

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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01-07-11  
04:59 PM

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.

A.10-07-017  
(Filed July 15, 2010)

**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES  
TO MOVE EXHIBITS INTO EVIDENCE AND SEAL PORTIONS  
OF THE EVIDENTIARY RECORD**

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January 7, 2011

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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.

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**I. INTRODUCTION**

Pursuant to Rules 11.1 and 11.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), and Public Utilities Code Section 583, General Order 66-C and Decision 06-06-066, the Division of Ratepayer Advocates (“DRA”) respectfully requests to move its exhibits into evidence and seal portions of the evidentiary record. Evidentiary hearings for this proceeding were held from December 13 to 17, 2010. At the close of the hearings, Administrative Law Judge (“ALJ”) Vieth indicated there were preliminary marked exhibits not yet submitted due to outstanding claims of confidentiality and instructed the parties to work together to narrow the scope of the redactions and resubmit public and confidential copies of the remaining exhibits.<sup>1</sup>

Therefore, DRA respectfully requests that following exhibits are moved into evidence:

**Exhibit Index**

<b>Exh. No.</b>	<b>Date Identified</b>	<b>Sponsor/Witness</b>	<b>Description</b>
100	12/17	Shmidt/Ghazzagh	Prepared Testimony - <b>Public</b>

<sup>1</sup> A.10-07-017 Hearing Transcript 791:24-792:8.

100C	12/17	Shmidt/Ghazzagh	Prepared Testimony - Confidential
100C-RR	12/17	Shmidt/Ghazzagh	Prepared Testimony – Confidential/NaturEner Version
101	12/13	Moftakhar	SDG&E Response to TURN DR-12, Q3(b) & attachment “Rim Rock Market Pricing” - <b>Public</b>
101C-RR	12/13	Moftakhar	SDG&E Response to TURN DR-12, Q3(b) & attachment “Rim Rock Market Pricing”
102	12/13	Moftakhar	SDG&E Response to TURN DR-12, Q3(a) and attachment “Quarterly Forecast Update, Third Quarter 2010, pp 65-111 - <b>Public</b>
102C-RR	12/13	Moftakhar	SDG&E Response to TURN DR-12, Q3(a) and attachment “Quarterly Forecast Update, Third Quarter 2010, pp 65-111
103	12/13	Moftakhar	DRA’s Comparison of Energy Price Forecasts and Forward Data w/ Alberta Energy Forward Curves and Forecasts - <b>Public</b>
103C-RR	12/13	Moftakhar	DRA’s Comparison of Energy Price Forecasts and Forward Data w/ Alberta Energy Forward Curves and Forecasts
104	12/13	Moftakhar	DRA’s Comparison of Energy Price Forecasts and Forward Data w/ Comparison of Alberta Energy Price Assumptions - <b>Public</b>
104C-RR	12/13	Moftakhar	DRA’s Comparison of Energy Price Forecasts and Forward Data w/ Comparison of Alberta Energy Price Assumptions
105	12/13	Moftakhar	SDG&E Response to DRA DR-8, Q2 - <b>Public</b>
105C-RR	12/13	Moftakhar	SDG&E Response to DRA DR-8, Q2
106	12/13	Moftakhar	DRA’s Competitive Energy Insight Model Runs - <b>Public</b>
106C-RR	12/13	Moftakhar	DRA’s Competitive Energy Insight Model Runs
107	12/13	Moftakhar	SDG&E Response to DRA DR-8, Q3 - <b>Public</b>
107C-RR	12/13	Moftakhar	SDG&E Response to DRA DR-8, Q3
108	12/14	Burkhart	SDG&E Response to DRA DR-3, Q14 - <b>Public</b>
108C-RR	12/14	Burkhart	SDG&E Response to DRA DR-3,

