

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

Order Instituting Rulemaking to Establish  
Policies and Cost Recovery Mechanisms for  
Generation Procurement and Renewable  
Resource Development.

Rulemaking 01-10-024

**ADMINISTRATIVE LAW JUDGE'S RULING  
ADOPTING AMENDED PROTECTIVE ORDER  
AND SEVERING AN ISSUE FOR HEARING**

This Ruling adopts an Amended Protective Order pursuant to the undersigned's Ruling of December 1, 2003, which directed the parties to comment on, and which directed San Diego Gas & Electric Company (SDG&E) to provide a draft revised Protective Order, consistent with the Amended Protective Order that the Federal Energy Regulatory Commission's (FERC) Administrative Law Judge (ALJ) McCartney issued in FERC Docket Nos. EL02-60-003 and EL02-62-003, which would allow attorneys and/or outside experts, who are not competitive duty personnel for their clients, to gain access to Protected Materials in this case that are relevant to the SDG&E Request for Proposals (RFP).

This Ruling also severs from the evidentiary hearing on SDG&E's RFP, which is scheduled to commence in the above-entitled matter on February 9, 2004, the issue of SDG&E's request for reallocation of the Sunrise contract as a condition of the approval of the Calpine Purchase Power Agreement (PPA).

**Amended Protective Order**

In the undersigned's December 1, 2003 Ruling on SDG&E's Motion to Amend Protective Order (December 1 Ruling), SDG&E was directed within

10 days of the filing of that Ruling to provide a draft revised Protective Order, incorporating the concepts embodied in the Amended Protective Order that the FERC ALJ McCartney issued in FERC Docket Nos. EL02-60-003 and EL02-62-003, so as to allow attorneys and/or outside experts, who are not competitive duty personnel for their clients, to gain access to Protected Materials in this case that are relevant to the SDG&E RFP. The December 1 Ruling also directed the parties to submit comments, within 15 days of the filing of the Ruling, on how the concepts embodied in the FERC Amended Protective Order could best be incorporated into the Protective Order that until now has been in effect in this proceeding in order to allow attorneys and/or outside experts, who are not competitive duty personnel for their clients, to gain access to Protected Materials in this case that are relevant to the SDG&E RFP, and to confer on, and coordinate in, the preparation of the revised version of the Protective Order to be submitted by SDG&E.

On December 5, 2003, SDG&E circulated to the parties via e-mail a draft of a revised version of the Protective Order to reflect the revision required by the December 1 Ruling. In SDG&E's view, the proposed revisions to the Protective Order captured the spirit and intent of the December 1 Ruling "...to allow attorneys and/or consultants to a MPP who do not perform any competitive duties ... to have access to Protected Materials relevant to the SDG&E RFP." In this e-mail, SDG&E requested the parties to inform it if any further revisions were necessary to comply with the December 1 Ruling, and informed the parties that this draft revision was being reviewed internally within SDG&E, and that any substantial changes triggered by that internal review would be circulated a.s.a.p. for further comment.

SDG&E received a few responses to its December 5 e-mail, and incorporated some of the recommended changes into the proposed Amended Protective Order that it submitted on December 11, 2003. SDG&E did not incorporate other suggested revisions, because, in SDG&E's view, they did not seem necessary. The proposed Amended Protective Order that SDG&E submitted on December 11, 2003 did not wholly rewrite the then-applicable Protective Order to track the FERC order, although it did provide the access to Protected Materials in this case that are relevant to the SDG&E RFP to attorneys and/or outside experts, who are not competitive duty personnel for their clients. Thus, the proposed Amended Protective Order that SDG&E submitted on December 11, 2003 did accomplish the purpose that the December 1 Ruling sought to be achieved and will accordingly be adopted in this Ruling.

A number of the parties commented in writing on SDG&E's December 11 proposed Amended Protective Order.

PG&E and Southern California Edison Company (SCE) urged that a "FERC Model" Protective Order under which market participants would be able to obtain access to protected materials not be adopted, although Pacific Gas and Electric Company (PG&E) agreed that the guidelines proposed by SDG&E in its December 11 submittal were "reasonable." For the reasons articulated in the December 1 Ruling, we decline to accommodate PG&E's and SCE's requests that a "FERC Model" Protective Order not be adopted for the purposes of review by the parties of SDG&E's RFP.

