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

Gildred Building Company, dba The Gildred
Companies; Ocotillo Solar LLC,

Complainants,

vs.

Southern California Edison Company (U338-E)

Defendant.

Case (C.) 16-10-021
(Filed October 21, 2016)

RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO
GILDRED BUILDING COMPANY, DBA THE GILDRED COMPANIES AND
OCOTILLO SOLAR LLC'S MOTION TO COMPEL

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**RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO GILDRED
BUILDING COMPANY, DBA THE GILDRED COMPANIES AND OCOTILLO SOLAR LLC’S
MOTION TO COMPEL TO PRODUCE DOCUMENTS**

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Pursuant to Rule 11.3(b) of the California Public Utilities Commission's ("Commission" or "CPUC") Rules of Practice and Procedure, Southern California Edison Company ("SCE") respectfully submits this response to Gildred Building Company, dba The Gildred Companies and Ocotillo Solar LLC's (collectively, "Complainants") Motion to Compel SCE to Produce Documents ("Motion to Compel").

I.

INTRODUCTION

Complainants' Amended Complaint asserts four discrete causes of action against SCE based on SCE's decision not to enter into a 20-year power purchase agreement ("PPA") with Complainants for the Ocotillo Wells Project in SCE's 2014 Renewables Portfolio Standard ("RPS") solicitation. Complainants allege that: (1) SCE repudiated a PPA with Complainants in bad faith; (2) SCE failed to act in good faith in its dealings with Complainants in connection with

the 2014 RPS solicitation; (3) SCE violated the Procurement Protocol for the 2014 RPS solicitation by rejecting Complainants' bid based on a comparison to bids received in the 2015 RPS solicitation; and (4) SCE's failure to comply with the Procurement Protocol violated Decision ("D.") 14-11-042.¹ Complainants request that the Commission order SCE to sign the purported PPA for the Ocotillo Wells Project and submit that PPA for Commission approval via a Tier 3 advice letter; or alternatively, order SCE to conduct another evaluation of the Ocotillo Wells Project under the Procurement Protocol and execute a PPA with Complainants pursuant to the standards and criteria adopted by the Commission for the 2014 RPS solicitation.²

Complainants' claims against SCE are wholly without merit. SCE filed a Motion to Dismiss Amended Complaint demonstrating that the Amended Complaint fails to allege sufficient facts to support the conclusion that SCE violated any tariff, law, or Commission rule or order when it decided not to enter into a PPA with Complainants, warranting dismissal of the Amended Complaint.³ In particular, SCE never had a binding PPA with Complainants and never had an obligation to enter into such PPA. Complainants have also failed to allege any violation of the Procurement Protocol based on SCE's alleged bad faith conduct, or establish that SCE violated the Procurement Protocol by considering relevant market data in evaluating the Ocotillo Wells Project. Moreover, even if the Commission assumes (for dismissal purposes only) that a binding PPA was formed and repudiated by SCE, the Amended Complaint should still be dismissed because the Commission does not have jurisdiction to adjudicate contract disputes

¹ See Amended Complaint at ¶¶ 24-38, 40 (February 14, 2017). Complainants originally filed their Complaint on or about October 21, 2016 but filed an Amended Complaint on February 14, 2017 to redact less information and substitute one of the counsel for Complainants.

² See Amended Complaint at ¶¶ 41-42.

³ See SCE's Motion to Dismiss Amended Complaint (February 14, 2017); SCE's Reply to Complainants' Response to Motion to Dismiss Amended Complaint (February 14, 2017). SCE originally filed its Motion to Dismiss Complaint and Reply to Complainants' Response to Motion to Dismiss Complaint on December 15, 2016 and January 10, 2017, respectively, but filed amended documents on February 14, 2017 to redact less information and update certain information to refer to the Amended Complaint and other amended documents.

between public utilities and third parties. Complainants' requested relief – an order directing SCE to sign a PPA – is also legally impermissible and inappropriate.

The Scoping Memo and Ruling of Assigned Commissioner for this proceeding states that the Commission will first determine whether SCE's Motion to Dismiss Amended Complaint should be granted.⁴ Only if the Amended Complaint is not dismissed will the Commission consider whether the facts and law support Complainants' causes of action and whether, if the Commission finds SCE in violation of the laws set forth in the Amended Complaint, the law supports the relief requested.⁵

The Commission should rule on Complainants' Motion to Compel only after its decision on SCE's Motion to Dismiss Amended Complaint. If SCE's Motion to Dismiss Amended Complaint is granted, there will be no need for any additional discovery. Additionally, the Commission may determine that it does not have jurisdiction over this case. SCE's customers should not be required to bear the significant burden and cost of additional discovery, particularly the irrelevant and unduly burdensome discovery requested by Complainants, if this case will ultimately be dismissed.

Furthermore, when the Commission does rule on Complainants' Motion to Compel it should deny the motion. The issues to be determined in this proceeding involve SCE's conduct and dealings with Complainants and the Ocotillo Wells Project in the 2014 RPS solicitation. Subject to appropriate protections for market sensitive information, SCE has already agreed to produce the non-privileged documents that are relevant to these issues and admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence, including all documents relating to Complainants and the Ocotillo Wells Project for the relevant time period, communications between SCE and other shortlisted bidders in the 2014 RPS solicitation from shortlisting through the completion of contract negotiations, and shortlist results for the 2014 and

⁴ See Scoping Memo and Ruling of Assigned Commissioner at 4-5 (March 29, 2017).

⁵ See *id.* at 4.

2015 RPS solicitations (including price and valuation results). SCE has also offered to stipulate to where the Ocotillo Wells Project fell in comparison to the other shortlisted projects in the 2014 and 2015 RPS solicitations.

However, Complainants seek production of vast categories of highly market sensitive information covering all documents with any relation to the 2014 and 2015 RPS solicitations. For example, Complainants request production of all communications between and among the 67 SCE employees who worked on the 2014 and 2015 RPS solicitations relating to those solicitations. Complainants also request all communication with bidders in the 2014 and 2015 RPS solicitations, which includes all of the market sensitive bid information submitted by competitors of Complainants who bid in those solicitations, most of whom were not shortlisted and never negotiated contracts with SCE. Complainants are requesting production of documents that are not relevant to this proceeding and not admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence. As such, their Motion to Compel should be denied.

Moreover, even if there was some small likelihood that some of the documents sought by Complainants would lead to the discovery of admissible evidence, the burden and expense to SCE of complying with Complainants' overbroad requests clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. SCE does not yet have a complete estimate of the time and expense involved in reviewing and producing all of the documents requested by Complainants. Based on an initial search of documents it has already collected, however, such production will take thousands of hours and cost hundreds of thousands of dollars, if not more. This cost to SCE's customers is not justified by the small possibility that Complainants' overbroad and unduly burdensome requests will produce admissible evidence.

Finally, consistent with the Commission's well-established confidentiality rules, SCE has agreed to produce relevant and non-privileged market sensitive information to Complainants through appropriate non-market participant Reviewing Representatives who meet the Commission's requirements and subject to execution of an appropriate Non-Disclosure Agreement. Such confidentiality protections are necessary because Complainants are requesting

highly market sensitive information such as pricing from recent RPS solicitations and Complainants are a market participant who could use this information to materially affect the market price of electricity to the detriment of customers.

The only Reviewing Representatives proposed by Complainants are Mr. Gregg Haggart, who is the Chief Executive Officer of Complainants, and thus a market participant, and Mr. Joseph Karp, outside counsel for Complainants who represents other market participants on wholesale energy transactions. Neither Mr. Haggart nor Mr. Karp meet the Commission's requirements to be Reviewing Representatives. Therefore, the Commission should deny Complainants' request that the Commission compel SCE to provide them with market sensitive information. Nor should the Commission create an exception to its confidentiality rules for Mr. Haggart and Mr. Karp. Complainants can participate fully in the litigation of their claims in this proceeding through use of appropriate Reviewing Representatives, including other attorneys at Mr. Karp's firm. The Commission should not create a loophole in its confidentiality rules that allows market participants to view market sensitive information from recent solicitations by filing a complaint regarding their alleged treatment in that solicitation.

II.

THE COMMISSION SHOULD RULE ON COMPLAINANTS' MOTION TO COMPEL AFTER ITS DECISION ON SCE'S MOTION TO DISMISS AMENDED COMPLAINT

As discussed above, SCE has a pending Motion to Dismiss Amended Complaint. The Commission should not make any ruling on Complainants' Motion to Compel until after it decides SCE's Motion to Dismiss Amended Complaint.

A motion to dismiss "requires the Commission to determine whether the party bringing the motion prevails based solely on undisputed facts and matters of law."⁶ A complaint should be dismissed if, "taking the well-pleaded factual allegations of the complaint as true, the

⁶ D.14-03-032 at 4 (citations omitted).

defendant is entitled to prevail as a matter of law.”⁷ Here, SCE’s Motion to Dismiss Amended Complaint demonstrates that the Amended Complaint should be dismissed based on the undisputed material facts and law. Furthermore, even if the Commission assumes for dismissal purposes only that a binding PPA was formed between SCE and Complainants and SCE repudiated it, the Amended Complaint should still be dismissed because the Commission does not have jurisdiction to adjudicate contract disputes asserted by third parties against a public utility. Complainants’ request that the Commission order SCE to sign a PPA is also legally impermissible and inappropriate.

One of the benefits of filing a motion to dismiss is to avoid incurring substantial costs and resources on discovery when the defendant is entitled to prevail as a matter of law. In this case, SCE intends to continue its review and production of the documents it has agreed to produce before a ruling on SCE’s Motion to Dismiss Amended Complaint. However, if the Commission dismisses the Amended Complaint, Complainants’ Motion to Compel will be moot and SCE’s customers will save the significant costs of completing the production requested by Complainants. SCE and its customers should not bear the burden of producing a vast amount of documents for a case that will ultimately be dismissed, particularly when Complainants’ data requests seek documents that are not relevant to this proceeding or reasonably calculated to lead to the discovery of admissible evidence and are overly broad and unduly burdensome as detailed in Sections III.A and III.B below. Moreover, in deciding SCE’s Motion to Dismiss Amended Complaint, the Commission may ultimately determine that it does not have jurisdiction over this case. For all these reasons, the Commission should rule on Complainants’ Motion to Compel only after its decision on SCE’s Motion to Dismiss Amended Complaint.

⁷ D.12-03-037 at 7 (quoting D.99-11-023).

III.

THE COMMISSION SHOULD DENY COMPLAINANTS' MOTION TO COMPEL

Rule 10.1 of the Commission's Rules of Practice and Procedure provides that "any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter is either itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." Thus, "[t]he standard for deciding a motion to compel is whether the information sought is (1) privileged, (2) relevant to the subject of the proceeding, and (3) admissible as evidence or appears reasonably calculated to lead to the discovery of admissible evidence. A motion will be denied if the burden, expense, or intrusiveness of the discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence."⁸

Complainants' Motion to Compel should be denied. As explained below, Complainants are seeking to compel the production of documents that are not relevant to this proceeding and not admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence. Further, to the extent there is any likelihood that the documents sought by Complainants have any relevance to this matter, the burden and expense of complying with their data requests clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

⁸ Administrative Law Judge's Ruling Granting in Part and Denying in Part the Motion to Compel Filed by The Utility Reform Network, A.05-12-002 and I.06-03-003, at 3 (April 18, 2006).

