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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Concerning Energy Efficiency Rolling
Portfolios, Policies, Programs,
Evaluation, and Related Issues.

Rulemaking 13-11-005

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING
MOTION TO DEVIATE FROM CONFIDENTIALITY REQUIREMENTS FOR
CERTAIN DATA REQUEST SUBMISSIONS AND SEEKING FURTHER
COMMENT**

This ruling denies the Joint Motion of Southern California Gas Company, San Diego Gas & Electric Company, and Southern California Edison Company to Deviate from Confidentiality Requirements for Certain Voluminous Data Request Submissions, filed on February 3, 2023.

In addition, comments are sought from parties about specific categories of data and how they should be treated in the context of the Commission's evaluation, measurement, and verifications (EM&V) activities for energy efficiency programs. Comments may be filed no later than August 25, 2023, with reply comments due no later than September 8, 2023.

1. Background

On February 3, 2023, Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE), filed a joint motion seeking to deviate from General Order (GO) 66-D confidentiality requirements for certain voluminous data request submissions (Joint Motion). The data requests are all associated with the

evaluation of energy efficiency programs by Commission staff and their consultants. The specific data requests referenced by the Joint Motion are the commercial, industrial, agricultural, and custom (CIAC) and normalized metered energy consumption (NMEC) requests. The Joint Motion also suggests that any authorized deviations from GO 66-D could be applied to other data requests that are similar in scope and also associated with the Commission's EM&V studies in energy efficiency.

The Joint Motion focuses on the fact that the data requests are voluminous, requiring numerous attachments containing confidential information that must be individually marked and justified for confidential treatment. The Joint Motion details the number of hours spent by utility employees marking and justifying just one of the types of submissions. In addition, the Joint Motion suggests that information could be provided on a timelier basis if deviations from GO 66-D requirements are authorized.

The specific sections of GO 66-D where deviations are requested are Sections 3.2(a) and 3.2(c).

The Joint Motion also points out that many of the materials contain utility customer personally identifiable information (PII), which is to be afforded the highest level of protection and treated as confidential in perpetuity.

Pacific Gas and Electric Company (PG&E) filed a response to the Joint Motion on February 21, 2023. The PG&E response generally supports the Joint Motion.

PG&E's response also points out that, in addition to PII, many of the data request responses also contain, by necessity, customer-specific information and third-party confidential information. This creates additional burdens, because the format and nature of the documents are not within the utilities' control, and

therefore may require more time-consuming analysis because of variations by program or third-party contractor.

PG&E's response asserts that the benefits of maintaining customer and third-party information security and privacy by filing the information confidentially, as requested in the Joint Motion, along with conserving administrative resources, could outweigh potential public benefits of the presumption that the data should be disclosed for transparency. Finally, PG&E points out that much of the data is consolidated or aggregated for purposes of evaluation conclusions and reports, and by virtue of aggregation becomes able to be made public, even if the underlying individual data included PII and cannot be disclosed.

No other parties responded to the Joint Motion.

2. Discussion

The particular sections of GO 66-D from which the Joint Motion seeks a deviation are as follows:

- GO 66-D, Section 3.2(a), which states:

If confidential treatment is sought for any portion of information, the information submitted must designate each page, section, or field, or any portion thereof, as confidential. If only a certain portion of information is claimed to be confidential, then only that portion rather than the entire submission should be designated as confidential.

- GO66-D, Section 3.2(c), which states:

Provide a declaration in support of the legal authority cited in Section 3.2(b) of this GO signed by an officer of the information submitted or by an employee or agent designated by an officer. The officer delegating signing authority to an employee or agent must be identified in the declaration.

These provisions, taken together, require that data on individual pages and spreadsheet files must be separately delineated as confidential and then each individual request for confidentiality must be justified and reviewed by an officer or designee to confirm its confidential nature.

I have reviewed several examples of the types of data requested and included in the CIAC and NMEC data requests to the utilities. I concur that the data is both voluminous and contains numerous instances of PII, which should be afforded the highest level of confidentiality protection. In many instances, the PII is mixed with information, on individual pages, that may not be confidential. Therefore, it is easy to see that the requirements of GO 66-D, Sections 3.2(a) and 3.2(c) would require a large amount of time to mark, justify, and verify each individual instance of confidential data being claimed.