			Q14
110	12/15	Burkhart	Alternatives to RimRock - <b>Public</b>
110C	12/15	Burkhart	Alternatives to RimRock
111	12/16	Alexander	RimRock Response to DRA-NE-3, various Qs - <b>Public</b>
111C-RR	12/16	Alexander	RimRock Response to DRA-NE-3, various Qs
114	12/17	Shmidt	RPS Project Development Status Report Update, SDG&E, August 2, 2010 - <b>Public</b>
114C	12/17	Shmidt	RPS Project Development Status Report Update, SDG&E, August 2, 2010
115	12/17	Shmidt	RPS Compliance Report: Procurement Detail - <b>Public</b>
115C	12/17	Shmidt	RPS Compliance Report: Procurement Detail
116	Late-filed	Alexander	Wind assessment report- <b>Public</b>
116C-RR	Late-filed	Alexander	Wind assessment report

The exhibit index provided by ALJ Veith at the conclusion of hearings indicates that none of the exhibits referenced above were entered into the record. In addition, DRA moves that upon receipt of the above-referenced exhibits into the evidentiary record of this proceeding, those exhibits designated by either “C”, or “C-RR”, be sealed. Updated electronic and hard copies of the exhibits listed herein are being provided separately to the ALJ.

## **II. DRA’S CONFIDENTIAL EXHIBITS CONTAIN INFORMATION PROTECTED UNDER COMMISSION ORDERS AND APPLICABLE LAW**

DRA’s exhibits contain information identified by San Diego Gas and Electric and NaturEner Rim Rock Energy, LLC as confidential per Decision 06-06-066 and General Order 66-C and therefore are not subject to public disclosure. DRA has worked cooperatively with SDG&E and Naturener to prepare public and partially confidential versions of these exhibits. All parties agree as to the appropriateness of the redactions included in the final exhibits.

When SDG&E originally presented its evidence, it attached declarations to the confidential exhibits explaining how the confidential information contained

therein fits within the D.06-06-066 Matrix. In submitting these updated exhibits, per ALJ Vieth's request, DRA relies on modified declarations submitted by SDG&E and Naturener. SDG&E's declarations as to the confidentiality of the documents are attached as Appendix A. NaturEner's are included with their respective motion for sealing the record.

### **III. CONCLUSION**

For the reasons set forth above, DRA respectfully moves the Commission to accept the above-referenced exhibits into evidence in this proceeding and requests to seal the confidential portions of the evidentiary record.

Respectfully submitted,

MARCELO POIRIER  
CANDACE MOREY

/s/ MARCELO POIRIER

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Marcelo Poirier  
Staff Counsel

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January 7, 2011

# **APPENDIX A**

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

**DECLARATION OF HILLARY HEBERT  
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Hillary Hebert, do declare as follows:

1. I am an Energy Contracts Originator in the Electric & Fuel Procurement Department for San Diego Gas & Electric Company (“SDG&E”). I have reviewed the SDG&E responses to Data Requests from The Utility Reform Network (TURN) and the Division of Ratepayer Advocates (DRA) in the Rim Rock Tax Equity Investment proceeding (A.10-07-107) portions of which are identified on the record of the proceeding as DRA’s Confidential Appendix B to Exhibit 100-C and 100 C-RR. In addition, I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066<sup>1/</sup> and D.08-04-023 to demonstrate that the confidential information (“Protected Information”) provided in the Exhibits submitted concurrently herewith (described below) falls within the scope of data protected as confidential pursuant to the IOU Matrix attached to the Commission’s confidentiality decision, D.06-06-066 (the “IOU Matrix”) and/or under relevant statutory provisions.<sup>2/</sup>

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<sup>1/</sup> As amended by D.07-05-032.

