

**APPENDIX 1  
IOU Matrix**

<b>Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data</b>		
<b>Item</b>	<b>Public/Confidential Treatment<sup>1</sup></b>	<b>Explanation of Item</b>
<b>I) Natural Gas Information</b>		
<b>A) Forecasts (gas)</b>		Covers gas forecasts only insofar as they relate to gas used in electric generation.
1) Commercially available gas price forecasts	Public unless there is confidentiality provision with vendor. If there is such a provision, IOU shall first attempt to secure permission to release information. If that fails, data confidential no more than three years. <sup>2</sup>	A price forecast is a projection of future price levels (these could be day-ahead prices, futures prices, monthly prices etc.) expressed either in nominal or a given year's dollars. Covers commercially available gas price forecasts from NYMEX, <sup>3</sup> CERA, <sup>4</sup> PIRA <sup>5</sup> and similar vendors only.

<sup>1</sup> Unless otherwise indicated, the "Public/Confidential Treatment" determinations for each item in the matrix covers data for that item for all time periods (annual, quarterly, monthly, daily etc.)

<sup>2</sup> Where this Matrix allows confidential treatment for a period of time, that period shall begin on the first date a party submits the data to the Commission or furnished it to a third party, including an affiliated company, whichever comes first.

<sup>3</sup> New York Mercantile Exchange.

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2) Utility gas price forecasts	Front three years of forecast data confidential for three years. <sup>6</sup>	Covers forecasts developed by IOUs only.
3) Utility gas demand forecasts – consumption	Utility specific – front three years of demand forecast data confidential for three years.  Aggregate – demand forecast by service territory public.	Covers forecasts of natural gas used in IOU generators and/or purchased by IOUs and delivered to other generators with contracts with IOUs to deliver power.

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<sup>4</sup> Cambridge Energy Research Associates.

<sup>5</sup> PIRA Energy Group.

<sup>6</sup> For example, an IOU’s forecast in 2006 of gas prices for 2007, 2008, and 2009 would be confidential, but the forecast in 2006 of gas prices for 2010 would be public.

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4) Long-term fuel (gas) buying and hedging plans	Confidential for three years	
5) Monthly California Department of Water Resources (DWR) gas position updates, including information about hedging activities	Confidential for three years	
<b>B) Historical information (gas)</b>		
1) Historical market gas prices	Public	Closing trading market price of natural gas at gas delivery points.
2) Utility recorded gas procurement and cost information	Public	Covers actual quantity and cost of procured natural gas.

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<b>II) Cost Forecast Data - Electric</b>		
<b>A) Electric Price Forecasts</b>		
1) Commercially available electric price forecasts	Public unless there is confidentiality provision with vendor. If there is such a provision, IOU shall first attempt to secure permission to release information. If that fails, data confidential no more than three years.	Covers broker projections of the average cost of energy, capacity, and other costs that influence the customer cost of electricity which is used to determine average customer rates broken into two time periods (on-peak and off-peak).
2) Utility electric price forecasts	Confidential for three years	Covers on-peak and off-peak annual, quarterly, monthly, and daily data
<b>B) Generation Cost Forecasts</b>		Forecast of cost by resource
1) Utility Retained Generation (URG)	Confidential for three years  Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	

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2) DWR Contracts	Variable cost of dispatchable resources confidential.  All other information public	DWR Contracts are contracts for generating resource capacity and energy deliveries executed by the California Department of Water Resources during 2001 and allocated to the investor owned utilities for contract administration purposes only.
3) QF Contracts	Confidential for three years.  Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc. after three years.	
4) Non-QF bilateral contracts	Confidential for three years.  Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	
5) Demand response program cost	Public	

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6) Demand side management (not including demand response) and Energy Efficiency cost	Public	
7) Non-contractual and spot purchases of energy and capacity	Aggregated net sale and purchase cost public immediately.  Individual details confidential for six months.	
8) Forecast of total cost of generation	Public	
<b>III) Forecast of Revenue Requirements and Customer Rates – Electric</b>		
<b>A) Utility Generation Revenue Requirements including DWR Contracts</b>	Public	Does not include Transmission & Distribution or other non-Generation items.
<b>B) Customer Class Total Revenue Requirements and Rates</b>	Public	Total system revenue requirements allocated to existing rate classes using existing rate allocation formulas.

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<b>IV) Resource Planning Information – Electric</b>		
<b>A) Forecast of IOU Generation Resources (MW and MWh)</b>	Confidential for three years.  Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	Covers the capacity rating and expected energy output of power plants owned partly or fully by an IOU.
<b>B) Forecast of Qualifying Facility Generation</b>	Confidential for three years.  Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	
<b>C) Forecast of IOU Hydro Greater than 30 Megawatts (MW)</b>	Confidential for three years.  Public by resource category (e.g. fossil, wind, solar, hydro-electric, etc.) after three years.	Hydro generation stations > 30 MW do not qualify for the Renewable Portfolio Standard (RPS).
<b>D) Forecast of IOU Hydro Less than 30 MW - RPS-eligible</b>	Public	Hydro generation stations <30 MW stations qualify for the RPS

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<b>E) Forecast of Pre-1/1/2003 ("Old-World") Bilateral Contracts</b>	<p>Individual contract information confidential for three years.</p> <p>Aggregated annual capacity and energy data from all contracts public immediately.</p>	<p>"Old World" contracts are IOU contracts for electric capacity and energy executed prior to January 1, 2003 when utilities returned to procurement.</p> <p>Covers price, other key terms and descriptive information for each contract or aggregations of contracts with the same supplier.</p>
<b>F) Forecast of Post-1/1/2003 ("New World") Bilateral Contracts</b>	<p>Individual contract information confidential for three years.</p> <p>Aggregated annual capacity and energy data from all contracts public immediately.</p>	<p>"New World" contracts are IOU contracts for electric capacity and energy executed after January 1, 2003 when utilities returned to procurement.</p> <p>Covers price, other key terms and descriptive information for each contract or aggregations of contracts with the same supplier. Contracts submitted to CPUC for approval through the Application process.</p>
<b>G) Forecast of DWR contracts</b>	<p>Individual contract information confidential for three years.</p> <p>Aggregated annual capacity and energy data public from all contracts public immediately.</p>	

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<b>H) Forecast of generic renewable resources disaggregated by location and technology type</b>	Public	Estimates of future resources that may be needed to meet the RPS requirements. This information relates to capacity, expected energy, location, technology, and possibly expected average generation costs and emissions. Ranges of the internal cost benefit scores by technology, expiring renewable contract capacity by resource type, minimum renewable procurement needed per year by resource type.
<b>I) Forecast of existing renewable resource contracts</b>	Public	Specific details regarding specific individual renewable resources, or projects, which include the capacity, energy, timing, and pricing terms of the contracts. Terms and conditions of executed contracts and contract amendments.
<b>J) Forecast of wholesale market purchases</b>	Forecast of aggregate capacity purchases confidential for front five years.  Forecast of aggregate energy purchases confidential for front three years.	Purchases of energy, and possibly capacity, that occur for shorter durations of time and are usually purchased only shortly before needed. The purchases may be made as short term bilateral contracts or as purchases of energy from other energy markets.

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<b>K) Forecast of wholesale market sales</b>	Forecast of aggregate capacity sales confidential for front five years.  Forecast of aggregate energy sales confidential for front three years.	Sales of energy, and possibly capacity, that occur for shorter durations of time and are usually sold only shortly before needed. These may be made as short term bilateral contracts or through exchange markets.
<b>L) Forecast of Interruptible tariff and other dispatchable Demand Response programs</b>	Public	Impacts of Demand Response programs and demand reduction programs.
<b>M) Forecast of non-Demand Response Demand Side Managements (DSM) and Energy Efficiency (EE) Savings</b>	Public	Consortium for Energy Efficiency (CEE) forecasted capacity and energy savings.
<b>V) Load Forecast Information and Data – Electric</b>		
<b>A) Load Servicing Entity (LSE) demand forecasting</b>	Public	Detailed information regarding the methodology used by LSEs when estimating future expected electric capacity and energy needs.

