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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement
Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690
(Sept. 22, 2004)) Relating to Confidentiality of
Information.

Rulemaking 05-06-040
(Filed June 30, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING CLARIFYING INTERIM
PROCEDURES FOR COMPLYING WITH DECISION 06-06-066**

This ruling clarifies the procedures for requesting confidential treatment of electric procurement, resource adequacy and renewable portfolio standard (RPS) data submitted to the Commission pursuant to the requirements of Decision (D.) 06-06-066 (hereinafter, "electric procurement-related data"), on an interim basis pending resolution of Southern California Edison Company's (Edison) petition to modify D.06-06-066 and D.06-07-006 (which petition was also filed in this proceeding). A similar ruling is being contemporaneously issued in Rulemaking (R.) 06-02-011, a proceeding in which Edison also filed its petition. The interim procedures announced below pertain only to electric procurement-related data and may be modified in the final disposition of Edison's petition.

I. Introduction

Parties or persons¹ claiming a right to confidentiality for their data should always be prepared to prove that they meet the requirements of the two versions

¹ For purposes of this ruling, "parties or persons" are used interchangeably. "Parties" generally refers to persons who have appeared as parties in a formal proceeding before

Footnote continued on next page

of a “Matrix” adopted in D.06-06-066. In some cases, listed below, such parties or persons shall prove compliance by way of a formal motion to be decided by an Administrative Law Judge (ALJ). In other cases, also listed below, such parties or persons shall accompany data for which they claim a right to confidential treatment with a declaration under penalty of perjury certifying that they are only claiming confidentiality for data D.06-06-066 recognizes as confidential. In these latter situations, no formal motion is initially required.

II. Motion Required

A motion is initially required in two situations:

A. Formal Filing

Situation: A party files a pleading in a formal proceeding, including data of the type addressed in the Matrices to D.06-06-066, and seeks confidential treatment of that data.

A motion for confidential treatment will accompany the data and will comply with new Rule 11.4 of the Commission’s Rules of Practice and Procedure (Rules).

the Commission. “Persons” generally refers to all other natural or fictitious persons who are submitting data to the Commission, usually outside a formal proceeding.

B. Material Offered in Evidence

Situation: A party offers material in evidence in a formal proceeding and seeks confidential treatment for data of the type addressed in the Matrices to D.06-06-066.

Consistent with new Rules 11.5, an oral or written motion to seal the evidentiary record will accompany the proffered evidence.

C. Requirements

Motions filed or made under (A) or (B) above shall, at a minimum, meet the following five requirements in Ordering Paragraph 2 of D.06-06-066:

1. That the material constitutes a particular type of data listed in the Matrix;
2. The category or categories in the Matrix to which the data correspond;
3. That the submitting party 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.

III. No Motion Initially Required

In the following situations, a party or person seeking confidential treatment need not file a motion, but shall accompany the data for which it claims such treatment with a declaration under penalty of perjury meeting the five requirements in Ordering Paragraph 2 of D.06-06-066.

A. Prepared Testimony Served but Not Yet Offered in Evidence

Situation: A party serves prepared testimony in a formal proceeding, but before the evidentiary hearing, where the testimony contains data of the type addressed in the Matrices to D.06-06-066. The party has not yet offered the testimony in evidence.

In this situation, the following procedure applies:

1. A declaration under penalty of perjury will accompany the testimony establishing the five factors required by D.06-06-066, Ordering Paragraph 2, but no motion is initially required.
2. If another party or person asks to see the confidential data, the filer and the requesting person shall meet and confer to resolve the dispute informally, consistent with the intent of new Rule 11.3. If they cannot resolve the dispute, the party seeking confidential treatment shall file a motion in compliance with Section II (B) & (C) above.

B. Discovery/Data Request Responses

Situation: A party or person provides data in response to a data or discovery request in a formal proceeding served by another party or person (other than Commission staff). The party or person providing the data claims confidential treatment under D.06-06-066.

In this situation, the following procedure applies:

1. A declaration under penalty of perjury will accompany the data establishing the five factors required by D.06-06-066, Ordering Paragraph 2, but no motion is initially required.

2. If another party or person asks to see the confidential data, the submitting party or person and the requesting person shall meet and confer to resolve the dispute informally, consistent with the intent of new Rule 11.3. If they cannot resolve the dispute, the party or person seeking confidential treatment shall file a motion in compliance with Section II (B) & (C) above.

C. Advice Letters

Situation: A person files an advice letter and seeks confidential treatment for data of the type addressed in the Matrices to D.06-06-066.

In this situation, the following procedure applies:

1. A declaration under penalty of perjury will accompany the filing, establishing the five factors required by D.06-06-066, Ordering Paragraph 2, but no motion is initially required.
2. If another person asks to see the confidential data, the filer and the requesting person shall meet and confer to resolve the dispute informally, consistent with the intent of new Rule 11.3. If they cannot resolve the dispute, the filer and the requesting person shall present the dispute to the director of the Energy Division. The confidentiality claim and dispute will be resolved consistent with the Commission's procedures for addressing confidentiality claims and requests for information in the context of Public Record Act requests. If not before, this interim procedure for advice letters may be modified when the Commission adopts a final version of General Order (GO) 96-B.

D. Information Provided to Staff Outside of Formal Proceeding

Situation: In response to a Commission staff data request outside of a formal proceeding, a person submits data, for which the submitting person claims confidential treatment under D.06-06-066.

In this situation, the following procedure applies:

1. A declaration under penalty of perjury will accompany the data provided to Commission staff, establishing the five factors required by D.06-06-066, Ordering Paragraph 2, but no motion is initially required.
2. If another party or person asks to see the confidential data, the submitting person and the requesting person shall meet and confer to resolve the dispute informally, consistent with the intent of new Rule 11.3. If they cannot resolve the dispute, the submitting person and the requesting person shall present the dispute to the director of the Energy Division. The confidentiality claim and dispute will be addressed consistent with the Commission's procedures for addressing confidentiality claims and requests for information in the context of Public Record Act requests.

IT IS SO RULED.

Dated August 22, 2006, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

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Dated August 22, 2006, at San Francisco, California.

/s/ JANET V. ALVIAR

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