By contrast, the Independent Energy Producers Association (IEP) and The Cogeneration Association of California and The Energy Producers and Users Coalition (CAC/EPUC) criticize SDG&E's proposed Amended Protective Order for not going far enough to allow for "meaningful participation in this

proceeding by Market Participants,” and they suggest concepts and/or language that, in their view, would achieve this purpose. However, we disagree that the revisions suggested by IEP and CAC/EPUC are necessary to achieve the requisite degree of openness and transparency to enable the Market Participating Parties to have reasonable access to the Protected Materials contained in SDG&E’s RFP filing. To the contrary, SDG&E’s proposed Amended Protective Order provides to the Reviewing Representatives of the Market Participating Parties effectively the same degree of access to such materials as is granted to the Reviewing Representatives of the Non-Market Participating Parties.

IEP and CAC/EPUC should recognize that the adoption of SDG&E’s proposed Amended Protective Order will give them all of the insight into the results of SDG&E’s RFP process that are under review in this proceeding that they need in order to be on an effectively equal footing with the non-market parties that are participating in this review. More than this, they should not expect, or demand.

### **Severance of the Sunrise Reallocation Issue**

At the Prehearing Conference on October 31, 2003, addressing the scheduling for hearings on SDG&E’s RFP filing, the undersigned issued a ruling from the bench denying the October 21, 2003, Motion of PG&E to summarily dismiss SDG&E’s request for reallocation of the Sunrise contract as a condition to approval of the Calpine PPA or, in the alternative, to bifurcate the Sunrise contract reallocation proposal to a separate procedural track from the rest of the Recommended Proposals in SDG&E’s RFP filing.

In its further comments on this question, filed on November 5, 2003, SDG&E argued that the Sunrise reallocation must be considered as part and parcel of SDG&E’s RFP Motion, because it is a condition precedent to the

approval of the Calpine PPA, although SDG&E acknowledged in that filing that its proposal to reallocate the Sunrise contract to PG&E affected parties that might not otherwise have an interest in this proceeding. Also, on November 5, 2003, SCE filed Comments in support of PG&E's Motion.

After further consideration of this matter, the undersigned has determined that there are several good reasons at this time to stay the hearings that are currently scheduled to begin on February 9, 2004 insofar as they will address SDG&E's Sunrise contract reallocation proposal. The reasons are as follows:

SDG&E has made it clear that time is of the essence and that it is essential to obtain Commission approval for most of the proposed power procurement activities covered in its RFP filing as quickly as possible. This time constraint does not, however, apply to the issues surrounding the proposed Sunrise contract reallocation. Staying the upcoming hearings with respect to this one issue will facilitate the timely completion of the hearings on the rest of the relevant issues, and the issuance of a Proposed Decision on SDG&E's filing. The Commission can take action on SDG&E's proposed PPA with Calpine without deciding the issue of the proposed Sunrise contract reallocation.

Moreover, the undersigned takes notice of the fact that in Commission Proceeding A00-11-038, *et al.*, the final allocation methodology for the Department of Water Resources (DWR) revenue requirement for 2004 and, likely, future years as well, is currently being litigated. A Commission decision resolving this question can be expected within the next several months. Since the outcome of this proceeding will affect the allocation of the costs to all three of the IOUs of the DWR contracts, this outcome could possibly also affect whether SDG&E must in fact consider Commission approval of the Sunrise reallocation as a condition precedent to the approval of the Calpine PPA.

Since a delay of several months in addressing the proposed reallocation of the Sunrise contract in this proceeding will not adversely affect SDG&E's deadlines, and since a resolution of the DWR contract cost allocation question in

Commission proceeding A00-11-038, *et al.* could have a direct impact on the question of whether the Commission either needs to, or should, approve the proposed reallocation of the Sunrise contract to PG&E, it will be an efficient use of the resources of the parties to this proceeding to delay hearings on this one question until the Commission issues its decision on the DWR contract cost allocation question in Docket A00-11-038, *et al.*

Within five (5) working days after that Commission decision is issued, SDG&E is directed to inform the parties whether further proceedings in this Docket on SDG&E's request for reallocation of the Sunrise contract as a condition to SDG&E's approval of the Calpine PPA are required. Upon receipt of such submittal from SDG&E, if necessary, an additional Prehearing Conference will be scheduled in this proceeding.

Therefore, **IT IS RULED** that:

1. The Amended Protective Order, as submitted in this proceeding by SDG&E on December 11, 2003, and attached hereto, is adopted.
2. The issue of SDG&E's request for reallocation of the sunrise contract as a condition of the approval of the Calpine PPA is severed from the evidentiary hearings on SDG&E's RFP, which are scheduled to commence in the above-entitled matter on February 9, 2004, and is stayed until after the Commission issues a decision on the DWR contract cost allocation question in Commission proceeding A00-11-038, *et al.*
3. Furthermore, the parties are directed not to file any testimony relating to the issue of SDG&E's request for reallocation of the Sunrise contract as a condition of the approval of the Calpine PPA until directed to do so by further order of the Commission.

