

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

ADMINISTRATIVE LAW JUDGE'S RULING DIRECTING LOAD-SERVING ENTITIES TO SUBMIT LOAD DATA AND ADOPTING PROTECTIVE ORDER

1. Summary

This ruling directs load-serving entities (LSEs) to submit specified load forecast data to this Commission in accordance with a schedule established herein. Because certain data may be considered confidential by the LSE submitting it, such data will be subject to the confidentiality provisions of an interim protective order which is adopted by this ruling. Parties are directed to meet and confer on the development of a permanent protective order.

2. Background

Decision (D.) 04-01-050, issued in Rulemaking 01-10-024, adopted a policy framework for Resource Adequacy Requirements (RAR) in California. Under this regulatory framework, each of the three major California investor-owned electric utilities (IOUs) as well as the energy service providers (ESPs) and community choice aggregators (CCAs) operating within their service territories (collectively, LSEs) will be obligated to procure capacity and a planning reserve margin sufficient to meet their own forecasted load. D.04-01-050 provided for workshops to address implementation issues, and the April 1, 2004 order that

instituted this rulemaking (OIR) provided that implementation issues not resolved in R.01-10-024 will be addressed in this proceeding.

D.04-10-035, the *Interim Opinion Regarding Resource Adequacy* decided in this proceeding on October 28, 2004, addressed various RAR issues that were raised in the initial workshop report issued on June 15, 2004. Among other things, D.04-10-035 provided definition and clarification with respect to the RAR policy framework adopted in D.04-01-050. It also established a second procedural phase (Phase 2) of the RAR portion of this rulemaking to further develop the program, provided for additional workshops in Phase 2, and announced the Commission's intention to implement a functioning RAR program during 2005.

A key component of the RAR program is the requirement for annual resource adequacy filings by LSEs. In these filings, LSEs must demonstrate that they have contracted for resources to meet 90% of their summer peaking needs plus a 15% planning reserve margin (PRM) for May through September of the following calendar year.¹ The Commission determined that these annual RAR filings will be made on September 30 of each year. However, for 2005 only, the filings will be due 90 days after the date of the Phase 2 decision since that decision will be issued after June 30, 2005. (D.04-10-035, Section 3.2, p. 12.)

D.04-10-035 provided that the California Energy Commission (CEC) will review the hourly load forecasts that are to be the bases for the resource commitments in the LSE filings. The Commission provided that this review will

¹ The RAR program is scheduled to be implemented for the 2006 summer season. For 2006 only, the LSEs' RAR filings will be for June through September rather than May through September because the 15% PRM requirement takes effect on June 1, 2006.

include a coincidence analysis and a comparison of forecast loads with historic loads of each LSE. (D.04-10-035, Sections 3.4.1 and 3.4.2, pp. 16-17.) It is now apparent that the review will also need to include the impacts of energy efficiency, demand response and distributed generation programs that each LSE could not be expected to assess individually. The CEC will calculate adjustments to the load forecasts submitted by the LSEs, and the LSEs in turn will use the adjusted data in their September 30 filings.

The April 1, 2004 OIR named the three IOUs as respondents to this rulemaking. Anticipating the need for the Assigned Commissioner or the Administrative Law Judge (ALJ) to order the submission of load data by ESPs and CCAs as well as the IOUs, D.05-03-013 modified the OIR to also name registered ESPs and CCAs as respondents.

3. Discussion

3.1 The Need for LSE Load Data at This Time

D.04-10-035 requires LSEs to submit preliminary load forecasts and supporting data for review by the CEC prior to the full RAR filings that will be made on September 30 of each year. While the schedule for the annual reporting cycle is still under review, the Phase 2 workshops have underscored the need for the CEC begin reviewing LSE load data for 2006 well in advance of the issuance of a Phase 2 RAR decision. As the Commission noted in D.05-03-013, the ability of LSEs to acquire resources commensurate with their approved load forecasts and make appropriate RAR filings later this year could be jeopardized if the CEC does not have the opportunity to complete its review and provide the results to the LSEs on a timely basis. Avoiding this outcome requires that the CEC have the preliminary load forecasts and supporting data available for its review and analysis in the near future. Accordingly, this ruling directs the LSEs listed in

Appendix A to submit such load forecasts and supporting data at this time. Appendix B sets forth in detail a two-part schedule for the forecasts and data that are to be submitted by each LSE.