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methodology		
<b>B) LSE Total Peak Load Forecast - Bundled Customer (MW)</b>	Front three years of forecast data confidential for three years.	Each LSE's own forecast of its bundled customer peak load.
<b>C) LSE Total Energy Forecast - Bundled Customer (MWh)</b>	Front three years of forecast data confidential for three years.	Each LSE's own forecast of its bundled customer total energy requirements.
<b>D) LSE Peak Load Forecast by Service Area (MW), i.e., Retail at ISO Peak Forecast</b>	Front three years of forecast data confidential for three years.	Forecasts of expected highest demand (MW) during the hour, month or the year for Retail Load at ISO (which equals bundled customer load + direct access at the ISO).
<b>E) LSE Energy Forecast by Service Area (MWh), i.e., Retail at ISO Energy Forecast</b>	Front three years of forecast data confidential for three years.	Forecasts of expected total energy demand (MWh) during the hour, month or the year for Retail Load as ISO (which equals bundled customer energy + direct access at ISO).
<b>F) Total Peak Demand Load Forecast - IOU Planning Area (MW)</b>	Public	Forecasts of the expected highest demand (MW) in the entire system area of the IOU. This system area includes both the customers served by the IOU (area of bundled customers) and the customers served by other retail providers. Includes bundled load, Direct Access, Community Choice Aggregation (CCA), Municipal Utilities (Munis), and Transmission and Distribution (T&D) losses.

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<b>G) Total Energy Load Forecast - IOU Planning Area (MWh)</b>	Public	Forecasts of the total energy requirements (MWh) in the entire system area of the IOU. The planning area includes both the customers served by the IOU (area of bundled customers) and the customers served by other retail providers. Includes bundled load, Direct Access, CCA, Munis, and T&D losses.
<b>H) Net capacity and energy forecasts by retail provider</b>	Front three years of forecast data confidential for three years.	Forecast bundled customer load of each LSE plus T&D losses
<b>I) Incremental peak load from 1:5, 1:10, and 1:20 compared to 1:2 peak</b>	Front three years of forecast data confidential for three years.	Forecasts of expected highest demand (MW) under different weather scenarios. 1:2 means average weather conditions. 1:5, 1:10, 1:20 mean higher probability of hot temperature (one in every five, ten or twenty year).
<b>J) Projections of Distributed Generation energy production and peak output reducing energy sales to end-users</b>	Public	Estimation of the total energy production by all distributed generation, which reduces the total energy needed from other generation resources.
<b>K) Energy and peak impacts of demand response programs</b>	Public	Forecasts of the estimated capacity and energy impacts of various demand response programs, which reduce resource needs provided by generation resources.

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<b>VI) Net Open Position Information – Electric</b>		
<b>A) Utility Bundled Net Open (Long or Short) Position for Capacity (MW)</b>	Front five years of forecast data confidential for five years.	The difference between the available amount of capacity and the forecasted need for capacity which can be aggregated on an hourly, monthly, quarterly, or annual basis.
<b>B) Utility Bundled Net Open (Long or Short) Position for Energy (MWh)</b>	Front three years of forecast data confidential for three years.	The difference between the available amount of energy and the forecasted need for energy which is aggregated on a monthly or annual basis.
<b>C) Utility Bundled Net Open (Long or Short) Position for Capacity (MW) by Customer Class</b>	Front five years of forecast data confidential for five years.	The difference between the available amount of capacity and the forecasted need for capacity which can be aggregated on an hourly, monthly, quarterly, or annual basis.
<b>D) Utility Bundled Net Open (Long or Short) Position for Energy (MWh) by Customer Class</b>	Front three years of forecast data confidential for three years.	The difference between the available amount of energy and the forecasted need for energy which is aggregated on a monthly or annual basis.

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<b>E) Utility Planning Area Net Open (Long or Short) for Capacity (MW)</b>	Annual and Quarterly data: Public.  Monthly and Daily data: Front five years of forecast data confidential for five years.	On a regional basis, including all LSEs, the difference between the available amount of capacity and the forecasted need for capacity which can be aggregated on an hourly, monthly, quarterly, or annual basis.
<b>F) Utility Planning Area Net Open (Long or Short) for Energy (MWh)</b>	Annual and Quarterly data: Public.  Monthly and Daily data: Front three years of forecast data confidential for three years.	On a regional basis, including all LSEs, the difference between the available amount of energy and the forecasted need for energy which is aggregated on a monthly or annual basis.
<b>VII) Bilateral Contract Terms and Conditions – Electric</b>		
<b>A) Contracts with resources owned by affiliates (except RPS)</b>	Public	Specific details regarding specific resources owned by the affiliates (any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with) of the IOU. The contract information includes the capacity, energy, timing, and pricing terms of the contracts.
<b>B) Power purchase agreements including those between utilities</b>	Utility-Affiliate contracts: Public.	Specific contracts between the IOU and other parties (including affiliates of the IOU) to deliver power to the IOU. The contract information includes the capacity, energy, timing, and pricing terms of the contracts.

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<b>and their affiliates (except RPS)</b>	Other contracts (not with Utility affiliates) Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.  Other terms confidential for three years; after then, full contract information public.	
<b>C) Expired Power Purchase Agreements (PPAs)</b>	Public	Terminated Power Purchase Agreements under which power is no longer delivered
<b>D) Interruptible tariff and other dispatchable Demand Response programs</b>	Public	Descriptions of Demand Response programs and their operating characteristics, customer groups etc.

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<b>E) New non-utility affiliated bilateral contracts (except RPS)</b>	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.</p> <p>Other terms confidential for three years; after then, full contract information public.</p>	Includes contracts of greater and fewer than 5 years in duration
<b>F) Renewable Resource Contracts under RPS program - Contracts with Supplemental Energy Payments (SEPs)</b>	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.</p> <p>Other terms confidential for three years; after then, full contract information public</p>	SEPs are payments, administered by the California Energy Commission (CEC), that are intended to cover some or all (at CEC's discretion) of the difference between the market price referent and the (higher) price of RPS contracts that are approved.

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<b>G) Renewable Resource Contracts under RPS program - Contracts without SEPs</b>	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.</p> <p>Other terms confidential for three years; after then, full contract information public</p>	
<b>H) Score sheets, analyses, evaluations of proposed RPS projects</b>	Confidential for three years.	
<b>VIII) Competitive Solicitation (Bidding)</b>		Bid data on price, terms and conditions.

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<b>Information – Electric</b>		
<b>A) Bid information</b>	Total number of projects and megawatts bid by resource type (e.g. fossil, wind, solar, hydro-electric, etc.) – public after final contracts submitted to CPUC for approval  Full contract information public after three years	Participating bids, counter-party names, prices and quantities offered.
<b>B) Specific quantitative analysis involved in scoring and evaluation of participating bids</b>	Evaluation guidelines should be public. Other information confidential for three years after winning bidders selected.	Levelized and/or escalated bid prices, transmission upgrade cost adders, wheeling charges, congestion costs, delivery characteristics, portfolio fit, "dump energy" quantities and costs, SEP calculations.

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<b>IX) Strategic Procurement Information – Electric</b>		
<b>A) Qualitative identification of specific uncertainties leading to risks</b>	Public	Discussion of various uncertainties impacting resource need, potential supply and prices (e.g. core/non core market structure, community choice aggregation).
<b>B) Reliance on various types of resources, such as energy efficiency, demand reduction, shaped energy contracts, capacity contracts, new utility power plants, and purchases from California Independent System Operator (CAISO) markets expressed as annual percentages</b>	Public	Forecasts or recorded data on broad categories of supply sources used to serve bundled load, expressed as annual percentages.

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<b>C) Qualitative description of risk management plans with use of hedging instruments, including gas supply purchases, tolling arrangements, financial arrangements.</b>	Public	Discussion of various means, both physical and financial, which utility may employ to hedge energy cost risk without quantification of hedging strategy, hedging products used or hedged volumes.
<b>D) Procurement incentive mechanisms including principles underlying incentive mechanisms, formulas to allocate cost responsibility relative to reference levels or benchmarks, and escape conditions.</b>	Public	Description of incentive mechanisms including underlying principles, comparisons to reference levels or benchmarks, allocation of costs/benefits and escape conditions.