A. Complainants' Data Requests Seek Documents That Are Not Relevant to This Proceeding and Not Admissible in Evidence or Reasonably Calculated to Lead to the Discovery of Admissible Evidence

As provided in the Scoping Memo and Ruling of Assigned Commissioner, if the Amended Complaint is not dismissed there are four discrete issues to be determined in this proceeding – do the facts and law support a finding that: (1) SCE repudiated the alleged PPA in bad faith; (2) SCE failed to act in good faith in its dealings with Complainants in connection with the 2014 RPS solicitation; (3) SCE violated the Procurement Protocol by rejecting Complainants' bid based on a comparison to bids received in the 2015 RPS solicitation; and (4) SCE failed to comply with the Procurement Protocol in violation of D.14-11-042.⁹ The only other issue to be determined is whether the law supports the relief requested by Complainants in the event the Commission finds SCE in violation of the laws set forth in the Amended Complaint.¹⁰

Accordingly, the issues to be determined in this proceeding involve SCE's conduct and dealings with Complainants and the Ocotillo Wells Project in connection with the 2014 RPS solicitation. SCE has already agreed to produce the non-privileged documents that are relevant to these issues and admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence. Subject to the designation of appropriate non-market participant Reviewing Representatives, confirmation of creation of an ethics wall, and execution of an appropriate Non-Disclosure Agreement with respect to market sensitive information,¹¹ SCE has agreed to produce any non-privileged documents relating to Complainants and the Ocotillo Wells

⁹ See Scoping Memo and Ruling of Assigned Commissioner at 4 (March 29, 2017).

¹⁰ See *id.*

¹¹ Consistent with the Commission's confidentiality rules, SCE has conditioned the production of all market sensitive information to Complainants on designation of appropriate non-market participant Reviewing Representatives, confirmation of creation of an ethics wall, and execution of an appropriate Non-Disclosure Agreement. Thus, this requirement applies to all of the market sensitive information that SCE has agreed to produce.

Project for the relevant time period included in Complainants' Motion to Compel (i.e., December 18, 2014 through May 4, 2016).¹² SCE has also agreed to provide all communications between SCE and shortlisted bidders in the 2014 RPS solicitation from shortlisting through the completion of contract negotiations.¹³ Additionally, SCE has agreed to produce summaries of the shortlisted proposals in both SCE's 2014 and 2015 RPS solicitations, including pricing and valuation results, and stipulate to where the Ocotillo Wells Project fell in comparison to those proposals.¹⁴

However, Complainants are seeking to compel SCE to produce:

- Internal SCE communications between and among SCE employees who participated in the 2014 and 2015 RPS solicitations relating to those solicitations, dating from December 18, 2014 (the date on which SCE made public its request for proposals in connection with the 2014 RPS solicitation) to May 4, 2016 (the date that Complainants allege SCE notified Complainants that SCE was repudiating the alleged PPA between SCE and Complainants);
- Communications between SCE and bidders in the 2014 and 2015 RPS solicitations relating to those solicitations, dating from December 18, 2014 to May 4, 2016;
- Communications between SCE and Commission Staff, the Procurement Review Group, and the Independent Evaluator relating to the 2014 and 2015 RPS solicitations dating from December 18, 2014 to May 4, 2016; and
- Any non-confidential documents responsive to any of Complainants' data requests.¹⁵

¹² See Motion to Compel, Exhibit G at 3-53.

¹³ See *id.*, Exhibit L at 1.

¹⁴ See *id.*, Exhibit G at 4-6, 11-16, 18-20, 26-28, 32-38, 40-43.

¹⁵ See *id.* at 3-4.

Despite Complainants' assertion that they have sought to limit the categories of information they are seeking to the relevant time period and the data requests they view as most essential to the prosecution of their Amended Complaint,¹⁶ the last category above is not limited to the relevant time period (i.e., December 18, 2014 through May 4, 2016) applicable to the other requests in Complainants' Motion to Compel and appears to include all non-confidential documents responsive to any of their data requests, including:

- Provide all COMMUNICATIONS between and among the SCE employees identified in Data Request No. 1 RELATING TO the 2014 RPS SOLICITATION (i.e., all communications between and among all SCE employees that worked on the 2014 RPS solicitation).
- Provide all COMMUNICATIONS with the CPUC RELATING TO the 2014 RPS SOLICITATION.
- Identify all bids SCE received in connection with the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO each bid identified in Data Request No. 4.
- Provide all COMMUNICATIONS RELATING TO each bid identified in Data Request No. 4.
- Provide all COMMUNICATIONS with the PROCUREMENT REVIEW GROUP RELATING TO the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO the PROCUREMENT REVIEW GROUP'S review of bids SCE received in connection with the 2014 RPS SOLICITATION.
- Provide all COMMUNICATIONS with the INDEPENDENT EVALUATOR RELATING TO the 2014 RPS SOLICITATION.

¹⁶ See *id.* at 13 n.32.

- Provide all DOCUMENTS RELATING TO the INDEPENDENT EVALUATOR's review of bids SCE received in connection with the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's ranking of bids SCE received in connection with the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's evaluation of bids SCE received in connection with the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's use of least-cost best-fit principles in analyzing bids SCE received in connection with the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's quantitative assessment of bids SCE received in connection with the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO any market valuation analysis performed by SCE RELATING TO the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO any market valuation analysis performed by SCE RELATING TO any individual bid SCE received in connection with the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's calculation of its RENEWABLE NET SHORT for purposes of the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's calculation of its expected loads for purposes of the 2014 RPS SOLICITATION.
- Provide SCE's short list, and any revisions thereto, for the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's short list, and any revisions thereto, for the 2014 RPS SOLICITATION.
- Provide all COMMUNICATIONS RELATING TO SCE's short list, and any revisions thereto, for the 2014 RPS SOLICITATION.

- Provide all COMMUNICATIONS with the Imperial Irrigation District RELATING TO the 2014 RPS SOLICITATION.
- Identify all advice letters SCE has filed with the CPUC RELATING TO the 2014 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO each advice letter identified in Data Request No. 23.
- Provide all COMMUNICATIONS RELATING TO each advice letter identified in Data Request No. 23.
- Provide all COMMUNICATIONS between and among the SCE employees identified in Data Request No. 26 RELATING TO the 2015 RPS SOLICITATION (i.e., all communications between and among all SCE employees that worked on the 2015 RPS solicitation).
- Provide all COMMUNICATIONS with the CPUC RELATING TO the 2015 RPS SOLICITATION.
- Identify all bids SCE received in connection with the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO each bid identified in Data Request No. 29.
- Provide all COMMUNICATIONS RELATING TO each bid identified in Data Request No. 29.
- Provide all COMMUNICATIONS with the PROCUREMENT REVIEW GROUP RELATING TO the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO the PROCUREMENT REVIEW GROUP'S review of bids SCE received in connection with the 2015 RPS SOLICITATION.
- Provide all COMMUNICATIONS with the INDEPENDENT EVALUATOR RELATING TO the 2015 RPS SOLICITATION.

- Provide all DOCUMENTS RELATING TO the INDEPENDENT EVALUATOR's review of bids SCE received in connection with the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's ranking of bids SCE received in connection with the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's evaluation of bids SCE received in connection with the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's use of least-cost best-fit principles in analyzing bids SCE received in connection with the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's quantitative assessment of bids SCE received in connection with the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO any market valuation analysis performed by SCE RELATING TO the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO any market valuation analysis performed by SCE RELATING TO any individual bid SCE received in connection with the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's calculation of its RENEWABLE NET SHORT for purposes of the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO SCE's calculation of its expected loads for purposes of the 2015 RPS SOLICITATION.
- Provide SCE's short list, and any revisions thereto, for the 2015 RPS SOLICITATION.
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- Provide all COMMUNICATIONS with the Imperial Irrigation District RELATING TO the 2015 RPS SOLICITATION.
- Identify all advice letters SCE has filed with the CPUC RELATING TO the 2015 RPS SOLICITATION.
- Provide all DOCUMENTS RELATING TO each advice letter identified in Data Request No. 48.
- Provide all COMMUNICATIONS RELATING TO each advice letter identified in Data Request No. 48.
- Provide all DOCUMENTS RELATING TO Advice Letter 3209-E.
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- Provide all DOCUMENTS RELATING TO Advice Letter 3498-E.
- Provide all COMMUNICATIONS RELATING TO Advice Letter 3498-E.
- Provide all DOCUMENTS RELATING TO CPUC Resolution E-4726
- Provide all COMMUNICATIONS RELATING TO CPUC Resolution E-4726.¹⁷

Complainants are asking for any and all documents with any relation to the 2014 or 2015 RPS solicitation, no matter how irrelevant to their claims. For example, a total of 67 different SCE employees worked on either SCE's 2014 or 2015 RPS solicitation.¹⁸ Complainants are asking for all communications between and among these 67 employees relating to the 2014 and 2015 RPS solicitations during the relevant time period (and apparently all non-confidential communications relating to the 2014 and 2015 RPS solicitations during any time period). However, many of these employees had nothing to do with SCE's dealings with Complainants or the Ocotillo Wells Project and communications between and among all 67 employees that worked on both solicitations will include many topics that are totally irrelevant to this proceeding

¹⁷ See *id.*, Exhibit A at 3-6.

¹⁸ See Declaration of Daniel L. Walker ("Walker Declaration") at ¶¶ 2-3, Exhibits A-B. The Walker Declaration is attached as Appendix A to this response.

such as preparing for the launch of the 2015 RPS solicitation, dealing with technical and logistical issues in both solicitations, and filing advice letters for executed contracts.

Complainants argue that “[b]y providing a basis for comparing SCE’s communications with Complainants against its communications with other bidders, the communications that Complainants now seek will shed light on the consistency of SCE’s treatment of bidders, and on SCE’s motives for repudiating the PPA entered into by Complainants and SCE.”¹⁹ However, SCE has already agreed to produce the communications that relate to Complainants or the Ocotillo Wells Project and communications between SCE and shortlisted bidders in the 2014 RPS solicitation from shortlisting through the completion of contract negotiations. Complainants have not established that every internal communication with any relation to the 2014 or 2015 RPS solicitation is relevant to their case and admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence. The same is true with respect to all communications between SCE and Commission Staff, the Procurement Review Group, and the Independent Evaluator relating to the 2014 and 2015 RPS solicitations.

Indeed, Complainants did not even participate in the 2015 RPS solicitation so the only relevance 2015 RPS solicitation information has to the issues to be determined in this proceeding is whether SCE compared Complainants’ bid to the 2015 RPS solicitation bids, which SCE has admitted that it did,²⁰ and where the Ocotillo Wells Project fell in comparison to the 2015 RPS solicitation bids, which SCE has agreed to stipulate to as noted above.

Similarly, Complainants seek all communications between SCE and all bidders in the 2014 and 2015 RPS solicitations relating to those solicitations during the relevant time period. In the 2014 RPS solicitation, SCE valued 382 unique proposals involving 77 distinct projects

¹⁹ Motion to Compel at 16.

²⁰ See SCE’s Answer to Amended Complaint at ¶ 30, 35 (February 14, 2017). SCE originally filed its Answer to Complaint on December 15, 2016 but filed its Answer to Amended Complaint on February 14, 2017 to redact less information and update certain information to refer to the Amended Complaint and other amended documents.

from 36 bidders.²¹ In the 2015 RPS solicitation, SCE valued 279 unique proposals involving 94 distinct projects from 43 bidders.²² Most of these proposals and projects were not shortlisted and SCE never negotiated with them; however, Complainants are seeking all communications with these bidders, which includes all of the information these bidders submitted with their proposals in the solicitation. In addition to being highly confidential, this information has no relevance to this proceeding. Complainants offer no explanation why communications with all bidders in the 2014 and 2015 RPS solicitation, including all bid information, is relevant to their claims. As noted above, SCE has agreed to produce communications between SCE and shortlisted bidders in the 2014 RPS solicitation from shortlisting through the completion of contract negotiations so that Complainants can compare SCE's negotiations with Complainants to SCE's negotiations with other shortlisted bidders in the 2014 RPS solicitation. However, all bid information, including bid information and communications with bidders that were never shortlisted and SCE never negotiated with is simply not relevant.

