 Summary Load and LMP price forecasts of Joseph Pasquito, served on September 8, 2017, Exhibit 7-C;
- (6) Revised Attachment B – 2016 Hydro and Pump Storage of Joseph Pasquito, served on September 8, 2017, Exhibit 8-C;
- (7) Revised Attachment G – 2016 ERRRA Comp – LCD Workpapers, served on September 8, 2017, Exhibit 9-C;
- (8) Rebuttal Testimony of Ana Garza-Beutz, dated October 24, 2017, Exhibit 11-C, and;
- (9) Rebuttal Testimony of Joseph Pasquito, dated October 24, 2017, Exhibit 13-C.

SDG&E has shaded the confidential material in the foregoing documents for easy identification.

SDG&E has already served confidential versions of the foregoing documents on representatives in this proceeding. A redacted copy of the prepared testimony and appendices will be furnished by SDG&E to any interested parties only upon request.

II. INFORMATION CONTAINED IN SDG&E'S PREPARED TESTIMONY AND ATTACHED APPENDICES ARE CONFIDENTIAL AND MARKET SENSITIVE

In Decision (D.) 06-06-066 and D.08-04-023, the Commission set forth standards for designating information as confidential in Commission proceedings. As part of those decisions, the Commission set forth in the attached Appendix 1 to D.06-06-066 a matrix that identified several categories of data and the level of confidentiality granted to each category. Specifically,

the Commission stated in Ordering Paragraph 2 that “[w]here a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. Once it does so, it is entitled to the protection the Matrix provides for that category.”¹

Here, SDG&E is seeking confidential protection of certain confidential information contained in the above-referenced exhibits. This information, which has been shaded in yellow in the confidential versions of the exhibits, has been determined to be confidential by the Commission pursuant to the Matrix in D.06-06-066 and D.08-04-023. Each confidential version of testimony contains the respective witness’ declarations explaining which aspects of their testimonies are confidential under the Commission’s requirements.

As an alternative basis for requesting confidential treatment, SDG&E submits that the project status information provided in the response to the ALJ Ruling is material, market sensitive, electric procurement-related information protected under P.U.C. § 454.5(g) and P.U.C. § 583, as well as trade secret information protected under Government Code (Govt. Code) § 6254(k), and that the disclosure of this information would place SDG&E at an unfair business disadvantage, thus triggering the protection of GO 66-D.²

¹ D.06-06-066 at 80.

² This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v. Tanforan*, 173 Cal. 270, 274 (1916) (“Since . . . inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.”).

Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.³

Public Utilities Code § 454.5(g) provides:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.⁴ Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

If disclosed, the Protected Information could provide parties with whom SDG&E is currently negotiating insight into SDG&E's procurement needs, which would unfairly undermine SDG&E's negotiation position and could ultimately result in increased cost to ratepayers. In addition, if developers mistakenly perceive that SDG&E is not committed to assisting their projects, disclosure of the Protected Information could act as a disincentive to developers. Accordingly, pursuant to P.U. Code § 583, SDG&E seeks confidential treatment of this data, which falls within the scope of P.U. Code § 454.5(g), Govt. Code § 6254(k) and General Order 66-D.

³ See D.06-06-066 at 26-28.

⁴ See also Govt. Code § 6254.7(d).

III. CONCLUSION

For all the reasons set forth above, SDG&E respectfully moves the Commission for an order sealing a portion of the evidentiary record, and directing that the confidential, market sensitive information described above and appearing in the confidential versions of the above-referenced Exhibits shall remain protected under the statutory and regulatory provisions noted above, and shall not be made accessible or disclosed to anyone other than Commission staff except upon further order of the Commission.

Respectfully submitted,

By: /s/ Paul A. Szymanski
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DATED at San Diego, California, this 27th day of July 2018.