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<b>E) Procurement mechanics including number, type, and design of Requests of Offers (RFO) proposed to secure bilateral bids, and contract oversight appropriate to ex-ante review in lieu of prudency review.</b>	Public	General discussions of RFO procurement, products being sought through RFO and criteria to be used to evaluate RFO.
<b>X) Recorded (Historical) Data and Information – Electric</b>		
<b>A) Bundled customer total historical peak demand (MW)</b>	Public after data are one year old,	Historical peak demand for all customers in aggregate.
<b>B) Bundled customer historical peak demand by customer class</b>	Public after data are one year old,	Historical peak demand by customer class.
<b>C) IOU planning area historical peak demand</b>	Public	Historical peak demand at system area level. Highest demand system level hourly historical load for previous calendar year is made public by FERC sometime after June 1 of the current year (entire year: 8760 hours).

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<b>D) IOU Planning Area historical peak demand by customer class (MW)</b>	Public after data are one year old.	Historical peak demand segmented by customer class.
<b>E) Total IOU Bundled Customer historical energy sales (MWh)</b>	Annual, quarterly, monthly – Public.  Daily, hourly data public after data are one year old.	Historical sales are as billed at the customers meter without the addition of distribution and transmission losses.
<b>F) Bundled Customer historical energy sales by customer class (MWh)</b>	Annual, quarterly, monthly – Public  Daily, hourly data public after data are one year old.	Historical sales are as billed at the customers meter without the addition of distribution and transmission losses.
<b>G) IOU historical energy sales for bilateral contracts in which the IOU is the seller</b>	Public	Transaction detail of all exchange traded sales of energy from IOU to another party (Bilateral contracted capacity included Line 11).
<b>H) Market purchases of energy and capacity</b>	Public	Transaction detail of all exchange-traded purchases of energy by IOU to another party (Bilateral contracted capacity included Line 11).

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<b>I) Market sales of energy and capacity</b>	Public	Transaction detail of all exchange traded capacity purchases and sales (Bilateral contracted capacity included Line 11).
<b>XI) Monthly Procurement Costs (Energy Resource Recovery Account [ERRA] Filings)</b>	Confidential for three years	Detail of monthly variable cost on energy and utility operation.
<b>XII) Monthly Portfolio Risk Assessment</b>	Confidential for three years	Value at Risk (VaR) of electric and gas for electric generation – (a.k.a. To Expiration Value at Risk [TeVAr]).
<b>XIII) Energy Division Monthly Data Request (AB 57)</b>	Confidential for three years except capacity net short/long, which is confidential for five years.	Updates (on the monthly/weekly on/off-peak procurement cost, procurements cost categorized by transaction type, monthly energy and capacity forecast, monthly residual net short (RNS) forecast for a rolling 12-month the number of hours the utility is expecting to be short or long, the nature of the long position (physical vs. economic), monthly electric and gas price forecast) filed in response to the Energy Division's monthly data request.

**(END OF APPENDIX 1)**

**APPENDIX 2  
ESP Matrix**

<b>Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Energy Service Provider (ESP) Data</b>		
<b>Item</b>	<b>Public/Confidential Treatment</b>	<b>Explanation of Item</b>
<b>I) Renewables Portfolio Standard (RPS) Information</b>		
<b>A)</b> RPS compliance filings required by CPUC, by ESP	Public	Includes one-time and recurring reporting. Shows current and projected contents of an ESP's RPS portfolios, including sales and resource mix.
<b>B)</b> Annual RPS compliance filings, by ESP	Public	Includes Annual Procurement Target (APT) reporting required in Rulemaking 04-04-026 and all other required reports.
<b>C)</b> RPS contracts	Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.  Other terms confidential for three years <sup>7</sup> ; after then, full contract information public.	

<sup>7</sup> Where this Matrix allows confidential treatment for a period of time, that period shall begin on the first date an ESP submits the data to the Commission.

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D) Score sheets, summaries, analyses, evaluations of proposed RPS projects	Confidential for three years	
<b>II) Resource Adequacy Information</b>		
Detailed load forecasts (both year ahead and month ahead)	Public	<p>Year ahead data show that ESP has secured adequate generation capacity to cover 90% of its forecast peak load for next year's summer months.</p> <p>Month ahead data show that ESP has secured adequate capacity to cover 100% of its forecast load plus a reserve requirement</p>
<b>III) Load Forecast Information and Data – Electric</b>		
A) Load Servicing Entity (LSE) demand forecasting methodology	Public	<p>Detailed information regarding the methodology used by LSEs when estimating future expected electric capacity and energy needs.</p> <p>CEC IEPR Form 4 requires methodology descriptions</p>

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<b>Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Energy Service Provider (ESP) Data</b>		
<b>Item</b>	<b>Public/Confidential Treatment</b>	<b>Explanation of Item</b>
<b>B)</b> LSE Total Peak Load Forecast - Bundled Customer (MW)	Front three years of forecast data confidential for three years	Each LSE's own forecast of its bundled customer peak load. ESPs file annual and monthly data in CEC IEPR Forms 1.3 (annual sectoral peak demand forecasts) and 1 (monthly peak demand for total ESP peak load)
<b>C)</b> LSE Total Energy Forecast – Bundled Customer (MWh)	Front three years of forecast data confidential for three years.	ESPs file annual and monthly data in CEC IEPR Forms 1.3 (annual sectoral energy forecasts) and 2 (monthly energy forecast on a total ESP load basis)
<b>D)</b> Total Peak Demand Load Forecast - IOU Planning Area (MW)	Public	ESPs file annual and monthly data in CEC IEPR Forms 1.3 (annual forecasts) and 2 (monthly forecasts). When ESP data aggregated with that of other LSEs, can create planning area forecast.
<b>E)</b> Detailed load forecasts filed in spring for upcoming year, by ESP	Public	

**APPENDIX 2  
ESP Matrix**

<b>Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Energy Service Provider (ESP) Data</b>		
<b>Item</b>	<b>Public/Confidential Treatment</b>	<b>Explanation of Item</b>
<b>IV) Bilateral Contract Terms and Conditions – Electric</b>		
<b>A) Power purchase agreements (PPAs)</b>	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.</p> <p>Other terms confidential for three years; after then, full contract information public.</p>	Specific contracts between the IOU and ESP to deliver power to IOUs. The contract information includes the capacity, energy, timing, and pricing terms of the contracts.
<b>B) Expired Power Purchase Agreements (PPAs)</b>	Public	Terminated ESP-IOU Power Purchase Agreements under which power is no longer delivered.

**APPENDIX 2  
ESP Matrix**

<b>Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Energy Service Provider (ESP) Data</b>		
<b>Item</b>	<b>Public/Confidential Treatment</b>	<b>Explanation of Item</b>
<b>C) Bilateral contracts</b>	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.</p> <p>Other terms confidential for three years; after then, full contract information public</p>	Includes contracts of greater and fewer than 5 years in duration.
<b>D) Renewable Resource Contracts - Contracts with Supplemental Energy Payments (SEPs)</b>	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.</p> <p>Other terms confidential for three years; after then, full contract information public</p>	SEPs are payments, administered by the California Energy Commission (CEC), that are intended to cover some or all (at CEC's discretion) of the difference between the market price referent and the (higher) price of RPS contracts that are approved.

**APPENDIX 2  
ESP Matrix**

<b>Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Energy Service Provider (ESP) Data</b>		
<b>Item</b>	<b>Public/Confidential Treatment</b>	<b>Explanation of Item</b>
<b>E) Renewable Resource Contracts</b> - Contracts without SEPs	<p>Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, place of delivery, length of contract and online date.</p> <p>Other terms confidential for three years; after then, full contract information public</p>	
<b>V) Competitive Solicitation (Bidding) Information – Electric</b>		Bid data on price, terms and conditions.
<b>A) Bid information</b>	<p>Total number of projects and megawatts bid by resource type – public after final contracts submitted to CPUC for approval</p> <p>Full contract information public after three years.</p>	Participating bids, counter-party names, prices and quantities offered.