Finally, the Commission should also reject Complainants' request to compel production of all non-confidential documents responsive to any of their data requests. This request is inconsistent with Complainants' other requests in their Motion to Compel because it is not limited to the relevant time period. Moreover, this request includes a vast array of irrelevant information such as all documents and communications relating to every advice letter filed in connection with the 2014 and 2015 RPS solicitations. Complainants' Motion to Compel does not offer any explanation why such information is relevant and not duplicative of their other requests.

²¹ See Walker Declaration (attached as Appendix A to this response) at ¶ 4.

²² See *id.* at ¶ 5.

B. The Burden and Expense of Complainants' Data Requests Clearly Outweighs the Likelihood That the Information Sought Will Lead to the Discovery of Admissible Evidence

Even if there was a small likelihood that some of the 2014 and 2015 RPS solicitation documents sought by Complainants would lead to the discovery of admissible evidence, Complainants' requests are so overbroad that the burden and expense of complying with the requests clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

Complainants assert that SCE has not provided sufficient evidence that Complainants' data requests are unduly burdensome.²³ Complainants cite a ruling on a motion to compel filed by The Utility Reform Network ("TURN") where Pacific Gas and Electric Company ("PG&E") demonstrated that responding to TURN's data request would be unduly burdensome, "as it would require PG&E to analyze at least 4,000 invoices from outside law firms and consultants. According to PG&E, such an effort would take two people working full time approximately one month."²⁴ In that case, the Commission agreed with PG&E that the request was unduly burdensome and allowed PG&E to limit its response.²⁵

The burden and cost of producing the documents requested by Complainants would be significantly higher in this case than it was in the case cited by Complainants. Based on an initial search of documents from 11 SCE employees who were involved in the consideration of, and/or negotiations with, the Ocotillo Wells Project in the 2014 RPS solicitation and other relevant databases, there are 183,851 documents that may be responsive to the categories of documents that Complainants seek to compel.²⁶ SCE estimates that it would take approximately

²³ See Motion to Compel at 17-18.

²⁴ Administrative Law Judge's Ruling Granting in Part and Denying in Part the Motion to Compel Filed by The Utility Reform Network, A.05-12-002 and I.06-03-003, at 5 (April 18, 2006).

²⁵ See *id.*

²⁶ See Declaration of Michael K. Mar ("Mar Declaration") at ¶ 3. The Mar Declaration is attached as Appendix B to this response.

3,364 hours for review of these documents and the time associated with project management and quality control procedures, at a cost of approximately \$167,567.²⁷

These numbers substantially understate the time and cost of producing all of the documents that Complainants request in their Motion to Compel. The initial search run by SCE was based on the 11 SCE employees and databases most likely to have documents related to Complainants and the Ocotillo Wells Project. The search did not include documents from other SCE employees that worked on the 2014 and 2015 RPS solicitations or all communications with bidders other than Complainants in the 2014 and 2015 RPS solicitations.²⁸ Searching documents from all 67 employees who worked on the 2014 and 2015 RPS solicitations and including communications with all bidders from the 2014 and 2015 RPS solicitations (where the 2014 RPS solicitation had 382 unique proposals, 77 distinct projects, and 36 bidders and the 2015 RPS solicitation had 279 unique proposals, 94 distinct projects, and 43 bidders)²⁹ will substantially increase the number of documents that need to be reviewed, the hours needed to complete that work, and the cost of such production to SCE's customers.

The burden and expense of producing the documents requested by Complainants clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence, particularly given that much of the information sought by Complainants is not relevant to this proceeding or admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence as discussed in Section III.A.

²⁷ See *id.* at ¶ 4.

²⁸ See *id.* at ¶ 3.

²⁹ See Walker Declaration (attached as Appendix A to this response) at ¶¶ 2-5, Exhibits A-B.

IV.

**AS ESTABLISHED UNDER THE COMMISSION'S LONG-STANDING
CONFIDENTIALITY RULES, THE DISCLOSURE OF MARKET SENSITIVE
INFORMATION SHOULD BE LIMITED TO APPROPRIATE NON-MARKET
PARTICIPANT REVIEWING REPRESENTATIVES**

SCE has agreed to produce relevant and non-privileged market sensitive information to Complainants through appropriate non-market participant Reviewing Representatives who meet the Commission's requirements and subject to execution of an appropriate Non-Disclosure Agreement. This is consistent with the Commission's long-standing confidentiality rules for the protection of market sensitive information. These protections are particularly important in this case because Complainants are requesting production of a large amount of highly market sensitive information, including pricing, valuation results, and contract terms and conditions from the recent 2014 and 2015 RPS solicitations. The Commission is legally obligated to protect the confidentiality of this information under Public Utilities Code Section 454.5(g) and its decisions implementing that statute.

Additionally, Complainants are the owners of the Ocotillo Wells Project and are engaged in efforts to sell the output of the project in the wholesale energy market. Thus, Complainants are clearly a market participant who cannot access market sensitive information, except through appropriate non-market participant Reviewing Representatives. Complainants have proposed that Mr. Haggart and Mr. Karp be Reviewing Representatives for market sensitive information. However, Mr. Haggart is the Chief Executive Officer of Complainants, and thus a market participant. Moreover, while Mr. Karp is outside counsel for Complainants, he represents other market participants in wholesale energy transactions. Accordingly, neither Mr. Haggart nor Mr. Karp meet the requirements to be Reviewing Representatives. The Commission should deny Complainants' request that the Commission compel SCE to provide Mr. Haggart and Mr. Karp with market sensitive information and limit the production of market sensitive information to

appropriate non-market participant Reviewing Representatives that meet the Commission's requirements.

A. The Commission Has Adopted Well-Established Confidentiality Rules to Fulfill Its Legal Obligation to Protect the Confidentiality of Market Sensitive Information

The Legislature required the Commission to adopt appropriate procedures to ensure that investor-owned utilities' ("IOUs") market sensitive electric procurement-related information is protected from public disclosure. Specifically, Public Utilities Code Section 454.5(g) states:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

In Rulemaking ("R.") 05-06-040, the Commission completed a detailed and comprehensive review of the confidentiality rules for electric procurement data, including the RPS-related procurement information sought in Complainants' Motion to Compel. In accordance with Senate Bill ("SB") 1488,³⁰ the Commission instituted R.05-06-040 to examine its practices regarding confidential information to ensure meaningful public participation in its proceedings and open decision-making, while taking account of its obligations to protect the confidentiality of certain information.³¹

As Complainants note, SB 1488 expresses a preference for open decision making, a policy the Commission embraces.³² However, the Commission recognized that SB 1488 "did not repeal the existing confidentiality provisions that govern our activities."³³ Indeed, the

³⁰ See SB 1488 (September 22, 2004).

³¹ See Order Instituting Rulemaking, R.05-06-040, at 1 (June 30, 2005).

³² See Motion to Compel at 22-23.

³³ D.06-06-066, as modified by D.07-05-032, at 2.

Commission stated that “the statutes governing our treatment of confidentiality ... recognize that in some instances (such as ‘market sensitive’ information relating to electric procurement that passes a materiality standard), confidential treatment of data may not only be allowed, but may be required in order to carry out our statutory and constitutional duties.”³⁴ The Commission also acknowledged that “[c]onfidentiality protections are essential to avoid a repetition of electricity market manipulation” and that “[i]n a market such as the IOU procurement bidding process, one-sided release of information will result in higher, not lower, prices for ratepayers in most situations.”³⁵ As such, the Commission sought “to strike a balance between the rights of the public to open decision making, particularly with regard to the expenditure of ratepayer money, and the realization of market efficiencies through information flow on the one hand, and the prevention of market manipulation on the other.”³⁶

After wide-ranging debate and deliberations, in D.06-06-066, the Commission resolved a critical issue regarding the scope of the confidentiality protection required by Public Utilities Code Section 454.5(g). The Commission defined “market sensitive information” as procurement-related information that has “the potential to materially affect the market price for electricity.”³⁷ The Commission also adopted an IOU Matrix identifying whether various RPS-related data and other procurement information is entitled to confidential treatment because it is market sensitive, and determining how long such data will be protected from public disclosure.³⁸ In most cases, the Commission instituted a window of confidentiality that protects data for three years into the future, and one year in the past.³⁹

³⁴ *Id.* at 2-3.

³⁵ *Id.* at 4, 76 (Finding of Fact 2).

³⁶ *Id.* at 18.

³⁷ *Id.* at 78-79 (Conclusion of Law 12).

³⁸ *See* D.06-06-066, Appendix 1, as modified by D.08-04-023, Appendix C (“IOU Matrix”). Additionally, the Commission adopted an Electric Service Provider Matrix. *See* D.06-06-066, Appendix 2, as modified by D.08-04-023, Appendix B (“ESP Matrix”).

³⁹ *See* D.06-06-066, as modified by D.07-05-032, at 81 (Ordering Paragraph 1).

Based on this complete evidentiary record, the Commission concluded that a broad range of RPS-related information is market sensitive and entitled to confidential treatment. For example, other than contract summary information, the Commission found that RPS PPAs, including price and other terms, are confidential for three years from the date deliveries begin, or until one year following expiration, whichever comes first.⁴⁰ Similarly, the Commission held that score sheets, analyses, and evaluations of proposed RPS projects are confidential for three years.⁴¹ Bid information (which applies to RPS and non-RPS bid data) is confidential except for total number of projects and megawatts bid by resource type, which is public after final contracts are submitted to the Commission for approval.⁴² Likewise, other than evaluation guidelines, specific quantitative analysis involved in scoring and evaluation of participating bids (which applies to RPS and non-RPS bids) is confidential for three years after winning bidders selected.⁴³ Forecasted RPS procurement need (which is based on a percentage of an IOU's or other retail seller's bundled retail sales) is also confidential for the front three years of the forecast.⁴⁴

As further discussed in Section IV.B below, Complainants are seeking to compel production of a substantial number of market sensitive documents that fall within the categories of market sensitive information set forth in the IOU Matrix. Accordingly, the confidentiality of this market sensitive information must be protected by the Commission.

The Commission held that non-market participants may have access to market sensitive information provided these parties comply with Commission directives for protecting the confidentiality of such information through a Protective Order or Non-Disclosure Agreement.⁴⁵

⁴⁰ See IOU Matrix, Sections VII.F-G. The Commission has interpreted the reference to "confidential for three years" in these Matrix sections to mean three years from when the contract states deliveries begin. See, e.g., Resolution E-4815 at 14-15; Resolution E-4780 at 14; Resolution E-4774 at 14.

⁴¹ See IOU Matrix, Section VII.H.

⁴² See *id.*, Section VIII.A.

⁴³ See *id.*, Section VIII.B.

⁴⁴ See *id.*, Section V.C

⁴⁵ See D.06-06-066, as modified by D.07-05-032, at 84 (Ordering Paragraph 11); D.06-12-30 at 52 (Ordering Paragraph 3).