<sup>2/</sup> The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if information is eligible for statutory protection, it must be protected under the Matrix. (See *Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, \*38-39) Thus, by

3. In D.06-06-066, the Commission adopted rules governing confidentiality of certain categories of electric procurement data submitted to the Commission by investor owned utilities (“IOUs”) and energy service providers (“ESPs”). The Commission established two matrices – one applicable to IOUs, the other to ESPs – setting forth categories and sub-categories of data and providing a confidentiality designation for each.<sup>3/</sup>

4. To the extent information matches a Matrix category, it is entitled to the protection the Matrix provides for that category of information. In addition, the Commission has made clear that information must be protected where “it matches a Matrix category exactly . . . or consists of information from which that information may be easily derived.”<sup>4/</sup> In order to claim the protection afforded by the relevant Matrix, the party seeking confidential treatment must establish:

- 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>5/</sup>

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claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of applicable statutory provisions including, but not limited to, Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

<sup>3/</sup> See, D.06-06-066, as amended by D.07-05-032, *mimeo*, Appendices 1 and 2.

<sup>4/</sup> See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

<sup>5/</sup> D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

5. SDG&E's Protected Information: The Protected Information, consisting of the information described below, is protected pursuant to the following Matrix categories:

<b>Description of Data in DRA's Confidential Appendix B of Exhibit 100-C and 100-C-RR</b>	<b>Matrix Category</b>	<b>Period of Confidentiality</b>
<u>Attachment 9, C-RR</u> : shaded data	VII.G	Score sheets, analyses, evaluations of proposed RPS projects  Confidential for three years.
<u>Attachment 1, slides 5,18 ,C</u> : shaded data	VIII.A	Raw Bid Data -Always confidential.  Summaries of bids (total MW, MWH, technology types, etc) are confidential until final contracts are submitted to CPUC for approval.
<u>Attachment 13, C</u> : shaded data <u>Attachment 43, C</u> : shaded data <u>Attachment 64, slide 6, C</u> : shaded data <u>Attachment 69, slide 3, C</u> : shaded data	VIII.B	Quantitative Analysis in Scoring and Evaluation of Bids  Confidential for three years after winning bidders selected.
<u>Attachment 30, C-RR</u> : shaded data	XI	Detail of monthly variable cost on energy and utility operation

6. The Commission previously considered and approved application of IOU Matrix confidentiality protection to project development status data in its *Administrative Law Judge's Ruling Granting San Diego Gas & Electric Company's May 21, 2007*

*Amendment to April 3, 2007 Motion and May 22, 2007 Amendment to August 1, 2006 Motion*, issued June 28, 2007 in R.06-05-027.

7. SDG&E intends to comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

8. I am not aware of any instance of public disclosure of the Protected Information.

9. The Protected Information cannot be provided in a form that is further aggregated, redacted, or summarized and still provide the level of detail requested and expected by the Energy Division.

10. As an alternative basis for requesting confidential treatment, SDG&E submits that the project status information provided in the Exhibits is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under 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 G.O. 66-C.<sup>6/</sup>

11. 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

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<sup>6/</sup> 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.")

participants shall be provided access to this information under confidentiality procedures authorized by the commission.

12. General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

13. 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.<sup>7/</sup> 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.

14. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.<sup>8/</sup>

15. If disclosed, the Protected Information could provide parties with whom SDG&E is currently negotiating insight into SDG&E’s procurement options, 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), Evidence Code § 1060 and General Order 66-C.

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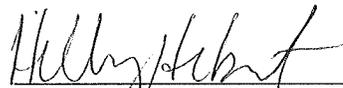
<sup>7/</sup> See also Govt. Code § 6254.7(d).

<sup>8/</sup> See, D.06-06-066, *mimeo*, pp. 26-28.

16. In accordance with the statutory provisions described herein, SDG&E hereby requests that the information set forth in the Exhibits be protected from public disclosure.

17. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 6th day of January, 2011, at San Diego, California.