**APPENDIX 2  
ESP Matrix**

<b>Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Energy Service Provider (ESP) Data</b>		
<b>Item</b>	<b>Public/Confidential Treatment</b>	<b>Explanation of Item</b>
<b>VI) Strategic Procurement Information – Electric</b>		
<b>A)</b> Qualitative identification of specific uncertainties leading to risks	Public	CEC IEPR Demand Form 6 requires LSEs to identify key load forecast uncertainties.
<b>B)</b> Reliance on various types of resources, such as energy efficiency, demand reduction, contracts, etc.	Public	CEC IEPR requires projected quantities by resource category, in Supply Forms 1 and 2.
<b>VII) Recorded (Historical) Data and Information – Electric</b>		
<b>A)</b> Market purchases of energy and capacity	Public	
<b>B)</b> Market sales of energy and capacity	Public	

**(END APPENDIX 2)**

## APPENDIX 3

### Glossary of Terms Agreed Upon by Parties

**Area Load:** The electrical load in given geographic area irrespective of what LSEs are providing generation services to end-users within the area.

- **Service Area Load** is generally used to mean the load in an IOU distribution service area including loads served by IOUs through bundled service tariffs, loads served by ESPs under direct access, and loads served by CCAs through the provisions of AB 117. In addition, for the SCE service area the generation and loads of MWD Metropolitan Water district included.
- **Planning Area Load** is generally used to mean Service Area Load plus the loads of publicly-owned utilities embedded within an IOU distribution service area or adjacent to the IOU distribution service area which collectively received transmission service from the PTO unit of an IOU.

PG&E and SCE provide transmission services to, and plan such services for, an extensive list of publicly-owned utilities in common with their own distribution service area customers. In contrast, SDG&E provides no such transmission services to publicly-owned utilities.

#### **Base-load Unit**

A power generating facility that is economic to run in all hours at full or near full capacity levels.

#### **Bilateral Contracts**

A two-party agreement for the purchase and the sale of energy and/or capacity products and services.

#### **Booked-out Power**

Rather than delivering equal and offsetting positions (i.e., for the same operating hour and delivery point), two parties agree to not deliver the transaction quantity and instead settle the financial terms of the contract. The parties avoid scheduling and transmission charges.

#### **Bundled Customers**

Bundled customers are those customers of the IOU for whom the IOU provides a suite of “bundled” services, including procuring and supplying electricity, as well as providing transmission, distribution and customer services.

#### **Bundled Service**

Electric power, transmission, distribution, billing, metering and related service provided by the IOU.

#### **Capacity**

The amount of electric power for which a generating unit, generating station, or other electrical apparatus is rated either by the user or manufacturer. Usually is measured in MW.

### **Community Choice Aggregation Service (CCA Service)**

Community Choice Aggregation Service allows customers to purchase electric power and, at the customer's election, participate in additional energy efficiency or conservation programs from non-utility entities known as Community Choice Aggregators (CCAs). It is a form of direct access.

### **Community Choice Aggregator**

Any city, county, or city and county, or group of cities, counties, or cities and counties, whose governing board or boards elect to combine the loads of their residents, businesses, and municipal facilities in a community wide electricity buyers' program. (see PU Code § 331.5.)

A CCA may also provide certain energy efficiency and conservation programs to its CCA customers.

### **Customer Class**

A "Customer Class" refers to, in general, a group of customers with similar service requirements. Typical customer classes include residential, industrial, commercial and agricultural.

### **Demand Response Programs**

"Demand response" refers to actions taken by end-users to reduce power demand during critical peak times or to shift demand to off-peak times.

A demand response program provides customers with incentives for reducing load in response to an event signal. These incentives can take the form of a financial credit or their bill, a dynamic rate or exemption from rolling blackouts. Events can be called for economic or reliability reasons. Because demand response programs are designed to operate only a few hours per event, they typically reduce capacity (kW) but not energy (kWh).

### **Direct Access**

The ability of end-use customers located in the service territory of an IOU to purchase electricity from retail sellers other than their local utility.

### **Direct Access Customers**

Customers located within the service territory of an IOU who purchase electricity from sellers other than their local utility. DA customers continue to receive and pay for delivery services from their local utility.

### **Direct Access-Eligible Customer**

A customer located within the service territory of an IOU who is eligible for Direct Access.

### **Distribution System**

The substations, transformers and lines that convey electricity from high-power transmission lines to ultimate consumers, or for Electric Microutilities, the distribution lines that convey electricity from the generating units to the ultimate customer.

### **Distribution Lines**

Overhead and underground facilities which are operated at distribution voltages, and which are designed to supply two or more customers.

### **DWR Contracts**

Contracts for generating resource capacity and energy deliveries executed by the California Department of Water Resources during 2001 and allocated to the investor owned utilities for contract administration purposes only.

### **EI Contract**

Edison Electric Institute contract is a standard master agreement that provides the base terms and conditions for transactions executed between two parties of a particular master agreement.

### **Electric Microutility**

Any electrical corporation that is regulated by the California Public Utilities Commission and organized for the purpose of providing sole-source generation, distribution, and sale of electricity exclusively to a customer base of fewer than 2,000 customers. (Public Utilities Code § 2780.) An Electric Microutility is not connected to the ISO controlled transmission grid and thus has no relationship with the ISO nor any ability to import or export power.

### **Electric Service Provider (ESP)**

An entity that is licensed by the CPUC to provide electric power service to Direct Access Customers (see PU Code §§ 218.3 and 394). An end-use customer can act as its own ESP as long as it complies with all requirements of being an ESP. Also referred to as Energy Service Providers.

### **Electronic Quarterly Reports ("EQR"):**

All FERC jurisdictional public utilities, including power marketers, must file EQRs, in which they:

- Summarize contractual terms and conditions in their agreements for all jurisdictional services, including:
  1. Market-based power sales;
  2. Cost-based power sales; and
  3. Transmission service
- Detail transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter.
- Tariff holders without effective contracts and transactions must file the ID Data portion of the EQR.

### **Energy**

Energy is the amount of electricity produced, flowing or supplied by generation, transmission or distribution facilities or consumed over time. Usually it is measured in units of watt-hours or standard multiples thereof, e.g., 1,000 Wh=1kWh, 1,000 kWh=1MWh, etc.

### **Energy Efficiency**

Programs and measures designed to reduce consumer energy consumption. Example of programs and measures include lighting retrofit, process redesign and appliance rebates which encourage consumers to purchase high-efficiency appliances.

### **Exchange Traded Contracts**

Contract for electric capacity and energy executed through electronic and voice exchange markets under standard product terms and conditions. Products are generally for "standard products" (peak, on-peak or flat) and standard periods of duration (hourly, daily, balance of month, monthly, quarterly).

**Heat Rate**

A number that tells how efficient a fuel-burning power plant is. Measured by Btu/kWh. The heat rate equals the Btu content of the fuel input divided by the kWh or power output. The lower the heat rate of a generating unit is, the more efficient the unit is.

**Intermediate Unit**

A generator unit that is used for energy production as required with a capacity factor normally in the range of 15-60%.

**Interruptible Service or Tariff**

Electricity supplied under agreements that allow the supplier to curtail or stop services at times.

A service under which, upon notification from the Independent System Operator, the IOU requires the customer to reduce the demand imposed on the electrical system to firm service level (i.e., a level below which the customer's load will not be interruptible), and the customer must comply within 30 minutes.

**Investor-Owned Electric Utility (IOU)**

An investor owned utility (IOU) is a private company owned by stockholders that provides electric utility services to a specific service area. A designation used to differentiate a utility owned and operated for the benefit of shareholders from municipally owned and operated utilities and rural electric cooperatives. The investor-owned utility is regulated by the California Public Utilities Commission.

**Load**

Load is the amount of electric power supplied to meet end users' needs. Load is also an end-use device of an end-use customer that consumes power. Load should not be confused with demand, which is the measure of power that a load receives or requires.

**Load-Serving Entity (LSE)**

An entity that provides electric power service to end-use customers. LSEs include but are not limited to IOUs, ESPs, CCAs and public-owned utilities.

**Must-Take Generation**

Utilities are mandated to take electricity from specific resources identified by the CPUC . Except for Electric Microutilities, the receiver of must-take generation will pay for the electrical energy output of must-take resource even if they refuse to schedule and receive that energy. For this reason, these resources are always economic to receive and scheduled in order to minimize financial loss. Regulatory must-take generation include QF generating units under federal law, nuclear units and pre-existing power-purchase contracts that have minimum-take provisions.

**New-World Contracts**

IOU Contracts for electric capacity and energy executed after January 1, 2003 when utilities returned to procurement.

### **Old-World Contracts**

IOU Contracts for electric capacity and energy executed prior to January 1, 2003 when utilities returned to procurement.