However, market participants may be denied access to market sensitive information covered by Public Utilities Code Section 454.5(g) and D.06-06-066.⁴⁶ Market participants may only obtain access to market sensitive information through non-market participant Reviewing Representatives who meet specific requirements set forth in Commission decisions and who are subject to a Protective Order or Non-Disclosure Agreement.⁴⁷ As addressed in Section IV.C below, Complainants are market participants and neither Mr. Haggart nor Mr. Karp meet the requirements to be non-market participant Reviewing Representatives pursuant to Commission precedent. Therefore, they should be denied access to market sensitive information and disclosure of market sensitive information in this proceeding should be limited to appropriate non-market participant Reviewing Representatives that meet Commission requirements.

B. Complainants Are Requesting Production of a Large Amount of Highly Market Sensitive Information

Complainants argue that “most of the information sought by Complainants’ Requests is likely not market-sensitive.”⁴⁸ Complainants are incorrect. SCE does not claim that all of the information Complainants are requesting is market sensitive. As discussed above, SCE has agreed to produce this non-market sensitive information to the extent it is not privileged and it is relevant to the subject of this proceeding and admissible as evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of the discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. However, Complainants are requesting production of a large amount of highly market sensitive information. In addition to being protected under Public Utilities Code Section 454.5(g) and D.06-06-066, Complainants also seek production of third party bidders’ information that is protected under Non-Disclosure Agreements between

⁴⁶ See D.06-12-030 at 52 (Ordering Paragraph 2).

⁴⁷ See D.06-12-030, as modified by D.11-07-028, at 45-46 (Ordering Paragraph 5); D.11-07-028 at 46 (Ordering Paragraph 4).

⁴⁸ Motion to Compel at 20, 23-25.

SCE and bidders in the 2014 and 2015 RPS solicitations. This market sensitive information must be protected from disclosure to market participants.

In D.06-06-066, the Commission stated that “[w]here a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. Once it does so, it is entitled to the protection the Matrix provides for that category.”⁴⁹ In particular, the party seeking confidentiality protection for data contained in the Matrix must show: (1) that the material constitutes a particular type of data listed in the Matrix; (2) the category or categories in the Matrix to which the data correspond; (3) that the party is complying with the limitations on confidentiality specified in the Matrix for that type of data; (4) that the information is not already public; and (5) that the data cannot be aggregated, redacted, summarized, masked, or otherwise protected in a way that allows partial disclosure.⁵⁰

As shown in the Walker Declaration, SCE has met this burden.⁵¹ Among other things, Complainants are seeking production of confidential and market sensitive bid and shortlist information from the 2014 and 2015 RPS solicitations; confidential and market sensitive specific quantitative analysis involved in scoring and evaluation of participating bids in the 2014 and 2015 RPS solicitations; confidential and market sensitive score sheets, analyses, and evaluations of proposed RPS projects from the 2014 and 2015 RPS solicitations; confidential and market sensitive contract terms and conditions from the 2014 RPS solicitation; and confidential and market sensitive information on SCE’s forecasted RPS procurement need.⁵² These categories of information are protected under the IOU Matrix, Sections VIII.A, VIII.B, VII.H, VII.G, and V.C and SCE is complying with the limitations on confidentiality specified in the Matrix for this

⁴⁹ D.06-06-066, as modified by D.07-05-032, at 81 (Ordering Paragraph 2).

⁵⁰ *See id.*; D.08-04-023 at 21-24.

⁵¹ *See* Walker Declaration (attached as Appendix A to this response) at ¶¶ 9-12.

⁵² *See id.* at ¶ 9.

information.⁵³ SCE has also met the other requirements for protecting market sensitive information.⁵⁴

Furthermore, in addition to being market sensitive information protected under the Matrix, Complainants are also requesting production of the information of third party bidders in the 2014 and 2015 RPS solicitations who are competitors of Complainants. Specifically, Complainants' request for communications between SCE and bidders in the 2014 and 2015 RPS solicitations relating to those solicitations, dating from December 18, 2014 to May 4, 2016, includes all of the bid information submitted by bidders who bid in those solicitations and information exchanged with SCE during negotiations with shortlisted bidders (e.g., price, other terms of different proposals, site information, descriptions of projects, generation profiles, interconnection information, project viability calculators). Similarly, Complainants' requests for internal SCE communications between and among SCE employees who participated in the 2014 and 2015 RPS solicitations relating to those solicitations and communications between SCE and Commission Staff, the Procurement Review Group, and the Independent Evaluator relating to the 2014 and 2015 RPS solicitations during the same time period will also include third party bidders' information used in the consideration and evaluation of those bidders' projects.

Bidders who submitted proposals in the 2014 and 2015 RPS solicitations were required to sign Non-Disclosure Agreements with SCE.⁵⁵ These Non-Disclosure Agreements obligate both SCE and the bidders to keep confidential all communications between the parties as part of, or arising out of, bidders' proposals submitted in those solicitations.⁵⁶ These Non-Disclosure Agreements include exceptions that allow disclosure of confidential information, including as required by law, as the party may be required to disclose to duly authorized governmental or regulatory agencies, including the Commission or any division thereof, in order to demonstrate

⁵³ See *id.* at ¶¶ 9-10.

⁵⁴ See *id.* at ¶¶ 11-12.

⁵⁵ See *id.* at ¶¶ 6-8, Exhibits C-E.

⁵⁶ See *id.*, Exhibit C at 1-2; Exhibit D at 1-2; Exhibit E at 1-2.

the reasonableness of its actions, or in the case of the 2015 RPS solicitation Non-Disclosure Agreement, to comply with any discovery or data request.⁵⁷ Notwithstanding these exceptions, however, SCE notes that third party bidders are unlikely to want their confidential and proprietary information disclosed to competitors, particularly without the protections of the Commission's requirement that market participants use non-market participant Reviewing Representatives to view market sensitive information. Although Complainants state that they have no plans to develop, own, or operate any wholesale energy projects other than the Ocotillo Wells Project they continue to own that project and concede that they are involved in the wholesale energy markets in their efforts to sell the output of the Ocotillo Wells project or that project itself.⁵⁸ Thus, Complainants may compete with other bidders in future efforts to sell the output of the Ocotillo Wells project or the project itself, and could use those third party bidders' confidential and proprietary information to put such projects at a disadvantage.

C. Mr. Haggart and Mr. Karp Are Market Participants or Represent Market Participants and Do Not Meet the Requirements to Be Reviewing Representatives

Under the Commission's confidentiality rules, non-market participants may have access to market sensitive information provided these parties comply with Commission directives for protecting the confidentiality of such information through a Protective Order or Non-Disclosure Agreement.⁵⁹ However, market participants may be denied access to market sensitive information covered by Public Utilities Code Section 454.5(g) and D.06-06-066.⁶⁰

In D.06-12-030, the Commission defined a "market participant" as follows:

- 1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing

⁵⁷ See *id.*, Exhibit C at 3-4; Exhibit D at 4; Exhibit E at 3-4.

⁵⁸ See Declaration of Gregg Haggart ("Haggart Declaration") at ¶¶ 1-4.

⁵⁹ See D.06-06-066, as modified by D.07-05-032, at 84 (Ordering Paragraph 11); D.06-12-30 at 52 (Ordering Paragraph 3).

⁶⁰ See D.06-12-030 at 52 (Ordering Paragraph 2).

of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below....

- 3) A person or entity that meets the criteria of 1) above is nonetheless not a market participant for purpose of access to market sensitive data unless the person/entity seeking access to market sensitive information has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:
- a) the person or entity's participation in the California electricity market is de minimis in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06 06-064 § 3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a de minimis amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or
 - b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, i.e., where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or
 - c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for market sensitive information.⁶¹

Complainants are market participants as defined under D.06-12-030. Specifically, Complainants are an entity “that engages in the wholesale purchase, sale or marketing of energy or capacity” and/or “bidding on utility procurement solicitations” because Complainants are marketing the sale of energy and capacity from the Ocotillo Wells Project and bid that project into SCE’s 2014 RPS solicitation. Complainants concede they own one wholesale energy project – the Ocotillo Wells Project – and that they engage in efforts to sell the output of the

⁶¹ *Id.* at 50-52 (Ordering Paragraph 1).

Ocotillo Wells Project or that project itself.⁶² Thus, Complainants meet the definition of a market participant under D.06-12-030.

Complainants argue that they are not a market participant because they only own one wholesale energy project, and currently have no plans to develop, own, or operate any other wholesale energy projects, or otherwise to participate in wholesale energy markets outside of efforts to sell the output of the Ocotillo Wells Project or the project itself and engagement in this proceeding.⁶³ Complainants assert that this “limited participation in the wholesale energy markets” does not fall within the definition of a market participant under D.06-12-030 because the information sought by Complainants could not be used by Complainants to raise prices above competitive levels.⁶⁴ Complainants are incorrect.

First, the Commission did exclude entities from the definition of market participant when their participation in the California electricity market is so de minimis in nature that they have no potential to materially affect the price paid or received for electricity.⁶⁵ However, the Commission defined de minimis participation in the California electricity market as “less than 1 MW of capacity per year, and/or an equivalent of energy,” having “no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, *i.e.*, where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price,” and/or “the person or entity is a cogenerator that consumes all of the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for market sensitive information.”⁶⁶ Complainants do not meet any of these definitions of de minimis. Indeed, Complainants’ participation in the wholesale energy market is not de minimis as they are marketing the output

⁶² See Haggart Declaration at ¶ 1, 3-4.

⁶³ See Motion to Compel at 26-27.

⁶⁴ See *id.*

⁶⁵ See D.06-12-030 at 51-52 (Ordering Paragraph 1).

⁶⁶ *Id.*

of the 50 MW Ocotillo Wells Project and have the ability to dictate the price of the electricity they sell from the project.

Second, Complainants could use the market sensitive information they are seeking in this proceeding to materially affect the price paid or received for electricity. Complainants are seeking production of highly market sensitive information from SCE's 2014 and 2015 RPS solicitations, including the prices bid by other bidders, the prices of shortlisted projects, and the prices of contracts SCE executed as a result of those solicitations. Complainants could use this information to adjust the pricing it offers for the Ocotillo Wells Project, and thus materially affect the price paid and/or received for the electricity, to the detriment of customers. Even if Complainants are not currently marketing the output of the Ocotillo Wells Project at this time, they will presumably do so if they do not succeed in their efforts to get the Commission to order SCE to sign a PPA with the project in this proceeding. Accordingly, Complainants clearly have the ability to use the market sensitive information they are seeking in this proceeding to materially affect the price paid or received for electricity if in possession of such information.

Complainants are a market participant and therefore cannot directly obtain access to market sensitive information.⁶⁷ Moreover, Mr. Haggart is the Chief Executive Officer of Complainants.⁶⁸ The definition of market participant in D.06-12-030 includes “[a] person or entity, *or an employee of an entity*, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters...”⁶⁹ As the Chief Executive Officer of Complainants, an entity that engages in the wholesale purchase, sale or marketing of energy or capacity and/or bidding on utility procurement solicitations, Mr. Haggart is an employee of a market participant and thus a market participant who cannot gain access to market sensitive information.

⁶⁷ See D.06-12-030 at 52 (Ordering Paragraph 2).

⁶⁸ See Haggart Declaration at 1.

⁶⁹ D.06-12-030 at 50 (Ordering Paragraph 1) (emphasis added).

Market participants may obtain access to market sensitive information through non-market participant Reviewing Representatives who meet specific requirements set forth in Commission decisions and who are subject to a Protective Order or Non-Disclosure Agreement.⁷⁰ “Reviewing Representatives may not be an employee of a market participant.”⁷¹ Therefore, Mr. Haggart does not qualify as a Reviewing Representative because he is the Chief Executive Officer of Complainants.

