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**FILED**

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

Application of San Diego Gas & Electric Company (U902E) to Amend Renewable Energy Power Purchase Agreement with NaturEner Rim Rock Wind Energy, LLC and for Authority to Make a Tax Equity Investment in the Project.

Application 10-07-017  
(Filed July 15, 2010)

**ADMINISTRATIVE LAW JUDGE'S RULING (1) REGARDING  
MOTIONS TO FILE CONFIDENTIAL MATERIALS UNDER SEAL AND TO  
RECEIVE EXHIBITS IN EVIDENCE AND (2) REVISING SCHEDULE**

**Summary**

Following upon the concerted effort by all active parties, post-hearing, to reasonably limit the material redacted in various exhibits previously tendered as documentary evidence, three of four motions to move exhibits into evidence and to seal portions of the evidentiary record are granted and the fourth motion is granted in substantial part. Specifically, while most of the motion by The Utility Reform Network is granted, the portion that seeks admission of the document identified as Exhibit 151-CCC remains pending. Disposition of this single issue, together with San Diego Gas & Electric's related, oral motion to strike Exhibit 151-CCC, is deferred for further briefing.

In addition, at the parties' request, the post-hearing briefing schedule is revised further.

## **Background to Motions**

The four active parties are San Diego Gas & Electric Company (SDG&E), NaturEner Rim Rock Wind Energy, LLC (Rim Rock), The Utility Reform Network (TURN), and the Division of Ratepayer Advocates (DRA). At hearings held December 13-17, 2010, each of the active parties introduced exhibits associated with one or more claims of confidentiality. The allegedly confidential portion(s) of the exhibit had been redacted from the public version tendered with the confidential version(s) or the party offered only a confidential version. I deferred ruling on the admission of all such exhibits and whether the confidential versions should be placed under seal. I directed the parties, post-hearing, to review the claims of confidentiality for conformance with existing law<sup>1</sup> and then as necessary, to revise the documents to appropriately narrow the scope of redactions. On January 7, 2011, SDG&E, Rim Rock, TURN and DRA submitted revised public and confidential versions of a number of the previously tendered exhibits. Each party also filed a motion asking the Commission to receive its exhibits in evidence and to seal the confidential versions. The TURN and DRA motions state, "All parties agree as to the appropriateness of the redactions included in the final exhibits."<sup>2</sup>

With respect to Exhibit 151-CCC, I heard oral argument from all parties on December 17, 2010, regarding whether the exhibit should be received in evidence

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<sup>1</sup> See for example Decision (D.) 06-06-066, as modified by D.07-05-032 and D.08-04-023, adopting an investor-owned utility (or IOU) Matrix and an energy services provider (or ESP) Matrix to govern protection of specified categories of procurement data for each type of entity; General Order 66-C; and relevant statutes, including Public Utilities Code § 454.5(g) and § 583.

<sup>2</sup> See DRA motion at 4; TURN Motion at 5.

and if so, how it might be used. Exhibit 151-CCC contains market sensitive procurement information that neither SDG&E nor Rim Rock may view, because the information is confidential to the Performance Review Group for another utility, Southern California Edison Company.

### **Discussion of Motions**

D.06-06-066, as modified, establishes an IOU Matrix and ESP Matrix. Both matrices identify categories and sub-categories of data entitled to confidentiality and specify the nondisclosure terms applicable. The confidentiality afforded under the matrices is derived from statutory protections for non-public market sensitive and trade secret information, including authority set forth in Pub. Util. Code § 454.5(g) and § 583, Government Code § 6254(k), and statutes referenced in the Commission's General Order 66-C. The party claiming protection under either Matrix must show:

- 1) That the material it is submitting constitutes a particular type of data listed in the Matrix,
- 2) Which category or categories in the matrix the data correspond to,
- 3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- 4) That the information is not already public, and
- 5) That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.<sup>3</sup>

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<sup>3</sup> D.06-06-006, as modified by D.07-05-032, Ordering Paragraph 2.

In this docket, the confidentiality claims associated with all exhibits except for Exhibit 151-CCC concern information which either SDG&E or Rim Rock seeks to protect.

SDG&E claims confidentiality with respect to portions of its own prepared testimony (direct and rebuttal) and portions of certain TURN or DRA exhibits (prepared testimony and/or cross-examination exhibits that rely upon data request responses from SDG&E). To address confidentiality claims associated with the first group, SDG&E has included at the end of its revised, prepared testimony a declaration by a knowledgeable employee (i.e., the Financial Planning Manager in the Financial Analysis Department, the Energy Contract Originator in the Electric & Fuel Procurement Department, the Director of Financial Analysis and Assistant Treasurer). To address confidentiality claims associated the second group, SDG&E has provided declarations (i.e., the Financial Planning Manager in the Financial Analysis Department and the Energy Contract Originator in the Electric & Fuel Procurement Department).