### **Off-peak**

Periods of low demands. All the time outside the on-peak period.

### **On-peak**

Periods of the highest demand.

### **Peak Demand**

The electric load that corresponds to a maximum level of electric demand in a specified time period.

### **Peaking Unit**

A power generating station that is normally used to produce extra electricity during peak load times. Typical peaking resources are fully dispatchable and deliver in approximately 10% of hours.

### **Price Curves:**

- **Forward Curve** (or "futures price") - A forward curve is a term structure of forward prices observed in the market. Forward contracts, like futures, are agreements to buy or sell a commodity at a future time. Forward price is the price to be paid at delivery.
- **Price Forecast** - A price forecast is a projection of future price levels (these could be day-ahead prices, futures prices, monthly prices etc.) expressed either in nominal or a given year's dollars.

### **Qualifying Facilities (QFs)**

"Qualifying facilities" (QFs) are non-utility cogeneration or other power producers that often generate electricity using renewable and alternative resources, such as hydro, wind, solar, geothermal, or biomass (solid waste). QFs must meet certain operating, efficiency, and fuel-use standards set forth by the Federal Energy Regulatory Commission (FERC) pursuant to PURPA (The Public Utility Regulatory Policies Act of 1978).

### **Reliability-Must-Run (RMR) Agreements**

A Must-Run Service Agreement between the owner of an RMR Unit and the ISO within geographical areas identified via the Local Area Reliability Service (LARS) process.

### **Reliability Must-Run (RMR) Generation**

Generation that the ISO determines is required to be on line to meet applicable reliability criteria requirements. This includes:

- i) Generation constrained on line to meet NERC and WECC reliability criteria for interconnected systems operation;
- ii) Generation needed to meet load demand in constrained areas; and
- iii) Generation needed to be operated to provide voltage or security support of the ISO or a local area.

**Residual Net Long for Capacity (Surplus)**

When the capacity resources under an LSE's control exceed the peak hourly demand (MW), including the required planning reserve margin, of the LSE's customers, the LSE is in a residual net long situation for capacity.

**Residual Net Long for Energy**

When the energy requirement (kWh or MWh) of the LSE's customers load, for a given period of time (i.e. hour, month, year, etc), is less than the total energy supply available to serve the LSE's customers, the LSE is in a residual net long situation for energy.

**Residual Net Short for Capacity (Deficit)**

When the peak hourly demand (MW), including the required planning reserve margin, of the LSE's customers exceeds the capacity resources under the LSE's control, the LSE is in a residual net short situation for capacity.

**Residual Net Short for Energy**

When the energy requirement (kWh or MWh) of an LSE's customer load, for a given time interval (i.e. hour, month, year, etc), is greater than the total energy supply available to serve the LSE's customers, the LSE is in a residual net short situation for energy.

**Spark Spread**

The difference between the market price of electricity and its cost of production for a specific natural gas fired generating plant.

**Spot Market**

A market in which transactions take place at most one day ahead of scheduled delivery.

**Spot Price**

The price for spot transactions.

- **Market Clearing Price:** The price in a market at which supply equals demand. All demand prepared to pay at least this price has been satisfied and all supply prepared to operate at or below this price has been purchased.

**System Net Energy Forecast**

Energy used by IOU and direct access customers, as measured at generation (includes T&D losses).

**Transmission & Distribution ("T&D") Losses**

Electric energy or capacity that is wasted in the normal operation of a power system. Some kilowatt-hours are lost in the form of waste heat in electrical apparatus such as substation transformers. Line losses are kilowatts or kilowatt-hours lost in transmission and distribution of electricity.

### **Tolling Agreements**

In a tolling agreement, the buyer is also the fuel supplier, and instead of buying kilowatt hours, the buyer, in effect, buys the service of converting fuel into electric energy. The project owner still sells capacity and ancillary services. However, instead of a sale of goods, a tolling agreement is more in the nature of a service contract, where the project owner sells fuel conversion services. The term "tolling agreement" derives from the fact that the project owner is charging the purchaser a "toll" for allowing the purchaser's fuel to pass through the owner's project.

### **UDC (Utility Distribution Company)**

An entity that owns a distribution system for the delivery of energy (to and from the ISO controlled grid) and that provides regulated retail electric service to eligible customers, as well as regulated procurement service to those end-use customers who are not yet eligible for direct access, or who choose not to arrange services through another retailer. Electric Microutility is defined separately above and is not included in this definition.

### **Utility Generation**

Resources owned by an investor-owned utility. Does not include resources that may be under contract or otherwise available to utilities, such as DWR contracts.

### **Weather scenarios - 1:5, 1:10, & 1:20**

Forecasts of expected highest demand (MW) under different weather scenarios. 1:2 means average weather conditions. 1:5, 1:10, 1:20 mean probability of hot temperature (one in every five, ten or twenty years).

**(END OF APPENDIX 3)**

**APPENDIX 4**

**TURN's Proposed Protective Order and Nondisclosure Agreement**

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


**MODEL NONDISCLOSURE AND PROTECTIVE AGREEMENT**

This Nondisclosure and Protective Agreement ("Agreement") is effective this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between Party A and its counsel of record, and Party B and its counsel of record.

WHEREAS, certain information or workpapers that may be requested to be produced or disclosed the above-referenced proceedings (the "Proceedings") may constitute trade secrets, proprietary and confidential information, or competitively sensitive documents (the "PROTECTED MATERIALS"); and

WHEREAS, the parties hereto wish to streamline discovery and facilitate preparation of testimony in the Proceedings and avoid unnecessary law and motion practice; and

WHEREAS, the parties hereto believe that this Agreement will facilitate the evaluation of Party A's opening testimony, facilitate discovery, protect legitimate proprietary or confidentiality concerns, and preserve the rights of the parties and those third-parties that possess rights in the PROTECTED MATERIALS;

ACCORDINGLY, the parties hereto agree that the following terms and conditions shall govern the use of such workpapers or information provided by Party A (the "Designating Party") to Party B (the "Receiving Party") in the context of the Proceedings:

1. This Agreement shall govern all PROTECTED MATERIALS produced by the Designating Party and shall remain effective until the requirements of paragraph 5 below are satisfied.

2. The Designating Party may designate as PROTECTED MATERIALS those items provided through discovery, upon request, or otherwise which are treated by the Designating Party as confidential or proprietary, which are not available to the public, and which, if disclosed freely, would, in the Designating Party's judgment, subject it to risk of competitive disadvantage or other business injury, including liability under a license or subscription agreement with third-parties.

3. For purposes of this Agreement:

a. The term "PROTECTED MATERIALS" includes (a) material provided by Party A in response to discovery requests or in compliance with Rule 74.1, et seq. of the Commission's Rules of Practice and Procedure, and designated by Party A as protected, including, but not limited to \_\_\_\_\_; (b) any copy or reproduction of such designated materials; (c) any information contained in or obtained from such designated materials; (d) any other materials which are made subject to this Agreement by the Administrative Law Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the parties hereto; and (e) notes of PROTECTED MATERIALS. Notwithstanding the above, Receiving Party

shall not have breached any obligation under this Agreement if Protected Material is disclosed to a third party when the Protected Material: (1) was in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; (2) had been received by the Receiving Party at the time of disclosure through other means without restriction on its use, or had been independently developed by the Receiving Party as shown through documentation; or (3) is subsequently disclosed to the Receiving Party by a third party without restriction on use and without breach of any agreement or legal duty.

b. The term “notes of PROTECTED MATERIALS” means memoranda, handwritten notes, or any other form of information which copies or discloses materials described in the foregoing paragraph.

c. The term “Reviewing Representative” is a person described in paragraphs 8 and 9.

d. The term “Commission” means the California Public Utilities Commission.

4. PROTECTED MATERIALS shall be made available under the terms of this Agreement only to the Reviewing Representatives as provided in paragraphs 8 and 9.

5. PROTECTED MATERIALS shall remain available until the date that this Proceeding is concluded or otherwise terminated by an order(s) of the Commission, which order(s) is no longer subject to judicial review. Within 30 days after such date, all Reviewing Representatives of the Receiving Party shall return the PROTECTED MATERIALS, including all copies thereof, and notes of PROTECTED MATERIALS to the

Designating Party or shall destroy said materials. Within such time period the Receiving Party shall also submit to the Designating Party an affidavit stating that all PROTECTED MATERIALS, copies thereof, and notes of PROTECTED MATERIALS are being returned or have been destroyed by all Reviewing Representatives of the Receiving Party.