Market participants may designate outside experts, consultants or attorneys as Reviewing Representatives provided they meet the following criteria:

- Reviewing Representatives may not currently be engaged in (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) engagement in such a transaction), (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction), or (c) knowingly providing electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction or consulting).
- Reviewing Representatives may not be an employee of a market participant. If the market participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a reviewing representative under our confidentiality rules must be separated by an

⁷⁰ See D.06-12-030, as modified by D.11-07-028, at 45-46 (Ordering Paragraph 5); D.11-07-028 at 46 (Ordering Paragraph 4).

⁷¹ D.06-12-030, as modified by D.11-07-028, at 45 (Ordering Paragraph 5).

ethics wall (of the kind used by law firms to manage conflict-of-interest situations among different clients) from those in the firm who are involved in wholesale commercial dealings.⁷²

Mr. Karp is an outside attorney. However, while Mr. Karp may not directly be a market participant, he concedes that he is “engaged by clients on an ongoing basis to advise regarding wholesale energy transactions.”⁷³ Mr. Karp “knowingly provid[es] electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants.”⁷⁴ Therefore, Mr. Karp does not qualify to be a Reviewing Representative.⁷⁵

Other attorneys at Mr. Karp’s firm may qualify as Reviewing Representatives provided that “the attorney, consultant, or expert serving as a reviewing representative under our confidentiality rules must be separated by an ethics wall (of the kind used by law firms to manage conflict-of-interest situations among different clients) from those in the firm who are involved in wholesale commercial dealings.”⁷⁶ In D.11-07-028, the Commission held that “[i]n circumstances where a Reviewing Representative is an employee or member of a firm that is also advising clients on energy marketing at wholesale and related services, the firm is to establish an ethics wall that incorporates the following standards:

- When reviewing or discussing any market sensitive data, the Reviewing Representative and those working with him/her shall employ all reasonable steps

⁷² *Id.*

⁷³ Declaration of Joseph M. Karp at ¶ 4.

⁷⁴ D.06-12-030, as modified by D.11-07-028, at 45 (Ordering Paragraph 5).

⁷⁵ *See* Administrative Law Judge’s Ruling Denying Motion to Provide Market-Sensitive Information to Certain Attorneys of Market Participant, A.07-12-021, at 3-5 (May 6, 2008) (denying motion to compel PG&E to provide market sensitive information to attorneys who were primary representatives of market participants).

⁷⁶ D.06-12-030, as modified by D.11-07-028, at 45 (Ordering Paragraph 5).

to ensure a physical separation from firm personnel who are not authorized Reviewing Representatives;

- The Reviewing Representative shall be responsible for informing all firm personnel about the existence and terms of the Commission's confidentiality rules, and in particular the prohibition against sharing market sensitive information with market participants; and
- The Reviewing Representative shall take all reasonable steps necessary to ensure that market sensitive information and files, including electronic files, are not accessible to firm personnel who are not authorized Reviewing Representatives."⁷⁷

Other attorneys at Mr. Karp's firm or other outside attorneys or consultants that do not represent market participants on wholesale energy transactions may qualify as Reviewing Representatives under the Commission's requirements. However, the only Reviewing Representatives that Complainants have proposed to use are Mr. Haggart and Mr. Karp. The Commission should reject Complainants' request that it compel SCE to produce market sensitive information to Mr. Haggart and Mr. Karp and require that Complainants use appropriate non-market participant Reviewing Representatives that comply with the Commission's requirements.

SCE also notes that while Complainants are correct that SCE has questioned how Mr. Karp could participate as counsel in this proceeding if there is an ethics wall screening him from market sensitive information, SCE is open to considering such an ethics wall. However, Complainants have not provided SCE with any information or assurance that there will be an ethics wall between Reviewing Representatives and other individuals in the firm who represent market participants on wholesale energy transactions.

⁷⁷ D.11-07-028 at 46 (Ordering Paragraph 4).

D. The Commission Should Not Create an Exception to Its Protection of Market Sensitive Information for Complainants

Complainants also ask the Commission to create a narrow exception to its requirements for Reviewing Representatives under D.11-07-028 to allow Mr. Haggart and Mr. Karp to act as Reviewing Representatives.⁷⁸ Complainants argue that this exception is necessary because “Complainants’ ability to participate fully and fairly in this proceeding would obviously be undermined if their executives and attorneys could not view relevant evidence in this proceeding.”⁷⁹

However, Complainants have not established why Mr. Haggart needs access to highly market sensitive information – including the confidential proprietary information of competitors – to participate in this proceeding. Just like other market participants in Commission proceedings, Complainants and Mr. Haggart can participate in all non-market sensitive aspects of the proceeding and access market sensitive information through appropriate Reviewing Representatives.

Moreover, there is no basis for creating an exception to the Commission’s confidentiality rules to allow Mr. Karp to act as a Reviewing Representative. Mr. Karp’s law firm has hundreds of attorneys, most of whom presumably do not represent market participants on wholesale energy transactions. Indeed, there are three attorneys listed as counsel for Complainants. Complainants have not provided SCE with any information as to whether the other two attorneys qualify as Reviewing Representatives but it appears that at least one of them, Mr. Woolner, may not represent market participants on wholesale energy transactions. There is no reason why another attorney or attorneys at Mr. Karp’s firm cannot act as a Reviewing Representative. Complainants’ apparent preference that Mr. Karp act as Reviewing Representative does not

⁷⁸ See Motion to Compel at 30-32.

⁷⁹ *Id.* at 30.

justify an exception to the confidentiality rules that undermines the protection of market sensitive information.

SCE is also concerned that exempting market participant and their attorneys from the Commission's limitations on market participants' viewing market sensitive information if they file a complaint will create a loophole that significantly weakens the protections for market sensitive information. If market participants know that they can access prices from recent solicitations by filing a complaint, it may create an incentive for market participants to file frivolous complaints to obtain market sensitive information.

V.

CONCLUSION

For all the foregoing reasons, the Commission should deny Complainants' Motion to Compel.

Respectfully submitted,

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April 17, 2017

Appendix A

**DECLARATION OF DANIEL L. WALKER IN SUPPORT OF RESPONSE OF
SCE (U 338-E) TO GILDRED BUILDING COMPANY, DBA THE GILDRED
COMPANIES AND OCOTILLO SOLAR LLC'S MOTION TO COMPEL**

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

Gildred Building Company, dba The Gildred
Companies; Ocotillo Solar LLC,

Complainants,

vs.

Southern California Edison Company (U338-E)

Defendant.

Case (C.) 16-10-021
(Filed October 21, 2016)

**DECLARATION OF DANIEL L. WALKER IN SUPPORT OF RESPONSE OF
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO GILDRED BUILDING
COMPANY, DBA THE GILDRED COMPANIES AND OCOTILLO SOLAR LLC'S
MOTION TO COMPEL**

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Dated: April 17, 2017

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

Gildred Building Company, dba The Gildred
Companies; Ocotillo Solar LLC,

Complainants,

vs.

Southern California Edison Company (U338-E)

Defendant.

Case (C.) 16-10-021
(Filed October 21, 2016)

**DECLARATION OF DANIEL L. WALKER IN SUPPORT OF RESPONSE OF
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO GILDRED BUILDING
COMPANY, DBA THE GILDRED COMPANIES AND OCOTILLO SOLAR LLC'S
MOTION TO COMPEL**

I, Daniel L. Walker, declare and state:

1. I am an Energy Contracts/Trading Specialist in the Contract Origination department at Southern California Edison Company ("SCE"). I acted as the co-lead contract originator on SCE's 2014 and 2015 Renewables Portfolio Standard ("RPS") solicitations. I have personal knowledge of the facts and representations herein and, if called upon to testify, could and would do so, except for those facts expressly stated to be based upon information and belief, and as to those matters, I believe them to be true.

2. As stated in SCE's Supplementary Response to Question 1 of Gildred Building Company, dba The Gildred Companies and Ocotillo Solar LLC's (collectively, "Complainants") First Set of Data Requests, provided on January 19, 2017, on information and belief, approximately 54 SCE employees worked on various aspects of SCE's 2014 RPS solicitation. A

true and correct copy of SCE's Supplementary Response to Question 1 of Complainants' First Set of Data Requests is attached as **Exhibit A**.

3. As stated in SCE's Supplementary Response to Question 26 of Complainants' First Set of Data Requests, provided on January 19, 2017, on information and belief, approximately 46 SCE employees worked on various aspects of SCE's 2015 RPS solicitation. A true and correct copy of SCE's Supplementary Response to Question 26 of Complainants' First Set of Data Requests is attached as **Exhibit B**. On information and belief, approximately 67 different SCE employees worked on various aspects of either SCE's 2014 RPS solicitation or SCE's 2015 RPS solicitation.

4. On information and belief, in SCE's 2014 RPS solicitation, SCE valued 382 unique proposals involving 77 distinct projects from 36 sellers. The 382 proposals valued were all deemed to be complete and conforming. There were an additional 101 unique proposals not included in the valuation because they were withdrawn, incomplete, or non-conforming. All affiliates for a parent company were counted as one seller and distinct projects are defined as having a unique site location.

5. On information and belief, in SCE's 2015 RPS solicitation, SCE valued 279 unique proposals involving 94 distinct projects from 43 sellers. The 279 proposals valued were all deemed to be complete and conforming. There were an additional 11 unique proposals not included in the valuation because they were withdrawn, incomplete, or non-conforming. All affiliates for a parent company were counted as one seller and distinct projects are defined as having a unique site location.

6. Sellers who submitted a proposal in SCE's 2014 RPS solicitation were required to enter into a Non-Disclosure Agreement with SCE. A true and correct copy of the form of that Non-Disclosure Agreement is attached as **Exhibit C**.

7. Sellers who were shortlisted in SCE's 2014 RPS solicitation entered into another Non-Disclosure Agreement with SCE. A true and correct copy of the form of that Non-Disclosure Agreement is attached as **Exhibit D**.

8. Sellers who submitted a proposal in SCE's 2015 RPS solicitation were required to enter into a Non-Disclosure Agreement with SCE. A true and correct copy of the form of that Non-Disclosure Agreement is attached as Exhibit E.

9. On information and belief, the information requested in Complainants' First Set of Data Requests which Complainants seek to compel SCE to produce by Complainants' Motion to Compel SCE to Produce Documents includes market sensitive information protected from public disclosure by California Public Utilities Commission ("Commission" or "CPUC") Decision ("D.") 06-06-066. Complainants seek to compel SCE to produce internal communications between and among SCE employees who participated in the 2014 and 2015 RPS solicitations relating to those solicitations, dating from December 18, 2014 to May 4, 2016; communications between SCE and bidders in the 2014 and 2015 RPS solicitations relating to those solicitations, dating from December 18, 2014 to May 4, 2016; and communications between SCE and Commission Staff, the Procurement Review Group, and the Independent Evaluator relating to the 2014 and 2015 RPS solicitations, dating from December 18, 2014 to May 4, 2016. On information and belief, the documents Complainants seek to compel SCE to produce include confidential and market sensitive bid and shortlist information from the 2014 and 2015 RPS solicitations; confidential and market sensitive specific quantitative analysis involved in scoring and evaluation of participating bids in the 2014 and 2015 RPS solicitations; confidential and market sensitive score sheets, analyses, and evaluations of proposed RPS projects from the 2014 and 2015 RPS solicitations; confidential and market sensitive contract terms and conditions from the 2014 RPS solicitation; and confidential and market sensitive information on SCE's forecasted RPS procurement need. Listed below are the categories on the Matrix of Allowed Confidential Treatment Investor Owned Utility ("IOU") Data ("Matrix") appended to D.06-06-066 to which these data correspond and the corresponding periods of confidentiality.