As outlined in D.04-10-035, the impacts of programs for energy efficiency, demand response, and distributed generation are to be accommodated within resource adequacy filings. The workshop discussions regarding how to quantify these impacts made clear that program operators must be responsible to prepare estimates of program impacts for allocation to LSE load forecasts. In keeping with other Commission decisions to focus most responsibility for program operation on IOUs, it is apparent that IOUs must prepare program impacts in parallel to their own load forecasting efforts. Appendix B therefore outlines responsibilities and a schedule for IOUs to prepare program impacts for energy efficiency, demand response and distributed generation programs.

3.2 Confidentiality Issues

D.05-03-013 noted that several parties have raised concerns about public disclosure of load information that ESPs and CCAs will be asked to submit. (D.05-03-013, p. 4.) The Commission stated its expectation that in directing data submittals by LSEs, the Assigned Commissioner or ALJ would “craft appropriate confidentiality protections for LSEs and their customers.” (*Id.*, 5.) Accordingly, pursuant to Commission direction and as explained below, I will establish a two-part plan for “appropriate confidentiality protections.”

First, I will direct that LSEs submit their load forecasts and related data to the Commission’s Energy Division subject to an interim protective order

(Appendix C).² The Energy Division will in turn transmit the information to the CEC, which will also be bound by this protective order.³ This interim protective order provides only this Commission, the CEC, other state agencies, and the California Independent System Operator (CAISO) with access to confidential information. It allows LSEs to designate the materials they consider to be confidential provided that the data submittals must be accompanied by a statement that provides justification for any claims of confidentiality.⁴

In adopting this interim protective order, there is no intent to prejudice confidentiality issues that are being addressed more comprehensively in this proceeding or elsewhere. Instead, the intent is to permit the RAR process to go forward at this time by taking a conservatively restrictive approach to confidentiality issues while those issues are still being addressed.

Second, I direct parties to meet and confer to address the components of a protective order that would supersede the interim protective order adopted herein and, generally, (1) refine the requirement that LSEs justify their claims of confidentiality and (2) provide broader access (*i.e.*, access that is not limited to

² This interim protective order is based in part on a protective order that was issued on May 9, 2005 in R.04-04-025, although numerous revisions have been made.

³ The Commission provided that LSEs will file hourly load forecasts with the CEC. (D.04-10-035, Section 3.4.1, p. 16.) However, reporting procedures are still under review in Phase 2. At this time, until the reporting procedures are more fully developed, I believe that the LSEs should submit their load data to this Commission.

⁴ As described below, the nature of the required statement of justification will be further addressed in this proceeding, and LSEs may later be required to further justify their claims of confidentiality.

the Commission, the CEC, other state agencies, and the CAISO) to protected materials. In this meet-and-confer process, parties should address:

- Whether to categorize load information that is (a) clearly market-sensitive or otherwise confidential, (b) clearly public, and (c) subject to case-by-case analysis. The purpose of identifying and establishing these categories would be to make generic determinations and thereby reduce the scope of information for which case-by-case showings are required.
- The extent to which market participants, non-market participants, and others with a commercial interest in the information should have access to protected materials, and any special procedures (e.g., “eyes-only” access by attorneys) that may be warranted.
- Consistency with confidentiality determinations that have been or are being made in other forums.

In a letter to Commission President Michael Peevey and CEC Commissioner John Geesman, distributed electronically on June 15, 2005, The Utility Reform Network (TURN) offered a proposal under which it would be granted access to confidential load and resource information now being reviewed as part of the CEC’s Integrated Energy Policy Report (IEPR) process. The Alliance for Retail Energy Markets (AReM) and Southern California Edison Company (SCE) sent letters in response to TURN’s proposal on June 20, 2005, and the Independent Energy Producers (IEP) responded by letter on June 22, 2005. While the confidentiality issues associated with the IEPR process are not identical to those being considered here, it is apparent that they are closely related. In light of the demonstrated interest in these issues on the part of TURN, AReM, SCE, and IEP, I ask that these parties collaborate to initiate and schedule a meet-and-confer process as described above. Notice of opportunity to

participate should be served on all parties. I further ask that these parties report to me on the status of this meet-and-confer process by July 20, 2005.

This two-part plan is adopted for two reasons. First, as noted earlier, there is a need for the CEC to begin analyzing LSE load data now. Second, there is also a need to more fully develop, after an opportunity for all affected parties to be heard, appropriate protections of market sensitive information that maximize, to the extent reasonably possible, (a) the scope of data that is made public and (b) the scope of participants that may gain access to data that must remain protected. LSEs are admonished that the fact that the interim protective order may be replaced by a permanent protective order that allows greater access to data that may initially be designated as confidential shall not constitute grounds to withhold the submission of data as ordered by this ruling.