6. To the extent possible, each page of PROTECTED MATERIALS and each disk containing PROTECTED MATERIALS shall be physically marked "PROTECTED MATERIAL" or "Contains Privileged Information - DO NOT RELEASE" by the Designating Party. All PROTECTED MATERIALS shall be maintained by the Receiving Party in a secure manner. Access shall be limited to those Reviewing Representatives specifically authorized pursuant to paragraphs 8 and 9.

7. PROTECTED MATERIALS covered by this Agreement shall be treated as confidential by the Receiving Party and by the Reviewing Representative in accordance with the certificate executed pursuant to paragraph 9. PROTECTED MATERIALS shall not be intentionally used except as necessary for the conduct of the Proceedings; nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this Proceeding and who needs to know the information in order to carry out that person's responsibilities in this Proceeding. Reviewing Representatives may make notes of PROTECTED MATERIALS which notes must be maintained in a secure manner pursuant to paragraph 6.

8. A Reviewing Representative is an individual who is:

- (i) An attorney who has made an appearance in this Proceeding for a Receiving Party;

- (ii) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (i);
- (iii) An expert or an employee of an expert retained by Receiving Party for the purpose of advising, preparing for, or testifying in this Proceeding; and
- (iv) An employee of a Receiving Party who has a role in advising, preparing for, or testifying in this Proceeding.

9. a. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to the PROTECTED MATERIALS pursuant to this Agreement unless that Reviewing Representative has first executed, and there has been delivered to the Designating Party, a non-disclosure certificate in the form set forth in Appendix 1.

b. Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their employment, instruction, supervision or control comply with this Agreement.

10. Any Reviewing Representative may disclose PROTECTED MATERIALS to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative have both executed and delivered a non-disclosure certificate to the Designating Party. In the event that any Reviewing Representative to whom the PROTECTED MATERIALS are disclosed ceases to be engaged in these Proceedings, or is employed or retained for a position whereby that person is no longer qualified to be a Reviewing Representative under paragraph 8, access to PROTECTED MATERIALS by that person shall be terminated and that person must comply with the

return/destruction requirements in paragraph 5. However, even if no longer engaged in this Proceeding, every person who has agreed to a non-disclosure certification shall continue to be bound by the provisions of this Agreement and the certification.

11. If the Receiving Party intends to submit or use in the Proceedings any PROTECTED MATERIALS in any written submission, including, without limitation, testimony, briefs, motions, comments, or protests, the Receiving Party shall submit two versions of such document: a full version under seal to the extent filed with the Commission or served on REVIEWING REPRESENTATIVES, labeled "CONTAINS PROTECTED MATERIALS - FOR REVIEWING REPRESENTATIVES ONLY" and a public version served on all other parties with PROTECTED MATERIALS redacted. If the Receiving Party intends to use in the Proceedings and/or in one or more of the dockets forming the Proceedings any PROTECTED MATERIALS such that the use would result in a public disclosure of those PROTECTED MATERIALS, including, without limitation, through cross-examination or other oral presentations before the Commission, the attorney for the Receiving Party shall contact the attorney for the Designating Party as soon as possible prior to such use, and counsel shall constructively explore means of identifying the PROTECTED MATERIAL so that the confidentiality thereof may be reasonably protected (including, but not limited to, clearing the hearing room during examination, discussion, or argument concerning the PROTECTED MATERIAL), while at the same time enabling an effective presentation. If the Designating Party and the Receiving Party are unable to agree upon a procedure to protect the confidentiality of the PROTECTED MATERIAL or if the

Receiving Party asserts the PROTECTED MATERIALS should not be filed under seal, the Receiving Party shall request a ruling from the presiding Administrative Law Judge; the Designating Party reserves the right to oppose the Receiving Party's request. Except as expressly provided for herein, no use can be made of the PROTECTED MATERIAL that would fail to protect its confidentiality without such a ruling from the presiding Administrative Law Judge.

12. The presiding Administrative Law Judge retains the discretion to review and evaluate the facts and circumstances involved in any proposed use of PROTECTED MATERIAL in Commission hearings, and the flexibility to respond in whatever manner is most appropriate under the circumstances, including the holding of in camera hearings.

13. Nothing in this Agreement shall be construed as precluding any party from objecting to the use of PROTECTED MATERIALS on any legal grounds.

14. Nothing in this Agreement shall preclude any party from requesting the presiding Administrative Law Judge, the Commission or any other body having appropriate authority to find that this Agreement should not apply to all or any part of any materials previously designated as PROTECTED MATERIALS pursuant to this Agreement.

15. The presiding Administrative Law Judge shall resolve any disputes arising under this Agreement or refer such dispute to the Administrative Law Judge designated by the Commission to resolve law and motion matters. Prior to presenting any dispute under this Agreement to the presiding Administrative Law Judge or law and motion Administrative Law Judge, the parties to the dispute shall use their best

efforts to resolve it. Any objection to the designation of PROTECTED MATERIALS or motion to compel, and any response to the objection or motion to compel shall be filed in writing with the presiding Administrative Law Judge or law and motion Administrative Law Judge, and shall be delivered to the opposing party's counsel(s) of record within 24 hours of filing unless otherwise ordered by the presiding Administrative Law Judge or law and motion Administrative Law Judge. In any challenge to the designation of materials as PROTECTED MATERIALS, the burden of proof shall be on the Designating Party.

16. To the extent that PROTECTED MATERIALS are discussed, analyzed or otherwise the subject of consideration during any conference or other session held in connection with the Proceeding, only Reviewing Representatives of any party may be present for such sessions.

17. The Receiving Party agrees that any release or attempted release of the PROTECTED MATERIALS or use of such materials other than as contemplated by this Agreement by a Receiving Party may cause Designating Party irreparable injury which could not be adequately compensated through pecuniary damages. Accordingly, the parties agree that any breach or threatened breach of this Agreement may be enjoined.

18. This Agreement shall be governed and construed according to the laws of the State of California.

19. This Agreement sets forth the complete understanding of the parties hereto with respect to the subject matter hereof as of the date first above set forth and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the

provisions hereof must be written, executed by both parties, and shall not be implied by any usage of trade or course of conduct.

20. Nothing in this Agreement shall be deemed to preclude any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in the Proceedings under this Agreement.

21. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Attorney for:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Attorney for:

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

--

**NONDISCLOSURE CERTIFICATE**

I certify my understanding that access to PROTECTED MATERIALS is provided to me pursuant to the terms and restrictions of the Nondisclosure and Protective Agreement (“Agreement”), concerning the above-captioned proceedings. I have been given a copy of and have read that Agreement and agree to be bound by it. I understand that the contents of the PROTECTED MATERIALS, any notes or other memoranda or any other form of information which copy or disclose PROTECTED MATERIALS shall not be disclosed to anyone other than in accordance with the Agreement and shall not be intentionally used for any purpose other than participation in the above-captioned proceeding before the California Public Utilities Commission. I agree that my obligation to honor the confidentiality of the PROTECTED MATERIALS shall continue after the issuance of the final, non-appealable order disposing of the merits the above-captioned proceedings as set forth in the Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Commission.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Representing: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date: \_\_\_\_\_

**(END OF APPENDIX 4)**

**APPENDIX 5**

**IOUs' Model Protective Order  
(May 9, 2005 ALJ Ruling in R.04-04-003/R.04-04-025))**

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

Order Instituting Rulemaking to Promote	)	
Consistency in Methodology and Input	)	
Assumptions in Commission	)	
Applications of Short-Run and Long-run	)	Rulemaking 04-04-025
Avoided Costs, Including Pricing for	)	
Qualifying Facilities.	)	
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**PROTECTIVE ORDER REGARDING CONFIDENTIALITY  
OF MARKET SENSITIVE DATA AND INFORMATION**

1. **Scope.** This Protective Order shall govern access to and the use in this proceeding of Protected Materials, as hereinafter defined. The parties to this proceeding (the "parties," or individually a "party") acknowledge that in view of the Assigned Commissioner's Ruling and Scoping Memo issued in this docket on January 4, 2005, this proceeding will be comprised of multiple phases devoted to the review and consideration of the E3 avoided cost methodology, short-run avoided cost ("SRAC") QF pricing, and long-run avoided cost forecasts and calculations. This Protective Order does not address the right of employees of the California Public Utilities Commission ("CPUC" or "Commission") acting in their official capacities ("Commission Staff") to view protected materials because Commission Staff is entitled to view

Protected Materials in accordance with the requirements of Section 583 of the Public Utilities Code and the Commission's General Order 66-C.