Data	Matrix Category	Period of Confidentiality
2014 and 2015 RPS solicitation bid and shortlist information	VIII.A Competitive Solicitation (Bidding) Information – Electric – Bid information	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.
Specific quantitative analysis involved in scoring and evaluation of participating bids in the 2014 and 2015 RPS solicitations	VIII.B Competitive Solicitation (Bidding) Information – Electric – Specific quantitative analysis involved in scoring and evaluation of participating bids	Evaluation guidelines public. Other information confidential for three years after winning bids selected.
Score sheets, analyses, and evaluations of proposed RPS projects from the 2014 and 2015 RPS solicitations	VII.H Bilateral Contract Terms and Conditions – Electric – Score sheets, analyses, evaluations of proposed RPS projects	Confidential for three years.
Contract terms and conditions from the 2014 RPS solicitation	VII.G Bilateral Contract Terms and Conditions – Electric – Renewable Resource Contracts under RPS program – Contracts without Supplemental Energy Payments	Contract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date. Other terms confidential for three years, or one year following expiration, whichever comes first.
Forecasted RPS procurement need for 2017, 2018, 2019, and 2020 and third compliance period (2017-2020)	V.C Load Forecast Information and Data – Electric – Load Total Energy Forecast – Bundled Customer (MWh)	Front three years of forecast data confidential.

10. I am informed and believe and thereon allege that SCE is complying with the limitations on confidentiality specified in the Matrix that pertain to the data listed in the table in paragraph 9 above.

11. I am informed and believe and thereon allege that the data in the table in paragraph 9 above cannot be aggregated, redacted, summarized, masked or otherwise protected in a manner that would allow partial disclosure of the data while still protecting confidential information because Complainants are requesting the data in its original format.

12. I am informed and believe and thereon allege that the data in the table in paragraph 9 above has never been made publicly available.

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

Executed on April 14, 2017 at Rosemead, California.

A handwritten signature in black ink, appearing to read "Daniel L. Walker", is written over a horizontal line.

Daniel L. Walker

EXHIBIT A

C.16-10-021 SCE's Supplementary Response to Complainants' First Set of Data Requests - January 19, 2017

Question 1 - SCE Employees That Worked on the 2014 RPS Solicitation

Energy Contracts

Cristina Radu	Check offers for complete submittal; negotiations
George Wiltsee	Check offers for complete submittal; negotiations
Esyah Huynh	Check offers for complete submittal
Wilson Co	Check offers for complete submittal; negotiations
Benny Wu	Check offers for complete submittal; negotiations
Erica Darplee	Co-Lead; all areas of solicitation; Advisory team
John Zoida	Check offers for complete submittal; negotiations
Laura Kuhls-Gulchrist	Check offers for complete submittal; negotiations
Gene Lee	Check offers for complete submittal; negotiations
Rosalie Roth	Check offers for complete submittal; negotiations
Dan Walker	Co-Lead; all areas of solicitation; Advisory team
Dan Chase	Check offers for complete submittal; negotiations
Inga Volkhonska	Evaluation tool and inputs
Tony Frontino – Manager	Primary manager over process; Advisory team
Jesse Bryson – Manager	Back up

Duties

Settlements

Linda Marshall	Review settlement provisions of pro forma and negotiated position
Michele Walker – Manager	Review settlement provisions of pro forma and negotiated position

Regulatory Policy

Rob Grimm	Project lead filing of some advice letters
Linda Morales	Project lead filing of advice letters
Catherine Leland	Lead filing of plan and all advice letters
Katie Sloan – Manager	Regulatory manager during 2014 solicitation; Advisory team

Contract Compliance and Technical Services

James Barbour	Help with bidders conference, website and admin details
Allison Galvan	Help with bidders conference, website and admin details
Uddhav Nobuth	Help with bidders conference, website and admin details
Barry Gilman	Review and comment on facility description documents
Wil Grady	Review and comment on facility description documents
Ted Gribble	Review and comment on facility description documents
Patrick Hodgins	Review and comment on facility description documents
Matt Langer – Manager	Managed group

Contract Management

Dave Iversen	Check offers for complete submittal; negotiations
Philippe Gerretsen	Check offers for complete submittal; negotiations
Marci Palmstrom - Manager	Manager

Dave Cox – Manager

Manager

Portfolio Evaluation (Planning)

Vidhi Chawla

Involved with evaluation of all offers and selections

John Mcnamara

Involved with evaluation of all offers and selections

Michael Freeman

Involved with evaluation of all offers and selections

Joseph Yan

Involved with evaluation of all offers and selections

Raj Roy

Involved with evaluation of all offers and selections

Amir Angha

Involved with evaluation of all offers and selections

Ranbir Sekhon – Manager

Involved with evaluation of all offers and selections; Advisory team

Credit & Risk

Chris Mitchell

Review credit/risk provisions

Marc Chazzud

Manager

Jim Helt

Review credit/risk provisions and track security deposit

Law

Will Cano

Negotiations and PPA development; Advisory team

Shae Harvey

Negotiations and PPA development

Beth Fox - Manager

Negotiations and PPA development; Advisory team

Todd Larsen

Negotiations and PPA development

Crystal Needham

Negotiations and PPA development

Cathy Karlstad

Regulatory attorney

Transmission Planning

Edyung Castano

SME on transmission related issues

Accounting

John Carillo

Accounting considerations

Elaine Quach

Manager

Advisory Team

Colin Cushnie

Vice President

Natalia Woodward

Director of Credit/Risk

EXHIBIT B

C.16-10-021 SCE's Supplementary Response to Complainants' First Set of Data Requests - January 19, 2017

Question 26 - SCE Employees That Worked on the 2015 RPS Solicitation

Energy Contracts

	<u>Primary Duties</u>
Cristina Radu	Check offers for complete submittal
George Wiltsee	Check offers for complete submittal
Wilson Co	Co-Lead; all areas of solicitation
Benny Wu	Check offers for complete submittal
Erica Darplee	Co-Lead; all areas of solicitation
John Zoida	Check offers for complete submittal
Gene Lee	Check offers for complete submittal
Dan Walker	Co-Lead; all areas of solicitation
Gus Flores – Manager	Manager
Jesse Bryson – Manager	Manager
Mark Irwin -- Manager	Manager

Settlements

Linda Marshall	Review settlement provisions of pro forma and negotiated position
Michele Walker – Manager	Review settlement provisions of pro forma and negotiated position

Regulatory Policy

Catherine Leland	Project lead filing of plan
Raffi Minasian	Lead filing of advice letters
Janos Kakuk	Manager

Contract Compliance and Technical Services

James Barbour	Help with bidders conference, website and admin details
Allison Galvan	Help with bidders conference, website and admin details
Barry Gilman	Review and comment on facility description documents
Wil Grady	Review and comment on facility description documents
Ted Gribble	Review and comment on facility description documents
Eric Lopez	Manager

Contract Management

Dave Iversen	Check offers for complete submittal; negotiations
Philippe Gerretsen	Check offers for complete submittal; negotiations
Marci Palmstrom - Manager	Manager
Dave Cox – Manager	Manager

Portfolio Evaluation (Planning)

Vidhi Chawla	Involved with evaluation of all offers and selections
Mara Legner	Involved with evaluation of all offers and selections
Marc Hazard	Evaluation and verification of all offers and selections
Jason Edwards	Manager

Kelly Lew-Quintal	Manager
Ranbir Sekhon	Director

Credit & Risk

Jim Helt	Review credit/risk provisions and track security deposit
Rosalie Roth	Manager

Law

Will Cano	Negotiations and PPA development
Laura Kuhls Gilchrist	Negotiations and PPA development
Shae Harvey	Negotiations and PPA development
William Walsh - Manager	Manager; Advisory Team
Cathy Karlstad	Regulatory attorney for plan filing
Carol Schmid-Frazee	Regulatory attorney for advice letters

Transmission

Lillian Bass	SME on transmission related issues
John Tucker	SME on transmission related issues
Edyung Castano	SME on transmission related issues

Accounting

John Carillo	Accounting considerations
Elaine Quach	Manager

Advisory Team

Colin Cushnie	Vice President
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EXHIBIT C

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

[Seller]

This Non-Disclosure Agreement (“Agreement”) dated as of _____ (“Effective Date”) is hereby entered into by and between **SOUTHERN CALIFORNIA EDISON COMPANY** (“SCE”), a California corporation, and *[Seller]* a *[Legal Status of Seller]* (“Seller”).

SCE and Seller shall sometimes be referred to in this Agreement individually as a “Party” and jointly as the “Parties.”

RECITALS

- A. SCE initiated a request for proposals (“RFP”) to supply energy and associated Green Attributes, Capacity Attributes and Resource Adequacy Benefits from eligible renewable resources (“ERRs”) on December 18, 2014, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. Seller desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by Seller to SCE as part of Seller’s submission of a proposal in response to the RFP (the “Proposal”), or any confidential or proprietary information that may be disclosed by either Party to the other Party as part of discussions or negotiations with Seller concerning Seller’s Proposal until the latest of: (1) if the Proposal is placed on SCE’s short list, Seller’s submission to SCE of its Short-List Deposit, and an updated NDA, in accordance with Section 5.02 of SCE’s Procurement Protocol; (2) if the Proposal is placed on SCE’s short list, Seller’s notification to SCE that Seller declines to pursue further negotiations; or (3) SCE’s notification to Seller that the Proposal has not been placed on SCE’s short list and SCE does not wish to negotiate the Proposal.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. For purposes of this Agreement, all oral or written (including electronic) communications exchanged between the Parties on or after the Effective Date (as set forth in Section 10 of this Agreement) as part of, or arising out of, the Proposal (including the fact that Seller has submitted the Proposal and, if applicable, the facts that: (i) SCE has short-listed the Proposal; and (ii) the Parties are negotiating the Proposal) shall be referred to as “Confidential Information.”

2. Each Party agrees to treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by each Party in writing.

Accordingly, each Party must take all necessary precautions and implement all requisite procedures and practices to protect Confidential Information provided by the other Party. Each Party may disclose Confidential Information only to its employees, directors, advisors, attorneys, consultants or accountants who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Proposal (“Permitted Disclosee”), or in subsequent discussions or negotiations regarding the Proposal and so long as such disclosing Party advises each Permitted Disclosee of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by such Permitted Disclosee. In addition, the Independent Evaluator (as described in that certain Procurement Protocol for SCE’s 2011 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy) is and must be deemed to be a Permitted Disclosee.

Each Party may also disclose Confidential Information to representatives of its rating agencies who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Proposal, so long as such disclosing Party advises the rating agency of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by any such rating agency.

3. Each Party may disclose Confidential Information to the Independent Evaluator, and each Party and the Independent Evaluator may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (i) the California Public Utilities Commission (“CPUC”), and (ii) participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 (“PRG”); *provided*, and notwithstanding any other provision in this Agreement, Seller may only disclose to such entities Confidential Information that is information on the bid and negotiation process of the RFP. In addition to the entities specified in (i) through (ii) of the preceding sentence, SCE may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (a) the California Energy Commission (“CEC”), (b) the Federal Energy Regulatory Commission (“FERC”), and (iv) the California Independent System Operator (“CAISO”).