  
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Hillary Hebert  
Energy Contracts Originator

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

**DECLARATION OF AMIR MOFTAKHAR  
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Amir Mofstakhar, do declare as follows:

1. I am the Financial Planning Manager in the Financial Analysis Department for San Diego Gas & Electric Company (“SDG&E”). I have reviewed SDG&E responses to Data Requests from The Utility Reform Network (TURN) and the Division of Ratepayer Advocates (DRA) in the Rim Rock Tax Equity Investment proceeding (A.10-07-107) portions of which are identified on the record of the proceeding as DRA’s Confidential Appendix B to Exhibit 100-C and 100 C-RR. In addition, I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066<sup>1/</sup> and D.08-04-023 to demonstrate that the confidential information (“Protected Information”) provided in the Exhibits submitted concurrently herewith (described below) falls within the scope of data protected as confidential pursuant to the IOU Matrix attached to the Commission’s confidentiality decision, D.06-06-066 (the “IOU Matrix”) and/or under relevant statutory provisions.<sup>2/</sup>

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<sup>1/</sup> As amended by D.07-05-032.

<sup>2/</sup> The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if information is eligible for statutory protection, it must be protected under the Matrix. (See *Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, \*38-39) Thus, by

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claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of applicable statutory provisions including, but not limited to, Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

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<sup>5/</sup> D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.



Description of Data in DRA Confidential Appendix B	Matrix Category	Period of Confidentiality
<ul style="list-style-type: none"> <li>• <u>Attachment 6</u>, C-RR: shaded data</li> <li>• <u>Attachment 31-32</u>, C-RR: shaded data</li> </ul>	XI	Detail of monthly variable cost on energy and utility operation

6. The Commission previously considered and approved application of IOU Matrix confidentiality protection to project development status data in its *Administrative Law Judge's Ruling Granting San Diego Gas & Electric Company's May 21, 2007 Amendment to April 3, 2007 Motion and May 22, 2007 Amendment to August 1, 2006 Motion*, issued June 28, 2007 in R.06-05-027.

7. SDG&E intends to comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

8. I am not aware of any instance of public disclosure of the Protected Information.

9. The Protected Information cannot be provided in a form that is further aggregated, redacted, or summarized and still provide the level of detail requested and expected by the Energy Division.

10. As an alternative basis for requesting confidential treatment, SDG&E submits that the project status information provided in the Exhibits is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under 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 G.O. 66-C.<sup>6/</sup>

11. 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.

12. General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

13. 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.<sup>7/</sup> 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.

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<sup>6/</sup> 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.”)

<sup>7/</sup> *See also* Govt. Code § 6254.7(d).

14. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.<sup>8/</sup>

15. If disclosed, the Protected Information could provide parties with whom SDG&E is currently negotiating insight into SDG&E's procurement options, 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), Evidence Code § 1060 and General Order 66-C.

16. In accordance with the statutory provisions described herein, SDG&E hereby requests that the information set forth in the Exhibits be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 6<sup>th</sup> day of January, 2011, at San Diego, California.

  
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Amir Moftakhar  
Financial Planning Manager

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<sup>8/</sup> See, D.06-06-066, *mimeo*, pp. 26-28.

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

**DECLARATION OF HILLARY HEBERT  
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Hillary Hebert, do declare as follows:

1. I am an Energy Contracts Originator in the Electric & Fuel Procurement Department for San Diego Gas & Electric Company (“SDG&E”). I have reviewed the SDG&E responses to Data Requests from The Utility Reform Network (TURN) and the Division of Ratepayer Advocates (DRA) in the Rim Rock Tax Equity Investment proceeding (A.10-07-107) portions of which are identified in the record of the proceeding as Exhibits 108C-RR, 110C, 155C-RR, 160C, 160C-RR and 176-C (Exhibits). In addition, I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066<sup>1/</sup> and D.08-04-023 to demonstrate that the confidential information (“Protected Information”) provided in the Exhibits submitted concurrently herewith (described below) falls within the scope of data protected as confidential pursuant to the IOU Matrix attached to the Commission’s confidentiality decision, D.06-06-066 (the “IOU Matrix”) and/or under relevant statutory provisions.<sup>2/</sup>

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<sup>1/</sup> As amended by D.07-05-032.