3.3 Inactive LSEs

D.05-03-013 provided that the Assigned Commissioner or ALJ would establish procedures to minimize the reporting burden on inactive ESPS. Any registered ESP that does not plan to serve load in 2006 may submit a verified statement to that effect to the Commission's Energy Division, and thereafter be relieved of the requirements of this ruling. LSEs declaring their intent to be inactive during 2006 are hereby placed on notice that they may be required to satisfy the load forecasting and resource commitment elements of resource adequacy requirements as a condition precedent to their resuming or commencing operations in 2006.

3.4 CCAs

At this time there are no registered CCAs. Any CCA that becomes registered after the issuance of this ruling may, at that time, and subject to further ruling, be subject to the requirements of the RAR program. I anticipate

that the obligations of a newly-registered CCA could include the requirement to submit load forecasts and supporting data for review by the CEC as provided in this ruling.

IT IS RULED that:

1. Except as provided in Ordering Paragraph 3, each load-serving entity (LSE) listed in Appendix A shall submit the load forecasts and data specified in Appendix B to the Commission's Energy Division not later than the dates listed therein. Copies shall be served on the undersigned Administrative Law Judge. Any LSE that designates any materials as confidential shall include with its submittal a statement that provides justification for the claim(s) of confidentiality. As more specifically set forth in Appendix B, historic loads and supporting data are due July 15, 2005, and load forecasts and supporting data are due August 15, 2005. In addition, the investor-owned utilities' estimated impacts of energy efficiency, demand response, and distributed generation are due August 15, 2005. The Energy Division Director may authorize extensions for good cause.

2. The California Energy Commission (CEC) staff shall prepare and not less than 10 days prior to the applicable submission dates issue appropriate templates that each LSE is to use in submitting the required information. LSEs shall timely respond to requests by the Energy Division and requests by CEC staff for any clarification of their submittals or for supplemental data.

3. Any registered Energy Service Provider (ESP) that does not plan to serve load in 2006 may submit a verified statement to that effect to the Commission's Energy Division on or before July 15, 2005. The requirement set forth above to submit load forecast data (Appendix 8, Part 8) will be waived for these ESPs. The verified statement shall include the following acknowledgement:

I hereby acknowledge that in opting out of the data submission and review process established by ruling of the Administrative Law Judge dated June 24, 2005, (insert name of ESP) may be required to satisfy the load forecasting and resource commitment elements of resource adequacy requirements as a condition precedent to its resuming or commencing operations in 2006.

4. The interim protective order attached as Appendix C shall govern the confidentiality of the data submitted by LSEs pursuant to Ruling Paragraph 1 until such time as a subsequent protective order that supersedes the interim protective order is adopted. Parties are hereby placed on notice that, after notice and opportunity to be heard, the data submitted by LSEs pursuant to Ruling Paragraph 1 and designated as protected materials pursuant to the interim protective order may, upon adoption of a permanent protective order, (a) become public information or (b) if such data remain protected, be made available to other persons.

5. Parties having an interest in the extent to which LSE load data should remain protected or be made public are directed to meet and confer on the development of a permanent protective order in accordance with the foregoing discussion. Any meet and confer sessions shall be open to all parties and Commission and CEC staff.

Dated June 24, 2005, at San Francisco, California.

/s/ MARK S. WETZELL
Mark S. Wetzell
Administrative Law Judge

Appendix A

Load-Serving Entities Subject to Ruling Dated June 24, 2005

Investor-Owned Utilities

Pacific Gas and Electric Company
San Diego Gas & Electric Company
Southern California Edison Company

Energy Service Providers (ESP#)¹

Energy America, L.L.C (1341)
Coral Power L.L.C. (1360)
BP Energy Company (1366)
Pilot Power Group, Inc. (1365)
APS Energy Services Company, Inc. (1361)
Commerce Energy, Inc. (1092)
New West Energy Corporation, New West Energy (1063)
AOL Utility Corp. (1355)
Constellation New Energy, Inc. (1359)
City of Corona Department of Water and Power (1367)
Michael Mazur, 3 Phases Electrical Consulting (1350)
Calpine PowerAmerica-CA, L.L.C. (1362)
Quiet L.L.C., Quiet Energy (1368)
Modesto Irrigation District, Modesto Irrigation Dist. MID. Water & Power (1151)
American Utility Network (A.U.N.) (1158)
Strategic Energy, L.L.C. (1351)
Sempra Energy Solutions (1364)
Occidental Power Services, Inc. (1369)

Community Choice Aggregators: (None at this time.)