Each Party will seek confidential treatment of any Confidential Information submitted by it to the CPUC in a formal proceeding or filing by means that is consistent with applicable law, including, if applicable, a motion for protective order; *provided*, such Party may disclose Confidential Information under the preceding Paragraph even if the CPUC does not specifically grant confidentiality or issue a protective order. SCE will seek confidential treatment of any Confidential Information submitted by it to the CEC, CAISO, or FERC by appropriate application to or agreement with such entities; *provided*, SCE may disclose Confidential Information under the preceding Paragraph even if no confidentiality or non-disclosure agreements are entered into. With respect to non-CPUC PRG participants, neither Party may disclose Confidential Information to such third parties unless and until a

written confidentiality or non-disclosure agreement is fully executed between the disclosing Party and such third-party disclosee. Seller shall provide notice to SCE of any disclosure by Seller of Confidential Information pursuant to this Section 3 of this Agreement.

Each Party will seek confidential treatment of any Confidential Information provided to the CPUC outside of a formal proceeding or filing by means that is consistent with applicable law.

Neither Party nor the Independent Evaluator shall have any liability whatsoever to any party in the event of any unauthorized use or disclosure by a governmental or regulatory agency or entity, including, without limitation, the CPUC and all divisions thereof, CEC, FERC, PRG or CAISO, of any Confidential Information or other information disclosed to any of them by such disclosing Party or its representatives.

SCE may also disclose Confidential Information as may be reasonably required to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be sold to SCE under any agreement reached as a result of discussions or negotiations.

4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term “Confidential Information” shall not include:
 - a. Information which is in the public domain as of the Effective Date or which later comes into the public domain from a source other than from the other Party, its Permitted Disclosee or representatives of its rating agencies;
 - b. Information which SCE or Seller can demonstrate in writing was already known to SCE or Seller prior to the Effective Date;
 - c. Information which comes to SCE or Seller from a *bona fide* third party source not under an obligation of confidentiality; or
 - d. Information which is independently developed by SCE or Seller without use of or reference to Confidential Information or information containing Confidential Information.
5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which such Party may be entitled by law or equity.
6. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law, legal compulsion, or with the written consent of the Party providing the Confidential Information or as SCE or Seller may be required to

disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.

7. All written Confidential Information supplied by a Party, and all copies or translations thereof made by the Party or Permitted Disclosee who received the Confidential Information, shall, upon written request of the Party who initially provided the Confidential Information, be returned to that Party, destroyed, or held and maintained subject to the terms of this Agreement *provided, however*, that a Party or Permitted Disclosee shall not be obligated to return or destroy any Confidential Information contained in its archive computer back-up system and *provided further, that* a Party may retain copies of Confidential Information to the extent that retention is required by applicable law or regulation.
8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
9. Any notice or communication given pursuant to this Agreement shall be in writing and:
 - a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;
 - b) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
 - c) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to SCE: Southern California Edison Company
 2244 Walnut Grove Avenue
 Rosemead, California 91770
 Attention: Director, Renewable and Alternative Power
 Telephone: (626) 302-1212
 Facsimile: (626) 302-1103

If to Seller:

[Name of Seller]
[Address of Seller]
Telephone:
Facsimile:

With copy to:

Telephone:

Facsimile:

10. This Agreement shall be effective as of the Effective Date and shall terminate on the latest of: (1) if the Proposal is placed on SCE's short list, Seller's submission to SCE of its Short-List Deposit, and a Long-term NDA, in accordance with the requirements of SCE's Procurement Protocol; (2) if the Proposal is placed on SCE's short list, Seller's notification to SCE that Seller declines to pursue further negotiations; or (3) SCE's notification to Seller that the Proposal has not been placed on SCE's short list and SCE does not wish to negotiate the Proposal; *provided* that the Parties' obligation to protect Confidential Information hereunder shall survive the termination of this Agreement and remain in effect until five years from the Effective Date, or earlier upon the mutual written consent of the Parties or as required by applicable law or decision of the CPUC.
11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.
12. Any waiver of the requirements and provisions of this Agreement shall be in writing.

The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.
13. This Agreement may not be modified except by a written agreement executed by both Parties.
14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
15. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.

17. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
18. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

[Seller's Full Name],

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

[Legal Status of Seller]

a California corporation.

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

EXHIBIT D

[If Seller is named to the Short-List, then by ten (10) business days following SCE's short-list notification, Seller must execute and provide the following Long-Term NDA to SCE as set forth in Section 5.02 of the 2014 RPS Procurement Protocol]

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

[Seller]

This Non-Disclosure Agreement ("Agreement") dated as of _____ ("Effective Date") is hereby entered into by and between **SOUTHERN CALIFORNIA EDISON COMPANY** ("SCE"), a California corporation, and *[Seller]* a *[Legal Status of Seller]* ("Seller").

SCE and Seller shall sometimes be referred to in this Agreement individually as a "Party" and jointly as the "Parties."

RECITALS

- A. SCE initiated a request for proposals ("RFP") to supply energy and associated Green Attributes, Capacity Attributes and Resource Adequacy Benefits from eligible renewable resources ("ERRs") on December 18, 2014, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. Seller submitted a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by Seller to SCE as part of Seller's submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by either Party to the other Party as part of discussions or negotiations with Seller concerning Seller's Proposal.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. For purposes of this Agreement, all oral or written (including electronic) communications exchanged between the Parties on or after the Effective Date (as set forth in Section 10 of this Agreement) as part of, or arising out of, the Proposal (including the fact that Seller has submitted the Proposal and, if applicable, the facts that: (i) SCE has short-listed the Proposal; and (ii) the Parties are negotiating the Proposal) shall be referred to as “Confidential Information.”
2. Each Party agrees to treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by each Party in writing.

Accordingly, each Party must take all necessary precautions and implement all requisite procedures and practices to protect Confidential Information provided by the other Party. Each Party may disclose Confidential Information only to its employees, directors, advisors, attorneys, consultants or accountants who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Proposal (“Permitted Disclosee”), or in subsequent discussions or negotiations regarding the Proposal and so long as such disclosing Party advises each Permitted Disclosee of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by such Permitted Disclosee. In addition, the Independent Evaluator (as described in that certain Procurement Protocol for SCE’s 2014 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Renewable Products) is and must be deemed to be a Permitted Disclosee.

Each Party may also disclose Confidential Information to representatives of its rating agencies who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Proposal, so long as such disclosing Party advises the rating agency of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by any such rating agency.

3. Each Party may disclose Confidential Information to the Independent Evaluator, and each Party and the Independent Evaluator may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (i) the California Public Utilities Commission (“CPUC”), and (ii) participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 (“PRG”); *provided*, and notwithstanding any other provision in this Agreement, Seller may only disclose to such entities Confidential Information that is information on the bid and negotiation process of the RFP. In addition to the entities specified in (i) through (ii) of the preceding sentence, SCE may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (a) the California Energy Commission (“CEC”), (b) the Federal Energy Regulatory

Commission (“FERC”), and (iv) the California Independent System Operator (“CAISO”).

Each Party will seek confidential treatment of any Confidential Information submitted by it to the CPUC in a formal proceeding or filing by means that is consistent with applicable law, including, if applicable, a motion for protective order; *provided*, such Party may disclose Confidential Information under the preceding Paragraph even if the CPUC does not specifically grant confidentiality or issue a protective order. SCE will seek confidential treatment of any Confidential Information submitted by it to the CEC, CAISO, or FERC by appropriate application to or agreement with such entities; *provided*, SCE may disclose Confidential Information under the preceding Paragraph even if no confidentiality or non-disclosure agreements are entered into. With respect to non-CPUC PRG participants, neither Party may disclose Confidential Information to such third parties unless and until a written confidentiality or non-disclosure agreement is fully executed between the disclosing Party and such third-party discloser. Seller shall provide notice to SCE of any disclosure by Seller of Confidential Information pursuant to this Section 3 of this Agreement.

Each Party will seek confidential treatment of any Confidential Information provided to the CPUC outside of a formal proceeding or filing by means that is consistent with applicable law.

Neither Party nor the Independent Evaluator shall have any liability whatsoever to any party in the event of any unauthorized use or disclosure by a governmental or regulatory agency or entity, including, without limitation, the CPUC and all divisions thereof, CEC, FERC, PRG or CAISO, of any Confidential Information or other information disclosed to any of them by such disclosing Party or its representatives.

SCE may also disclose Confidential Information as may be reasonably required to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be sold to SCE under any agreement reached as a result of discussions or negotiations.

4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term “Confidential Information” of a Party shall not include:
 - a. Information which is in the public domain as of the Effective Date or which later comes into the public domain from a source other than from the other Party, its Permitted Discloser or representatives of its rating agencies;
 - b. Information which the other Party can demonstrate in writing was already known to the other Party prior to the Effective Date;
 - c. Information which comes to the other Party from a *bona fide* third party source not under an obligation of confidentiality; or

- d. Information which is independently developed by the other Party without use of or reference to Confidential Information or information containing Confidential Information.
5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which such Party may be entitled by law or equity.
6. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law, legal compulsion, or with the written consent of the Party providing the Confidential Information or as SCE or Seller may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.
7. All written Confidential Information supplied by a Party, and all copies or translations thereof made by the Party or Permitted Disclosee who received the Confidential Information, shall, upon written request of the Party who initially provided the Confidential Information, be returned to that Party, destroyed, or held and maintained subject to the terms of this Agreement *provided, however*, that a Party or Permitted Disclosee shall not be obligated to return or destroy any Confidential Information contained in its archive computer back-up system and *provided further, that* a Party may retain copies of Confidential Information to the extent that retention is required by applicable law or regulation.
8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
9. Any notice or communication given pursuant to this Agreement shall be in writing and:
 - a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;
 - b) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
 - c) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to SCE: Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770
Attention: Vice President, Energy Procurement &
Management
Telephone: (626) 302-1212
Facsimile: (626) 302-1103

If to Seller: *[Name of Seller]*
[Address of Seller]
Telephone:
Facsimile:

With copy to:

[Name of Seller]
[Address of Seller]
Telephone:
Facsimile:

10. This Agreement shall be effective as of the Effective Date and shall terminate five years from such date, or earlier upon the mutual written consent of the Parties or as required by applicable law or decision of the CPUC.

11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.

12. Any waiver of the requirements and provisions of this Agreement shall be in writing.

The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.

13. This Agreement may not be modified except by a written agreement executed by both Parties.

14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could

apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.

15. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
17. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
18. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

[Remainder of page left blank intentionally.]

[Seller's Full Name],

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

[Legal Status of Seller]

a California corporation.

By:

By:

Name: *[Name]*

Name:

Title: *[Title]*

Title:

Date: *[Date]*

Date:

EXHIBIT E

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

[Seller]

This Non-Disclosure Agreement (“Agreement”) dated as of *[insert date (ie; February 20, 2016)]* (“Effective Date”) is hereby entered into by and between SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”), a California corporation, and *[Seller]* a *[Legal Status of Seller]* (“Seller”).

SCE and Seller shall sometimes be referred to in this Agreement individually as a “Party” and jointly as the “Parties.”