SDG&E's comprehensive declarations identify the confidential information with great specificity (e.g., by page and line, etc.). The declarations lay out alternative grounds for confidential treatment, addressing each of the IOU Matrix requirements as well as the standards developed under Pub. Util. Code § 583 and § 454.5(g) (protection of market sensitive information), Evidence Code § 1060 (trade secret protection) and General Order 66-C (protection against disclosures that would subject a regulated entity to an unfair business disadvantage).

Rim Rock's motion, signed by its counsel of record, also is very comprehensive. The motion identifies each exhibit Rim Rock deems to include confidential information (both prepared testimony and data request responses), specifies the location of the confidential information (page, line, etc.), and

explains the basis for the claim of confidentiality by citation to the Matrix decisions, the statutes referenced above, and General Order 66-C.

The SDG&E and Rim Rock claims of confidentiality, as set forth in their motions filed January 7, 2011, have been tailored since initially proposed, and now appear reasonably structured to protect information shielded from public disclosure under the Matrix decisions or other law. The parties' motions should be granted and all exhibits not previously received in evidence should be admitted (except Exhibit 55, which was not admitted at hearing and Exhibit 151-CCC, which remains at issue). The updated Exhibit Index attached to this ruling identifies each confidential exhibit and the degree of confidentiality associated with it. With the sole exception of Exhibit 151-CCC, the exhibits subject to the parties' January 7, 2011 motions are deemed received in evidence on that date.

Admission of Exhibit 151-CCC is deferred pending further briefing to establish how allegedly similar information was treated in Application (A.) 06-11-007 and A.09-12-002 (or elsewhere), together with any additional argument in support of admission or in opposition to SDG&E's oral motion to strike the exhibit.<sup>4</sup> TURN and any other interested party should identify any relevant documents such as: oral or written rulings, stipulations, transcript pages that memorialize pertinent discussions, or other documents that establish precedent. Initial briefs on this issue should be filed concurrently with post-hearing reply briefs; responsive briefs on this issue should be filed five days thereafter.

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<sup>4</sup> See Tr. at 797-805.

### Revised Schedule

The revised schedule below reflects my informal grant of the active parties' recent, informal request to further defer the dates for filing opening and reply post-hearing briefs, as previously communicated in SDG&E's email to the service list. The schedule below also includes the dates that briefs are due on admission of Exhibit 151-CCC.

Event	Date
Concurrent opening briefs filed	February 18, 2011
Concurrent reply briefs filed; Submission	March 4, 2011
Initial brief(s) on admission Exhibit 151 CCC	March 4, 2011
Responsive brief(s) on admission of Exhibit 151-CCC	March 9, 2011
Proposed Decision filed	No later than April 19, 2011 <sup>5</sup>
First Commission meeting at least 30 days after mailing of Proposed Decision where the Commission may act (if Proposed Decision filed April 19, 2011)	No later than May 19, 2011

### IT IS RULED that:

1. The January 7, 2011, motions of San Diego Gas & Electric Company, NaturEner Rim Rock Wind Energy, LLC, the Division of Ratepayer Advocates, and The Utility Reform Network to receive exhibits in evidence and to seal portions of the evidentiary record are granted, consistent with the updated Exhibit Index attached to this ruling.

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<sup>5</sup> Rule 14.2(a) of the Commission's Rules provides for issuance of a proposed decision within 90 days of submission of a ratesetting case where hearings are held. The schedule above accelerates compliance with this requirement.

- (a) The confidential information placed under seal pursuant to this ruling shall remain sealed for the period provided by the Matrix or other authority. During this period, the confidential information shall not be made accessible or be disclosed to anyone except in accordance with the confidentiality legend on page 1 of the Exhibit Index, except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge, which order shall be entered only after notice to San Diego Gas & Electric Company and Rim Rock and an opportunity to be heard.
- (b) If San Diego Gas & Electric Company (SDG&E) or NaturEner Rim Rock Wind Energy, LLC (Rim Rock), as applicable, believes that the confidential information placed under seal pursuant to this ruling should be granted protection beyond the period provided by the Matrix or other authority, SDG&E or Rim Rock may file a motion stating the justification for further withholding the material from public inspection or for such other relief as the Commission Rules may then provide. The motion shall be filed no later than 45 days before the expiration of the relevant time period.

2. The portion of The Utility Reform Network's motion to receive in evidence the document identified as Exhibit 151-CCC is deferred for further briefing. Initial briefs on this issue shall be filed by March 4, 2011 and responsive briefs shall be filed by March 9, 2011.

3. Post-hearing opening briefs shall be filed by February 18, 2011 and post-hearing reply briefs shall be filed by March 4, 2011.

Dated February 3, 2011, at San Francisco, California.

/s/ JEAN VIETH  
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Jean Vieth  
Administrative Law Judge

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated February 3, 2011, at San Francisco, California.

/s/ LILLIAN LI

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Lillian Li

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Adv r at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

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