<sup>2/</sup> The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if information is eligible for statutory protection, it must be protected under the Matrix. (See *Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, \*38-39) Thus, by

3. In D.06-06-066, the Commission adopted rules governing confidentiality of certain categories of electric procurement data submitted to the Commission by investor owned utilities (“IOUs”) and energy service providers (“ESPs”). The Commission established two matrices – one applicable to IOUs, the other to ESPs – setting forth categories and sub-categories of data and providing a confidentiality designation for each.<sup>3/</sup>

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claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of applicable statutory provisions including, but not limited to, Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

<sup>3/</sup> See, D.06-06-066, as amended by D.07-05-032, *mimeo*, Appendices 1 and 2.

<sup>4/</sup> See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

<sup>5/</sup> D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

5. SDG&E's Protected Information: The Protected Information, consisting of the information described below, is protected pursuant to the following Matrix categories:

Description of Data	Matrix Category	Period of Confidentiality
<ul style="list-style-type: none"> <li>Exhibit 160C, 160C-RR (Sempra Board of Directors 6/10/10 Presentation, p.1): shaded data in 5<sup>th</sup> bullet</li> </ul>	V.C	LSE Total Energy Forecast – Bundled Customer (MWh)  Front three years of forecast data confidential.
<ul style="list-style-type: none"> <li>Exhibit 176C (SDG&amp;E Response to TURN DR-11, Q3): shaded portion of chart</li> </ul>	VII.G	Score Sheets, analyses, evaluations of proposed RPS projects.  Confidential for three years.
<ul style="list-style-type: none"> <li>Exhibit 110C (Alternatives to Rim Rock): shaded data in charts providing bid data from SDG&amp;E's 2009 RPS RFO</li> </ul>	VIII.A	Raw Bid Data -Always confidential.  Summaries of bids (total MW, MWh, technology types, etc) are confidential until final contracts are submitted to CPUC for approval.
<ul style="list-style-type: none"> <li>Exhibit 155C-RR (SDG&amp;E Response to DRA DR-02-011): shaded data</li> <li>Exhibit 160C, 160C-RR, (Sempra Board of Directors 6/10/10 Presentation, p.1-2): shaded data except 5<sup>th</sup> bullet on page 1</li> </ul>	VIII.B	Quantitative Analysis in Scoring and Evaluation of Bids  Confidential for three years after winning bidders selected.
<ul style="list-style-type: none"> <li>Exhibit 108C-RR (SDG&amp;E's supplemental response to DRA's Data Request DRA-03, Question 14): shaded data</li> </ul>	XI	Details of monthly variable cost on energy and utility operation.

6. The Commission previously considered and approved application of IOU Matrix confidentiality protection to project development status data in its *Administrative Law Judge's Ruling Granting San Diego Gas & Electric Company's May 21, 2007*

*Amendment to April 3, 2007 Motion and May 22, 2007 Amendment to August 1, 2006 Motion*, issued June 28, 2007 in R.06-05-027.

7. SDG&E intends to comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

8. I am not aware of any instance of public disclosure of the Protected Information.

9. The Protected Information cannot be provided in a form that is further aggregated, redacted, or summarized and still provide the level of detail requested and expected by the Energy Division.

10. As an alternative basis for requesting confidential treatment, SDG&E submits that the project status information provided in the Exhibits is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under 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 G.O. 66-C.<sup>6/</sup>

11. 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

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<sup>6/</sup> 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.")

participants shall be provided access to this information under confidentiality procedures authorized by the commission.

12. General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

13. 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.<sup>7/</sup> 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.

14. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.<sup>8/</sup>

15. If disclosed, the Protected Information could provide parties with whom SDG&E is currently negotiating insight into SDG&E’s procurement options, 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), Evidence Code § 1060 and General Order 66-C.

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<sup>7/</sup> See also Govt. Code § 6254.7(d).

<sup>8/</sup> See, D.06-06-066, *mimeo*, pp. 26-28.

16. In accordance with the statutory provisions described herein, SDG&E hereby requests that the information set forth in the Exhibits be protected from public disclosure.

17. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 4th day of January, 2011, at San Diego, California.