¹ This list of ESPs differs from the list of ESPS attached to D.05-03-013 in the following respects: (a) Commonwealth Energy Corporation renamed as Commerce Energy, Inc; (b) ESP # of Calpine PowerAmerica-CA, L.L.C. is corrected; and (c) Occidental Power Services, Inc., a newly registered ESP, is added.

(End of Appendix A)

Appendix B
Specification of Load Forecast Data to be Submitted

Contact persons for questions regarding these requirements:

CPUC Energy Division: Manuel Ramirez
(415) 703-1809
MZR@cpuc.ca.gov
CPUC Energy Division
505 Van Ness Ave.
San Francisco, CA 94102-3298

California Energy Commission: Lynn Marshall
(916) 654-4767
lmarshall@energy.state.ca.us
California Energy Commission
1516 Ninth Street, MS-22
Sacramento, CA 95814-5512

A. Historic Data (due July 15, 2005)

1. Hourly loads by voltage level with associated distribution losses segregated by IOU service area for calendar year 2004
2. Monthly count of customers by major customer class by IOU service area
3. Weather-adjusted hourly loads for calendar 2004
4. Weather data for 2004 used in adjustment
5. Methodology used in adjusting actual loads

B. Forecast Data (due August 15, 2005) encompass:

1. Load forecasts encompass all twelve months of the year¹

¹ For the initial compliance cycle, forecasts are only to be submitted for the seven months June – December of 2006.

2. Load forecasts are prepared on a “best estimate” basis for predicting customers to be served in each month of the forecast
 3. Load forecasts should include hourly load values for each month
 4. Load forecasts should include estimates of losses including distribution, transmission and UFE added onto customer-meter loads
 5. Load forecasts are prepared using 1:2 weather for each month
 6. Load forecast documentation includes Excel spreadsheet tables and other electronic documentation covering at least:
 - a. Hourly loads, monthly peak load, and monthly energy for each month of the forecast year segregated by IOU service area
 - b. Historic year, current year and projected year customer counts by major customer class for each month by IOU service area
 - c. Projected changes in contract loads for each month of the forecast year
 - d. IOUs include adjustments for municipal departing load and community choice aggregators projected to depart from an IOU in the forthcoming year
 - e. Description of load forecasting methodology including regression equations and other descriptive information
 - f. Other historic data needed to understand the nature of the load forecasting methodology
 - g. Rationale for including incremental impacts or total impacts for each energy efficiency, demand response and distributed generation program as an adjustment to the preliminary load forecast
- C. Program Impact Data (due August 15, 2005)
1. energy efficiency programs
 - a. list of committed programs for 2004-2006
 - b. funding level of each program annually for 2004-2006
 - c. total hourly impacts of each program annually for 2004-2006
 2. demand response programs

- a. list of committed programs for 2004-2006
 - b. classification of each program as dispatchible or non-dispatchible and rationale for classification
 - c. funding level of each program annually for 2004-2006
 - d. total hourly impacts of each program annually for 2004-2006
3. distributed generation programs
- a. list of committed programs for 2004-2006
 - b. funding level of each program annually for 2004-2006
 - c. total hourly impacts of each program annually for 2004-2006

(End of Appendix B)

Appendix C

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

INTERIM PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF MARKET SENSITIVE LOAD DATA AND INFORMATION

1. Scope

This Interim Protective Order (“Protective Order”) shall govern access to and the use of Protected Materials, as hereinafter defined, submitted by any respondent to Rulemaking 04-04-003 pursuant to any ruling or order of the Assigned Administrative Law Judge (“Assigned ALJ”), the Law and Motion Administrative Law Judge (“Law and Motion ALJ”), the Assigned Commissioner, or the California Public Utilities Commission (“CPUC” or “Commission”) that requires such respondents to submit load forecasts and data in furtherance of the Commission’s development, establishment, implementation, and operation of a program of Resource Adequacy Requirements. This Protective Order does not address the right of employees of the Commission acting in their official capacities (“Commission Staff”) to view Protected Materials to the extent that 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 Assigned ALJ, the Law and Motion ALJ, the Assigned

Commissioner, or the Commission after all affected parties have been given notice and have had a reasonable opportunity to be heard.

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 ALJ, 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.