I generally concur with the arguments of PG&E that in these particular circumstances, the balance of public interest likely weighs in favor of granting the deviations from GO 66-D requested in the Joint Motion, rather than requiring the justification of individual claims for confidentiality within the data requests. However, the determination of the balance of public interest is ultimately a policy determination for the Commission itself to make.

Therefore, in this ruling, I deny the Joint Motion. Because the determination of the balance of public interest relevant to GO 66-D's requirements is ultimately a decision for the Commission, the parties may ask the Commission to interpret GO-66D in this context as not requiring page-by-page (or even more granular) confidentiality marking.

To aid the Commission in evaluating these matters further, the next section includes a list of categories of energy efficiency EM&V data. Parties are

requested to submit comments on the list of data categories, proposing which should be considered confidential or public, along with their rationale.

3. Data Categories for Party Comment

The Commission recently considered and adopted a confidentiality matrix for third-party energy efficiency contract information in Decision 23-02-002. This section proposes categories of data and information used to evaluate energy efficiency programs and asks parties to suggest how the data should be handled.

The Joint Motion included a list of data requested in these standing CIAC and NMEC data requests related to energy efficiency program evaluation. Based on that list, in the table below I have divided the data requested into several categories. Parties are asked to propose whether each category of data should be treated as public or confidential, and to include their rationale for the recommendation.

#	DATA CATEGORY / DESCRIPTION	PROPOSED TREATMENT
1	Customer Information (name, phone, email, site address)	
2	Customer representative contact information (name, phone, email)	
3	Utility account representative (name, phone, email)	
4	Third-party implementer contact information (name, phone, email)	
5	Customer project application	
6	Customer participation agreement	
7	Cost-effectiveness information, including completed screen tools	
8	Engineering documents, including technical assistance and feasibility studies	
9	Project extension documentation or approvals	
10	Equipment ordering documentation or invoices	
11	Inspection reports (pre- or post-installation), including photographs or other documentation of projects and measures	
12	Evidence of permits obtained or actual permits	

#	DATA CATEGORY / DESCRIPTION	PROPOSED TREATMENT
13	Energy audit reports	
14	Project design documents	
15	M&V plans	
16	Post-installation commissioning reports	
17	As-built plans	
18	Energy savings calculations (by measure)	
19	Fuel substitution information/calculations	
20	Production logs for on-site generation	
21	For industrial or agricultural processing projects, pre- and post-installation output data	
22	Operating hours information	
23	Decision-making information / documentation of individual customer	
24	Corporate policy statements on green or energy issues	
25	Customer information system billing data or metered consumption data, pre- and post-installation.	

For purposes of data being submitted for use in the Commission’s EM&V activities, it often appears to be the case that individual pages or exhibits may contain a combination of the above categories, including some information proposed to remain confidential and some that is proposed to be public.

Thus, in addition to proposing the above categories for Commission rules, this ruling requests that parties submit comments in response to the following question:

- If data is being submitted for purposes of the Commission’s EM&V activities and a particular exhibit contains any confidential data, should the portfolio administrator be allowed to submit the entire exhibit as confidential, without the requirement to justify each individual piece of confidential information that may be contained in a particular file or document? Why or why not?

Parties are invited to comment on the categorization, propose the designation (as public or confidential) along with their rationale, and comment on the question above with respect to allowing complete exhibits or files to be submitted as confidential if they contain confidential information, particularly PII, for energy efficiency EM&V purposes only.

Parties may file comments by no later than August 25, 2023. Reply comments may be filed by no later than September 8, 2023.

IT IS RULED that:

1. The Joint Motion of Southern California Gas Company, San Diego Gas & Electric Company, and Southern California Edison Company to Deviate from Confidentiality Requirements for Certain Voluminous Data Request Submissions, filed on February 3, 2023 is denied.

2. Parties are invited to comment on the appropriate confidentiality treatment of certain categories of data for energy efficiency evaluation, measurement, and verification purposes only, as discussed in Section 3 of this ruling. Comments in response to Section 3 of this ruling are invited by no later than August 25, 2023. Reply comments are invited no later than September 8, 2023.

Dated July 26, 2023, at San Francisco, California.

/s/ JULIE A. FITCH

Julie A. Fitch
Administrative Law Judge