  
\_\_\_\_\_  
Hillary Hébert  
Energy Contracts Originator

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

**DECLARATION OF AMIR MOFTAKHAR  
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Amir Moftakhar, do declare as follows:

1. I am the Financial Planning Manager in the Financial Analysis Department for San Diego Gas & Electric Company (“SDG&E”). I have reviewed SDG&E responses to Data Requests from The Utility Reform Network (TURN) and the Division of Ratepayer Advocates (DRA) in the Rim Rock Tax Equity Investment proceeding (A.10-07-107) portions of which are identified in the record of the proceeding as Exhibits 101C-RR, 102C-RR, 103C-RR, 104C-RR, 105C-RR, 106C-RR, 107C-RR, 157C-RR, 158C-RR, 159C-RR, 163C-RR, 164C, 166C-RR, 167C-RR, 173C-RR and 175C-RR (Exhibits). In addition, I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066<sup>1/</sup> and D.08-04-023 to demonstrate that the confidential information (“Protected Information”) provided in the Exhibits submitted concurrently herewith (described below) falls within the scope of data protected as confidential pursuant to the IOU Matrix attached to the Commission’s confidentiality decision, D.06-06-066 (the “IOU Matrix”) and/or under relevant statutory provisions.<sup>2/</sup>

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<sup>1/</sup> As amended by D.07-05-032.

<sup>2/</sup> The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if

3. In D.06-06-066, the Commission adopted rules governing confidentiality of certain categories of electric procurement data submitted to the Commission by investor owned utilities (“IOUs”) and energy service providers (“ESPs”). The Commission established two matrices – one applicable to IOUs, the other to ESPs – setting forth categories and sub-categories of data and providing a confidentiality designation for each.<sup>3/</sup>

4. To the extent information matches a Matrix category, it is entitled to the protection the Matrix provides for that category of information. In addition, the Commission has made clear that information must be protected where “it matches a Matrix category exactly . . . or consists of information from which that information may be easily derived.”<sup>4/</sup> In order to claim the protection afforded by the relevant Matrix, the party seeking confidential treatment must establish:

- 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>5/</sup>

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information is eligible for statutory protection, it must be protected under the Matrix. (*See Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, \*38-39) Thus, by claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of applicable statutory provisions including, but not limited to, Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

<sup>3/</sup> See, D.06-06-066, as amended by D.07-05-032, *mimeo*, Appendices 1 and 2.

<sup>4/</sup> See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

<sup>5/</sup> D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

5. SDG&E's Protected Information: The Protected Information, consisting of the information described below, is protected pursuant to the following Matrix categories:

Description of Data	Matrix Category	Period of Confidentiality
<ul style="list-style-type: none"> <li>• <u>Exhibit 101C-RR</u> (SDG&amp;E response to TURN DR-12, Q3.a and 3.b): shaded data in response to Q3.b</li> <li>• <u>Exhibit 102C-RR</u> (SDG&amp;E response to TURN DR-12, Q3.a and 3.b): entire attachment provided for Q3.a. and shaded data in Q3.b</li> <li>• <u>Exhibit 103C-RR</u> (Comparison of Energy Price Forecast and Forward Data): shaded chart data</li> <li>• <u>Exhibit 104C-RR</u> (Comparison of Energy Price Forecast and Forward Data): shaded chart data</li> <li>• <u>Exhibit 105C-RR</u> (SDG&amp;E response to DRA DR-08, Q2): Shaded data</li> <li>• <u>Exhibit 106-C-RR</u> (DRA Base Case Model Runs): Shaded data</li> <li>• <u>Exhibit 107C-RR</u> (SDG&amp;E response to DRA DR-08, Q3): shaded data</li> <li>• <u>Exhibit 157C-RR</u> (SDG&amp;E response to TURN DR-03, Q6): shaded data</li> <li>• <u>Exhibit 158-C-RR</u> (SDG&amp;E response to TURN DR-02, Q44, TURN DR-12, Q10, 11.b, 11.c, DRA DR-08, Q2): shaded data</li> <li>• <u>Exhibit 159C-RR</u> (SDG&amp;E Response to TURN DR-12, Q3b): shaded data</li> <li>• <u>Exhibit 163C-RR</u> (SDG&amp;E response to TURN DR-02, Q38): shaded data in tables</li> <li>• <u>Exhibit 164C</u> (SDG&amp;E response to TURN DR-10, Q1): shaded data in tables</li> <li>• <u>Exhibit 166C-RR</u> (Impacts to Green Attribute (GA) Price), shaded data and chart</li> <li>• <u>Exhibit 168C-RR</u> (Confidential Appendix G)</li> <li>• <u>Exhibit 173C-RR</u> (SDG&amp;E Response to TURN DR-02, Q35.b): shaded data in response and chart</li> <li>• <u>Exhibit 175C-RR</u> (SDG&amp;E Response to DRA DR-05-015): shaded text</li> </ul>	VIII.B	<p>Quantitative Analysis in Scoring and Evaluation of Bids</p> <p>Confidential for three years after winning bidders selected.</p>