To the extent that the Commission, the California Energy Commission (CEC), the Federal Energy Regulatory Commission, or any court determines that data covered by this protective order are public information, and such determination is no longer subject to administrative or judicial review, such data shall cease to be Protected Materials.

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 “Resource Adequacy Requirements” means the regulatory program governing certain load-serving entities established pursuant to Commission Decision (D.) 04-10-050 and D.04-10-035 and being developed and implemented in Commission Rulemaking 04-04-003.

e. The term “Reviewing Representative” refers to an NMPP Reviewing Representative, a Staff Reviewing Representative, and an ISO Reviewing Representative.

f. 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.

g. The term “Non-Market Participating Party,” or “NMPP,” refers to a party that 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).

h. 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.

i. 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.).

j. The term “Staff Reviewing Representative” refers to a person who is an employee or contractor of the Commission and, provided that an interagency agreement has been executed pursuant to Paragraph 11 a. hereof, a person who is an employee or contractor of the CEC.

4. Designation of Materials

a. When filing or providing 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. Each page shall be identified by “Bates Stamp” or equivalent method.

b. 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.

c. 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 Paragraph 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 established for 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 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. The Commission shall be entitled to select employees and contractors to serve as its Staff Reviewing Representatives. The CEC shall be entitled to select employees and contractors to serve as its Staff Reviewing Representatives. Each party selecting 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

a. 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.

b. 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.

c. Reviewing Representatives shall use Protected Materials solely for purposes of this proceeding, and, after this proceeding is closed, for purposes of the Resource Adequacy Requirements program being established and implemented in 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.

d. 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 Paragraph 8 hereof. Protected Materials shall not be used except as necessary for the conduct of this proceeding and for the ongoing operation of the RAR program being established and implemented in this proceeding, and shall not be disclosed in any manner to any person except (i) 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 state governmental agencies covered by Paragraph 11(b), (iv) ISO Reviewing Representatives (with the exception of price information), and (v) Staff Reviewing Representatives. 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, notwithstanding such opposition, the Reviewing Representative is ordered by a court of competent jurisdiction to disclose any Protected Materials, such disclosure shall not constitute a violation of this protective order. 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

a. The CPUC shall release Protected Materials to the CEC upon receipt from the CEC of an executed Interagency 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) be signed by a person authorized to bind the CEC contractually, and (iii) 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.

b. 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 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 of 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, or 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

ATTACHMENT A TO INTERIM PROTECTIVE ORDER

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

NON-DISCLOSURE CERTIFICATE

I, _____, have been asked by _____ to inspect certain materials that have been designated as "Protected Materials" under Paragraph 4 of the Protective Order entered in the above-captioned matter by the Administrative Law Judge by order dated June 24, 2005.

1. 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 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 such materials shall not be disclosed to anyone other than in accordance with the Protective Order.

2. I understand that my review of Protected Materials is solely for the purpose of participating in the above-captioned matter and establishing and implementing the RAR program adopted in the proceeding, and that any other use or disclosure of such materials by me is a violation of the Protective Order.

3. I hereby agree that for a period of two (2) years from the last date on which a Disclosing Party, as defined in the Protective Order, provides me with Protected Materials, I will not engage, directly or indirectly, in any of the following activities:

(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 of power plants (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 3(a) or 3(b) above (or the direct supervision of any employee(s) whose duties include such activities or consulting).

I acknowledge that engaging in any of the above activities within the two (2) year period following the last date on which a Disclosing Party, as defined in the Protective Order, provides me with Protected Materials constitutes a violation of the Protective Order. 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 paragraph or the Protective Order.

4. I hereby agree to submit to the jurisdiction of the California Public Utilities Commission ("CPUC") for the enforcement of the undertakings I have

made hereby and I waive any objection to venue laid with the Commission for enforcement of the order.

5. I acknowledge that any violation of the Protective Order shall constitute a violation of an order of the CPUC and that the parties to this proceeding 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.

Dated: _____

BY: _____

TITLE: _____

REPRESENTING: _____

ATTACHMENT B TO INTERIM PROTECTIVE ORDER

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

CONFIDENTIALITY AGREEMENT BETWEEN THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

A. PURPOSE

In connection with the development, establishment, and implementation of a program of Resource Adequacy Requirements in this proceeding, The California Energy Resources Conservation and Development Commission (“CEC”) will review, analyze, compile, and adjust load forecasts and data submitted to the California Public Utilities Commission (“Commission”) by load-serving entities pursuant to order of the Assigned Administrative Law Judge, the Assigned Commissioner, or the Commission. The CEC agrees to keep this information confidential in its entirety, disclosing it only to its employees and contractors whose work requires them to review and analyze such data.