2. **Modification.** This Protective Order shall remain in effect until it is modified or terminated by the Commission after all affected parties have been given notice and have had a reasonable opportunity to be heard. The parties acknowledge that the amount of Protected Materials, and the identity of the parties submitting such data, may differ from time to time. In light of this situation, the parties agree that modifications to this Protective Order may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible.

3. **Definitions**

*A. The term "Protected Material(s)" means (i) trade secret or other confidential and/or proprietary information whose market sensitive nature, as determined in good faith by the Disclosing Party, is such that unrestricted disclosure and use would cause the Disclosing Party significant harm, and (ii) any other materials that are made subject to this Protective Order by any assigned Administrative Law Judge ("Assigned ALJ"), Law and Motion Administrative Law Judge ("Law and Motion ALJ"), Assigned Commissioner, the Commission, or any court or other body having appropriate authority. Protected Materials also includes memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, or compiles other Protected Materials or from which such materials may be derived. Protected Materials do not include: (i) any information or document contained in the public files of the CPUC*

*or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order or any other protective order.*

*B. The term "redacted" refers to situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed. The term "unredacted" refers to situations in which the Protected Materials in a document, whether in paper or electronic form, have not been covered, blocked out, or removed.*

*C. The term "Disclosing Party" means a party who initially discloses any specified Protected Materials in this proceeding*

*D. The term "Market Participating Party" ("MPP") refers to a party that is: (i) a person or entity that engages in the purchase, sale or marketing of electrical energy or capacity or natural gas, or the bidding on or purchasing of power plants, or consulting on such matters; or (ii) a trade association or other organization composed of or representing persons or entities that engage in one or more of such activities.*

*E. The term "MPP Reviewing Representative" refers to an outside attorney or an outside expert retained by an MPP and selected pursuant to Paragraph 6 hereof for the purpose of preparing for, participating in, or giving advice concerning this proceeding.*

*F. The term "Non-Market Participating Party," or "NMPP," refers to a party that (i) is a state governmental agency other than the California Energy Commission ("CEC"), is not an MPP as defined in*

*Paragraph 3(f) hereof, and is statutorily authorized to obtain access to confidential data held by another state governmental agency upon execution of a written agreement to treat the data so obtained as confidential, as provided in Government Code Section 6254.5(e); or (ii) any other consumer or customer group that the Disclosing Parties and the Director of the Commission's Energy Division or his designee ("Division Director") agree have a bona fide interest in participating on behalf of end-use customers in this proceeding, and which group is not an MPP.*

*G. The term "NMPP Reviewing Representative" refers to a person an NMPP selects pursuant to Paragraph 6 hereof who is an employee of the NMPP or an attorney or an expert the NMPP retains for the purpose of preparing for, participating in, or giving advice concerning this proceeding.*

*H. The term "ISO Reviewing Representative" refers to a person employed and selected pursuant to Paragraph 6 hereof by the California Independent System Operator Corporation ("ISO"), a nonprofit public benefit corporation created pursuant to Article 3, Chapter 2.3 of the Public Utilities Act (Public Utilities Code Sections 345, et seq.).*

**4. Designation of Materials.**

*When filing or providing in discovery any documents containing Protected Materials, a party shall physically mark such documents on each page (or in the case of non-documentary materials such as computer diskettes, on each item) as "PROTECTED MATERIALS SUBJECT TO PROTECTIVE ORDER", or with words of similar import as long as one or more of the terms, "Protected Materials," "Protective Order," "Section*

*583” or “General Order No. 66-C” is included in the designation to indicate that the materials in question are protected.*

*I. All materials so designated shall be treated as Protected Materials unless and until (a) the designation is withdrawn pursuant to Paragraph 17 hereof, or (b) there is a determination pursuant to Paragraph 14 hereof changing the designation and a period of 14 calendar days has elapsed without an appeal or other challenge to the determination pending.*

*J. All documents containing Protected Materials that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this Protective Order. Such documents shall be served upon Reviewing Representatives and persons employed by or working on behalf of the state governmental agencies referred to in Paragraphs 11(a) and 11(b) hereof who are eligible and have requested to review such materials. Service upon the persons specified in the foregoing sentence may either be (a) by electronic mail in accordance with the Electronic Service Protocols set forth in Appendix A to the Order Instituting Rulemaking in this docket, (b) by facsimile, or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by hand on the date that service is due.*

5. **Redaction of Documents.** Whenever a party files or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such

party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature (but not magnitude) of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

6. **Selection of Reviewing Representatives.** Each MPP shall be entitled to select up to two outside attorneys and three outside experts to serve as its MPP Reviewing Representatives. Each NMPP shall be entitled to select employees, attorneys, and experts to serve as its NMPP Reviewing Representatives. The ISO shall be entitled to select employees to serve as its ISO Reviewing Representatives. Each party selecting an MPP Reviewing Representative, an NMPP Reviewing Representative, or an ISO Reviewing Representative shall first identify its proposed Reviewing Representative to all other parties and the Division Director and shall provide all parties with a curriculum vitae of each candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. Any party who objects to a proposed Reviewing Representative shall advise the proposing party in writing within five (5) business days from receipt of such notice, setting forth in detail the reasons there for. In the event of such objection, the proposing party, the objecting party or parties, and the Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the Assigned ALJ or the Law and Motion ALJ. In ruling on the motion, the Assigned ALJ or the

Law and Motion ALJ shall consider all relevant facts, including whether the proposed Reviewing Representative has a need to know the information in the Protected Materials to prove or defend against a material element of one or more issues presented in this proceeding, and whether it is reasonable to conclude that the information sought by the Reviewing Representative is essential to a fair resolution of an issue in this proceeding.

**7. Access to Protected Materials and Use of Protected Materials.**

*Subject to the terms of this Protective Order, Reviewing Representatives shall be entitled to access to Protected Materials, except that the Disclosing Parties may redact price information from Protected Materials made available to ISO Reviewing Representatives.*

*All other parties in this proceeding shall not be granted access to Protected Materials, but shall instead be limited to reviewing redacted versions of documents.*

*Reviewing Representatives shall use Protected Materials solely for purposes of this proceeding. In addition, for a period of two (2) years from the date a Disclosing Party provides Protected Materials to a Reviewing Representative, such Reviewing Representative shall not engage, directly or indirectly, in (a) the purchase, sale, or marketing of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) whose duties include such activities), (b) the bidding on or purchasing or power plans (or the direct supervision of any employee(s) whose duties include such activities), or (c) consulting with or advising others in connection with any activity set forth in subdivisions (a) or (b) above (or the direct supervision of any employee(s) whose duties include such*

*activities or consulting), if such activities (as described in subparagraphs (a) through (c) are reasonably likely to affect California energy markets in more than a de minimis way.*

*Notwithstanding any other provision of this Paragraph, with respect to an ISO Reviewing Representative only, participation in the ISO's ordinary operation of the ISO-controlled grid and in its ordinary administration of the ISO administered markets, including markets for ancillary services, supplemental energy, congestion management, and local area reliability services, shall not be deemed to be a violation of this Protective Order.*

8. **Non-Disclosure Certificates.** A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Non-Disclosure Certificate, attached hereto as Appendix A, and delivered the original, signed Non-Disclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Non-Disclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Non-Disclosure Certificates to Commission Staff upon request.