Description of Data	Matrix Category	Period of Confidentiality
<ul style="list-style-type: none"> <li>• <u>Exhibit 102C-RR</u> (SDG&amp;E response to TURN DR-12, 3.b): entire EDC report except cover page</li> <li>• <u>Exhibit 103C-RR</u> (Comparison of Energy Price Forecast and Forward Data): shaded chart data</li> <li>• <u>Exhibit 104C-RR</u> (Comparison of Energy Price Forecast and Forward Data): Shaded chart data</li> <li>• <u>Exhibit 173C-RR</u> (SDG&amp;E Response to TURN DR-02, Q35.b): shaded chart data</li> <li>• <u>Exhibit 175C-RR</u> (SDG&amp;E Response to DRA DR-05-015): shaded chart data</li> </ul>	Confidentiality authorized by GO 66-C, PUC Code Section 583	Proprietary Information. SDG&E is not permitted to release information procured without permission from owner of the information. Such permission was sought and denied.

6. The Commission previously considered and approved application of IOU Matrix confidentiality protection to project development status data in its *Administrative Law Judge's Ruling Granting San Diego Gas & Electric Company's May 21, 2007 Amendment to April 3, 2007 Motion and May 22, 2007 Amendment to August 1, 2006 Motion*, issued June 28, 2007 in R.06-05-027.

7. SDG&E intends to comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

8. I am not aware of any instance of public disclosure of the Protected Information.

9. The Protected Information cannot be provided in a form that is further aggregated, redacted, or summarized and still provide the level of detail requested and expected by the Energy Division.

10. As an alternative basis for requesting confidential treatment, SDG&E submits that the project status information provided in the Exhibits is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under 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 G.O. 66-C.<sup>6/</sup>

11. 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.

12. General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

13. 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.<sup>7/</sup> 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.

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<sup>6/</sup> 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.”)

<sup>7/</sup> *See also* Govt. Code § 6254.7(d).

14. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.<sup>8/</sup>

15. If disclosed, the Protected Information could provide parties with whom SDG&E is currently negotiating insight into SDG&E's procurement options, 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), Evidence Code § 1060 and General Order 66-C.

16. In accordance with the statutory provisions described herein, SDG&E hereby requests that the information set forth in the Exhibits be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 5<sup>th</sup> day of January, 2011, at San Diego, California.

  
Amir Moftakhar  
Financial Planning Manager

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<sup>8/</sup> See, D.06-06-066, *mimeo*, pp. 26-28.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **MOTION OF THE DIVISION OF RATEPAYER ADVOCATES TO MOVE EXHIBITS INTO EVIDENCE AND SEAL PORTIONS OF THE EVIDENTIARY RECORD** to the official service list in **A.10-07-017** by using the following service:

**E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

**U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **January 7, 2011** at San Francisco, California.

\_\_\_\_\_  
/s/ IMELDA EUSEBIO

Imelda Eusebio

**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 and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\* \* \* \* \*

**Service List  
A.10-07-017**

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