B. CONFIDENTIALITY AGREEMENT

1. This agreement is limited to records that are not open to public inspection, that are in the possession and control of the Commission, and that are identified above.
2. The Commission shall permit the CEC to review and copy the records identified above that are not open to public inspection (“protected materials,” or, hereinafter, “confidential records”), upon the representation of the Executive Director of the CEC that the confidentiality of such records will be maintained and that they will not be made available for

inspection by any other governmental agency, or by the public, except as provided for herein.

3. The CEC agrees that the confidential records identified above shall be released only to persons who are authorized in writing by the Executive Director of the CEC to obtain the confidential records and who have executed a nondisclosure certificate in accordance with the Protective Order making reference hereto, and that the CEC will ensure that each of its employees and contractors who have access to the confidential records is informed that they are subject to the requirements of this confidentiality agreement.
4. The CEC shall take reasonable security precautions to keep confidential the records provided to the CEC pursuant to this agreement. The CEC shall notify the Commission immediately upon the discovery of any unauthorized use or disclosure of the confidential records or of any other breach of this agreement, and will cooperate in every reasonable way to help the Commission prevent further unauthorized disclosure or use of the confidential records covered by this agreement.
5. The Commission reserves its authority under Section 583 of the California Public Utilities Code and General Order 66-C to consider and determine whether the records identified above should be made available for public inspection. The CEC agrees that its Executive Director will not exercise his authority under California Code of Regulations, title 20, section 2507(e), and will not release any confidential records or other documents designated as confidential by the CPUC in R.04-04-003 unless explicitly authorized by the CPUC or ordered by a court of competent jurisdiction.
6. In the event the CEC determines for any reason that it is required, or that it would be desirable, to disclose or make available the contents of the confidential records identified above to other governmental agencies or to the public, the CEC agrees not to do so without first notifying the Commission of its intent and the reason for the requested disclosure. The CEC further agrees that such notice shall be given no less than 20 days prior to the planned disclosure in order that the Commission, the Assigned Commissioner for R.04-04-003, the Assigned Administrative Law Judge

(ALJ) for that proceeding or the Law and Motion ALJ, as the case may be, can give adequate consideration, in accordance with Section 583 of the Public Utilities Code and the Commission's General order 66-C, to the issue of whether it is in the public interest to make such records available to other governmental agencies or to the public. The CEC agrees to abide by the determination of the Commission, the Assigned Commissioner or the applicable ALJ on this issue, but may appeal such determination pursuant to the CPUC's Rules of Practice and Procedure.

7. With respect to the use of data by the CEC contained in the confidential records subject to this agreement ("confidential data"), it shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs such confidential data in a manner that could reveal all or part of the confidential data, or (ii) any model that relies upon such confidential data for algorithms or other computation(s) critical to the functioning of the model, shall also be considered a confidential record subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, and this agreement. However, models that merely use confidential data as inputs will not themselves be considered such confidential records. It shall also be a rebuttable presumption that where the inputs to studies or models include confidential data, or where the outputs of such studies or models reveal the inputs or can be processed to reveal the confidential data, such inputs and/or outputs shall be considered confidential records subject to this agreement, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of the party producing the confidential records. Any disputes concerning the appropriate scope of redaction or aggregation that the CEC and the party producing the confidential records cannot resolve shall be presented for resolution to the Assigned ALJ for R.04-04-003 or to the Law and Motion ALJ.
8. This Agreement shall continue in effect unless or until either of the undersigned parties determines that the agreement should be terminated. Unless otherwise provided for by the written agreement of both the CEC and the Commission, unilateral termination of this agreement shall be effected no sooner than 30 days from the date that either party provides

notice, in writing, of its intent to terminate this agreement. All obligations created by this agreement during its term shall survive termination of the agreement.

9. This agreement shall not be modified except by a written agreement dated subsequent to the date of this agreement and signed by authorized representatives of both parties. None of the provisions of this agreement shall be deemed to have been waived by any act or acquiescence on the part of either party, its agents, or employees, but only by an instrument in writing signed by an authorized representative of the party. No waiver of any provisions of this agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
10. If any provision of this agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

Name _____

Executive Director, California
Energy Commission

General Counsel, California
Public Utilities Commission

Dated: _____

Dated: _____

(End of Appendix C)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge’s Ruling Directing Load-Serving Entities to Submit Load Data and Adopting Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated June 24, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

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

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

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.