RECITALS

- A. SCE may from time to time issue requests for offers (“RFO”) or requests for proposals (“RFP”) seeking proposals from potential sellers to sell to SCE Potential Products (as defined below). In addition, SCE may also from time to time issue requests for bids (“RFB”) seeking bids from potential buyers to buy Potential Products from SCE (the RFO, RFP and RFB shall be collectively referred to as “Solicitation”). The Parties seek to create a single universal confidentiality agreement that will be applicable to all future Solicitations where the Seller has submitted one (1) or more offers or bids in response to a Solicitation.
- B. In response to a Solicitation, Seller and SCE would like to negotiate a potential agreement (“Potential Agreement”) for the sale or purchase of the Potential Products (the “Negotiations”).
- C. Each of the Parties desires that any Confidential Information (as defined below) that may be provided by it or on its behalf to the other Party or its respective Representatives (as defined below) will be kept confidential by such other Party and its Representatives.
- D. It is the Parties desire to have this Agreement be applicable to all future Solicitations issued by SCE for Potential Products in which the Participant may participate.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Certain Defined Terms. For purposes of this Agreement, the following terms shall have the following meanings:

- (a) “Confidential Information” means (i) all Review Material, (ii) the fact that Seller has submitted an offer, proposal or bid in a Solicitation, (iii) the fact that the Parties are evaluating, discussing, or negotiating a Potential Agreement, or have done so, (iv) the terms, conditions, or other facts with respect to any Potential Agreement (including commercial terms related thereto) except as otherwise provided for in a resulting agreement, and, if applicable (v) the fact that SCE has short-listed Seller’s offer, proposal or bid in a Solicitation.
 - (b) “Potential Products” means (i) physical electric energy or capacity, including renewable energy; (ii) physical natural gas; (iii) financial derivative products related thereto; or (iv) other such products related thereto.
 - (c) "Representatives" means the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents of a Party utilized in connection with a Solicitation, a Potential Agreement, or Negotiations, and in the case of SCE, includes an Independent Evaluator (as such term is used in California Public Utilities Commission (“CPUC”) Decision (“D.”) 04-012-048 or such successor decision at the time the Solicitation is issued) (the “Independent Evaluator”).
 - (d) “Review Material” means any and all written (including electronic communications), orally conveyed or recorded information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with a Solicitation or Negotiations, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, and materials that (i) are when furnished, or thereafter become, available to the public other than as a result of a disclosure by the receiving Party or its Representatives, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a non-confidential basis from a source other than the disclosing Party or its Representatives, provided that, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.
2. Confidentiality Obligations. Each Party shall, and cause its Representatives to, treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by each Party in writing. All Confidential Information shall be used solely for the purpose of evaluating a Potential Agreement and not for any other purpose. Accordingly, each Party must take all necessary precautions and implement all requisite procedures and practices to protect Confidential Information provided by the other Party. Each Party may disclose Confidential Information only to its employees, directors, advisors, attorneys, consultants or accountants who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Potential Agreement (“Permitted Disclosee”), or in subsequent discussions or negotiations regarding the Potential Agreement and so long as such disclosing Party advises each Permitted Disclosee of the

confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by such Permitted Disclosee. In addition, to the extent that an Independent Evaluator is engaged by SCE to monitor and participate in the Solicitation process, such Independent Evaluate shall be deemed to be a Permitted Disclosee.

3. Permitted Disclosures.

- (a) Each Party may disclose Confidential Information to the Independent Evaluator, and each Party and the Independent Evaluator may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the Solicitation: (i) any duly authorized regulatory or governmental agency or entity, including the California Public Utilities Commission (“CPUC”) and all divisions thereof, California Energy Commission (“CEC”), and Federal Energy Regulatory Committee (“FERC”); and (ii) participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 (“PRG”), and (iii) the California Independent System Operator (“CAISO”); *provided*, and notwithstanding any other provision in this Agreement, Seller may only disclose to such entities Confidential Information that is information on the bid and negotiation process of the Solicitation.
- (b) Each Party will seek confidential treatment of any Confidential Information submitted by it to the CPUC in a formal proceeding or filing by means that is consistent with applicable law, including, if applicable, a motion for protective order; *provided*, such Party may disclose Confidential Information under the preceding Paragraph even if the CPUC does not specifically grant confidentiality or issue a protective order. SCE will seek confidential treatment of any Confidential Information submitted by it to the CEC, CAISO, or FERC by appropriate application to or agreement with such entities; *provided*, SCE may disclose Confidential Information under the preceding Paragraph even if no confidentiality or non-disclosure agreements are entered into. With respect to non-CPUC PRG participants, neither Party may disclose Confidential Information to such third parties unless and until a written confidentiality or non-disclosure agreement is fully executed between the disclosing Party and such third-party disclosee. Seller shall provide notice to SCE of any disclosure by Seller of Confidential Information pursuant to this Section 3 of this Agreement. Each Party will seek confidential treatment of any Confidential Information provided to the CPUC outside of a formal proceeding or filing by means that is consistent with applicable law.
- (c) Neither Party nor the Independent Evaluator shall have any liability whatsoever to any party in the event of any unauthorized use or disclosure by a governmental or regulatory agency or entity, including, without limitation, the CPUC and all divisions thereof, CEC, FERC, PRG or CAISO, of any Confidential Information or other information disclosed to any of them by such disclosing Party or its representatives.
- (d) SCE may also disclose Confidential Information as may be reasonably required to (i) participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be sold to SCE under any agreement reached as a result of discussions or negotiations, (ii) to

comply with any exchange, control area or CAISO rule, or (iii) to comply with any discovery or data request of a party to any proceeding pending before any entity set forth in Section 3(a) above.

- (e) The Parties may disclose any Confidential Information to the extent necessary in order to comply with any law or any order issued by a court or entity with competent jurisdiction over the disclosing Party, or in connection with a discovery request of a party to any proceeding before the foregoing.
4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term “Confidential Information” shall not include:
- a. Information which is in the public domain or which later comes into the public domain from a source other than from the other Party, its Permitted Disclosee or representatives of its rating agencies;
 - b. Information which SCE or Seller can demonstrate in writing was already known to SCE or Seller prior to the Effective Date;
 - c. Information which comes to SCE or Seller from a *bona fide* third party source not under an obligation of confidentiality; or
 - d. Information which is independently developed by SCE or Seller without use of or reference to Confidential Information or information containing Confidential Information.
5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which such Party may be entitled by law or equity.
6. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law, legal compulsion, or with the written consent of the Party providing the Confidential Information or as SCE or Seller may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.
7. All written Confidential Information supplied by a Party, and all copies or translations thereof made by the Party or Permitted Disclosee who received the Confidential Information, shall, upon written request of the Party who initially provided the Confidential Information, be returned to that Party, destroyed, or held and maintained subject to the terms of this Agreement *provided, however*, that a Party or Permitted Disclosee shall not be obligated to return or destroy any Confidential Information contained in its archive computer back-up system and *provided further, that* a Party may retain copies of Confidential Information to the extent that retention is required by applicable law or regulation.

8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
9. Any notice or communication given pursuant to this Agreement shall be in writing and:
 - a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;
 - b) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
 - c) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to SCE: Southern California Edison Company
 2244 Walnut Grove Avenue
 Rosemead, California 91770
 Attention: EP&M Contracts Management
 Telephone: 626-302-1212
 Facsimile: 626-302-8168

If to Seller:

[Name of Seller]
[Address of Seller]
Telephone: *[XXX-XXX-XXX]*
Facsimile: *[XXX-XXX-XXX]*

With copy to:

[Name of Recipient]
[Address of Recipient]
Telephone: *[XXX-XXX-XXX]*
Facsimile: *[XXX-XXX-XXX]*

10. Either Party may terminate this Agreement for any reason or no reason, with or without cause, by providing thirty (30) days prior written notice to the other of its intention to terminate; provided, however, that the terms of this Agreement remain applicable to any Confidential Information created or received with respect to a submitted offer, proposal or bid in response to a Solicitation for a period of five (5) years from the date the Confidential Information is created or received.
11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto. This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.
12. Any waiver of the requirements and provisions of this Agreement shall be in writing.
13. The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.
13. This Agreement may not be modified except by a written agreement executed by both Parties.
14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
15. The Parties' entry into this Agreement, the exchange of Review Material by the Parties, and the Negotiations, do not separately or together constitute or imply a commitment of the Parties to enter into a Potential Agreement or any other agreement. If the Parties elect to enter into binding commitments with respect to any offer, proposal or bid in response to a Solicitation, such commitments will be explicitly stated in a separate written agreement executed by both Parties.
16. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
17. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
18. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
19. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this

Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

[Seller's Full Name],

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

[Legal Status of Seller]

a California corporation.

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Appendix B

**DECLARATION OF MICHAEL K. MAR IN SUPPORT OF RESPONSE OF
SCE (U 338-E) TO GILDRED BUILDING COMPANY, DBA THE GILDRED
COMPANIES AND OCOTILLO SOLAR LLC'S MOTION TO COMPEL**

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

Gildred Building Company, dba The Gildred
Companies; Ocotillo Solar LLC,

Complainants,

vs.

Southern California Edison Company (U338-E)

Defendant.

Case (C.) 16-10-021
(Filed October 21, 2016)

**DECLARATION OF MICHAEL K. MAR IN SUPPORT OF RESPONSE OF
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO GILDRED BUILDING
COMPANY, DBA THE GILDRED COMPANIES AND OCOTILLO SOLAR LLC'S
MOTION TO COMPEL**

JANET S. COMBS
CATHY A. KARLSTAD
VIVIAN A. LE

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-1096
Facsimile: (626) 302-3990
E-mail: Cathy.Karlstad@sce.com

Dated: **April 17, 2017**

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

Gildred Building Company, dba The Gildred
Companies; Ocotillo Solar LLC,

Complainants,

vs.

Southern California Edison Company (U338-E)

Defendant.

Case (C.) 16-10-021
(Filed October 21, 2016)

**DECLARATION OF MICHAEL K. MAR IN SUPPORT OF RESPONSE OF
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO GILDRED BUILDING
COMPANY, DBA THE GILDRED COMPANIES AND OCOTILLO SOLAR LLC'S
MOTION TO COMPEL**

I, Michael K. Mar, declare and state:

1. I am the eDiscovery Coordinator in the Law department at Southern California Edison Company ("SCE"). I have personal knowledge of the facts and representations herein and, if called upon to testify, could and would do so, except for those facts expressly stated to be based upon information and belief, and as to those matters, I believe them to be true.

2. On information and belief, I understand that Gildred Building Company, dba The Gildred Companies and Ocotillo Solar LLC (collectively, "Complainants") seek to compel SCE to produce the following categories of documents in Complainants' Motion to Compel SCE to Produce Documents: (1) internal communications between and among SCE employees who participated in the 2014 and 2015 Renewables Portfolio Standard ("RPS") solicitations relating to those solicitations, dating from December 18, 2014 to May 4, 2016; (2) communications between SCE and bidders in the 2014 and 2015 RPS solicitations relating to those solicitations,

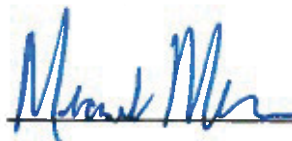
dating from December 18, 2014 to May 4, 2016; (3) communications between SCE and California Public Utilities Commission Staff, the Procurement Review Group, and the Independent Evaluator relating to the 2014 and 2015 RPS solicitations, dating from December 18, 2014 to May 4, 2016; and (4) any non-confidential documents responsive to any of Complainants' First Set of Data Requests.

3. Based on an initial search of documents from 11 SCE employees who were involved in the consideration of, and/or negotiations with, the Ocotillo Wells project in the 2014 RPS solicitation and other relevant databases, there are 183,851 documents that may be responsive to the categories of documents that Complainants seek to compel. This number does not include documents from other SCE employees who worked on the 2014 and 2015 RPS solicitations or all communications with bidders other than Complainants in the 2014 and 2015 RPS solicitations that are kept in other databases.

4. Using an average review time of 60 documents per hour based on experience with SCE's vendor, it will take approximately 3,064 hours to review 183,851 documents. At SCE's vendor's rate of \$40 per hour, this review will cost approximately \$122,567. This does not include the time associated with project management and quality control procedures. Based on experience with SCE's vendor, this will take approximately 300 additional hours and cost an additional \$45,000.

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

Executed on April 17, 2017 at Rosemead, California.



Michael K. Mar