9. **Maintaining Confidentiality of Protected Materials.** Each Reviewing Representative shall treat Protected Materials as confidential in accordance with this Protective Order and the Non-Disclosure Certificate executed pursuant to Paragraphs 8 hereof. Protected Materials shall not be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except (i) MPP Reviewing Representatives and NMPP Reviewing Representatives; (ii) Reviewing Representatives' paralegal employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Reviewing Representatives, provided that they shall first assure that

such personnel are familiar with the terms of this Protective Order, (iii) persons employed by or working on behalf of the CEC or other state governmental agencies covered by Paragraphs 11(a) and 11(b), and (iv) ISO Reviewing Representatives (with the exception of price information). Reviewing Representatives shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Protective Order, including by maintaining such materials in locked file cabinets and implementing password protection for computer files. Reviewing Representatives shall not leave such materials unattended on desks or tables or on computer screens. Reviewing Representatives shall be liable for any unauthorized disclosure or use by their paralegal employees or administrative staff. In the event any Reviewing Representative is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Reviewing Representative shall oppose disclosure on the grounds that the requested information has already been designated by the Commission as Protected Materials subject to this Protective Order lawfully issued by the Commission and therefore may not be disclosed. The Reviewing Representative shall also immediately inform the Disclosing Party of the request, and such party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Reviewing Representative shall cooperate with such party to the maximum extent practicable either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain

confidential treatment of them by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where a Reviewing Representative has been ordered to produce certain specific Protected Materials, the Reviewing Representative may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

10. **Return or Destruction of Protected Materials.** Within thirty (30) days after a Reviewing Representative completes or terminates his or her services in this proceeding or within thirty (30) days after this proceeding is concluded and no longer subject to appellate review, whichever occurs first, each Reviewing Representative shall, at his or her option, return to the Disclosing Party or destroy the Protected Materials obtained, produced or maintained pursuant to this Protective Order. Within the same 30-day period, the Reviewing Representatives shall submit to the Disclosing Party an original signed affidavit or declaration under penalty of perjury under the laws of the State of California stating that, to the best of his or her knowledge, all Protected Materials subject to this paragraph have been returned to the Disclosing Party or destroyed. To the extent any Protected Materials are not returned or destroyed pursuant to this paragraph for any reason, they shall remain subject to this Protective Order, Section 583 of the California Public Utilities Code and CPUC General Order No. 66-C. In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, then access to such

materials by that person shall be terminated. Even if no longer engaged in such reviews, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

**11. Access by Governmental Entities.**

*In the event the CPUC receives a request from the CEC for a copy of or access to any party's Protected Materials, the procedure for handling such requests shall be as follows. Not less than five (5) days after delivering written notice to the Disclosing Party of the request, the CPUC shall release such Protected Materials to the CEC upon receipt from the CEC of an Interagency Information Request and Confidentiality Agreement ("Interagency Confidentiality Agreement") identical in form to the agreement set forth in Appendix B hereto. Such Interagency Confidentiality Agreement shall (i) provide that the CEC will treat the requested Protected Materials as confidential in accordance with this Protective Order, (ii) include an explanation of the purpose for the CEC's request, as well as an explanation of how the request relates to furtherance of the CEC's functions, (iii) be signed by a person authorized to bind the CEC contractually, and (iv) expressly state that furnishing of the requested Protected Materials to employees or representatives of the CEC does not, by itself, make such Protected Materials public. In addition, the Interagency Confidentiality Agreement shall include an express acknowledgment of the CPUC's sole authority (subject to judicial review) to make the determination whether the Protected Materials should remain confidential or be disclosed to the public, notwithstanding any provision to the contrary in the statutes or regulations applicable to the CEC.*

*In the event the CPUC receives a request for a copy of or access to a party's Protected Materials from a state governmental agency other than the CEC that is authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining confidentiality set forth in Government Code Section 6254.5(e), the CPUC may, not less than five (5) days after giving written notice to the Disclosing Party of the request, release such protected material to the requesting governmental agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that contains the same provisions described in Paragraph 11(a) above, and that is otherwise substantively identical to the draft agreement set forth in Appendix B; i.e., identical as to legal principles but with variations in language that are necessary due to the particular situation of the requesting agency.*

12. **PRA Requests.** If a request is made pursuant to the Public Records Act ("PRA"), Government Code §6250, et seq., that a party's Protected Materials filed with or otherwise in the possession of the CPUC be produced, the CPUC will notify such party of the PRA request. The CPUC also will notify the requester that the Protected Materials are public records that have been filed with or submitted to the CPUC accompanied by a claim that they fall within the exclusions listed in Section 2 of General Order No. 66(c), and/or that there is a public interest served by withholding the records. The CPUC will thereafter proceed to determine, pursuant to General Order No. 66-C, whether the requested Protected Materials are excluded from public inspection. In the event the CPUC receives a request from a federal government agency or via a judicial subpoena for the production of a party's Protected Materials in the CPUC's possession, the CPUC will also notify the Disclosing Party of such request. In the event that a PRA requester brings suit to compel disclosure of a party's Protected

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Materials, the CPUC will promptly notify the Disclosing Party of such suit, and Commission Staff and the Disclosing Party shall cooperate in opposing the suit.

13. **Derivative Materials.** There shall be a rebuttable presumption that (a) any study that incorporates, describes or otherwise employs Protected Materials in a manner that could reveal all or a part of such materials, or (b) any model that relies upon Protected Materials for algorithms or other computation(s) critical to the functioning of the model, are Protected Materials that are subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, and this Protective Order. However, models that merely use Protected Materials as inputs will not themselves be considered Protected Materials. There shall also be a rebuttable presumption that where the inputs to studies or models include Protected Materials, or where the outputs of such studies or models reveal such inputs or can be processed to reveal such materials, such inputs and/or outputs shall be considered Protected Materials subject to this Protective Order, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of the Disclosing Party. Unless a party, by means of notice and motion, obtains a ruling from the Assigned ALJ or the Law and Motion ALJ holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any party who devises or propounds a model or study that incorporates, uses or is based upon such materials shall label the model or study "Protected Materials," and it shall be subject to the terms of this Protective Order.

14. **Dispute Resolution.** All disputes arising under this Protective Order, including but not limited to alleged violations of this Protective Order and disputes concerning whether materials were properly designated as Protected Materials, shall be presented for resolution to the Assigned ALJ or the Law and Motion ALJ. Prior to presenting any such dispute to the applicable ALJ, the parties to the dispute shall use their best efforts to resolve it. The parties and Commission Staff reserve the right to seek additional administrative or judicial

remedies after the Assigned ALJ or the Law and Motion ALJ has made a ruling regarding the dispute.

15. **Other Objections to Use or Disclosure.** Nothing in this Protective Order shall be construed as limiting the right of a party, the Commission Staff, or a state governmental agency covered by Paragraphs 11(a) or 11(b) from objecting to the use or disclosure of Protected Material on any legal ground, such as relevance or privilege.

16. **Remedies.** Any violation of this Protective Order shall constitute a violation of an order of the CPUC. Notwithstanding the foregoing, the parties and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

17. **Withdrawal of Designation.** A Disclosing Party may agree at any time to remove the "Protected Materials" designation from any materials of such party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all other parties that the Disclosing Party believes are in possession of such materials of the change of designation.

18. **Interpretation.** Titles are for convenience only and may not be used to restrict the scope of this Protective Order.

**(END OF APPENDIX 5)**

**APPENDIX 6**

**FERC Model Protective Order**

**MODEL PROTECTIVE ORDER**

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**Name of Proceeding Docket No.**

**PROTECTIVE ORDER**

**(Issued )**

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge ("Presiding Judge") or the Federal Energy Regulatory Commission ("Commission").
2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 CFR ' 388.113(c)(1) ("Critical Energy Infrastructure Information").
3. Definitions -- For purposes of this Order:
  - (a) The term "Participant" shall mean a Participant as defined in 18 CFR ' 385.102(b).

(b) (1) The term "Protected Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as "PROTECTED MATERIALS" or with words of similar import as long as the term "Protected Materials" is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant

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producing such information shall additionally mark on each page containing such information the words "Contains Critical Energy Infrastructure Information B Do Not Release".

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 5. Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as "Non-Internet Public" by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. & 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;

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(5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or

(6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below.

Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a

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Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3 (d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for

the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

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10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 17, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 17 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information B Do Not Release". For anything filed under seal, redacted versions or, where an entire Docket No. 6

document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information - Do Not Release."

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory  
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appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR " 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. ' 552) for Protected Materials in the files of the Commission.

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

**Presiding Administrative Law Judge**

**UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY  
COMMISSION**

**Name of Proceeding Docket No.**

**NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

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