4. Within five (5) working days after a Commission decision is issued in Docket A00-11-038, *et al.*, SDG&E shall inform the parties whether further proceedings in this Docket on SDG&E's request for reallocation of the Sunrise contract as a condition to SDG&E's approval of the Calpine PPA are required.

Dated January 14, 2004, at San Francisco, California.

/s/ CHRISTINE M. WALWYN

Christine M. Walwyn  
Administrative Law Judge

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

Order Instituting Rulemaking to Establish	)	
Policies and Cost Recovery Mechanisms for	)	Rulemaking 01-10-024
Generation Procurement and Renewable	)	
Resource Development.	)	
_____	)	

**AMENDED PROTECTIVE ORDER REGARDING CONFIDENTIALITY  
OF SDG&E POWER PROCUREMENT INFORMATION**

1. This Protective Order shall govern access to and the use of all Protected Materials in this proceeding as hereinafter defined. Notwithstanding any order terminating this docket, this Protective Order shall remain in effect until, after notice and an opportunity to be heard, it is specifically modified or terminated by the Assigned Commissioner, the Assigned Administrative Law Judge ("Assigned ALJ"), the Law and Motion Administrative Law Judge ("Law and Motion ALJ") or the California Public Utilities Commission ("CPUC" or "Commission"). This Protective Order does not address the right of employees of the Commission acting in their official capacities to view Protected Materials, because Commission employees are entitled to view such Protected Materials in accordance with the requirements of Section 583 of the Public Utilities Code and the Commission's General Order 66-C.

2. The parties acknowledge that in view of the Assigned Commissioner's Ruling Establishing Category and Providing Scoping Memo issued in this docket on April 2, 2002, this proceeding will be comprised of multiple phases devoted to the review of energy procurement plans and the development of interim procurement

cost recovery mechanisms. The parties also acknowledge that the amount of data that is confidential or proprietary, and the identity of the parties submitting such data, may differ from time to time, depending on whether specific procurement plans or broader policy issues are under consideration. In light of this situation, the parties agree that modifications to this Protective Order may become necessary, and they further agree to work cooperatively with the Assigned ALJ, the Law and Motion ALJ, the Assigned Commissioner or the full Commission, as the case may be, to devise and implement such modifications in as timely a manner as possible.

3. **Definitions** – The terms in this first definitional paragraph shall have a meaning consistent with the ideas set forth in the “Procurement Planning Proposals of the Southern California Edison Company [Edison] In Response to Order Instituting Rulemaking 01-10-024” (Edison Procurement Proposals) submitted in this docket on November 26, 2001. The term “**Procurement Plan**” means the type of plan for purchasing energy and/or capacity set forth in Section II.B. (at pages 39-55) of the Edison Procurement Proposals, whether the reference is to the type of initial Procurement Plan submitted by Edison or an update thereof, or a long term energy procurement plan filed in this proceeding. The term “**Procurement Plan Compliance Submittal**” refers to any one or more of the various types of filings intended to demonstrate the utility’s compliance with an approved Procurement Plan, as described in Section II.C. (at pages 55-58) of the Edison Procurement Proposals. The term “**Notice of Objection**” refers to the pleading that Commission Staff (as defined below) may submit objecting to a Procurement Plan Compliance Submittal or a transaction for which the utility is seeking pre-approval by the Commission, as set forth in Sections II.C.1. and II.D., respectively, of the Edison Procurement Proposals. Nothing in this first definitional paragraph shall be construed as an endorsement of any timeframe proposed in the Edison Procurement

Proposals, as these are matters to be determined in interim decisions or a final decision in this docket.

a) The term “redacted” refers to situations in which confidential or proprietary information in a document, whether the document is in paper or electronic form, has been covered, masked or blocked out. Thus, the “redacted version” of a document is one in which the document is complete except that the confidential or proprietary information contained therein is not visible because it has been covered, masked or blocked out. The term “unredacted” refers to situations in which confidential or proprietary information in a document, whether in paper or electronic form, has not been covered, masked or blocked out. Thus, the “unredacted version” of a document is one in which the document is complete, and the confidential or proprietary information contained therein is visible.

b) The term “Protected Materials” means the confidential or proprietary information contained in the unredacted version, and not contained in the redacted version, of any of the following: (A) any initial Procurement Plan submitted as a compliance filing by SDG&E in this proceeding, and any subsequent revisions thereof; (B) any materials submitted or produced in connection with the review, revision or approval of any initial or revised SDG&E Procurement Plan; (C) any Procurement Plan Compliance Submittal that SDG&E may submit from time to time to the Commission’s Energy Division and/or the Office of Ratepayer Advocates (which Division and Office, whether separately or collectively, are hereinafter referred to as “Commission Staff”); (D) any Notice of Objection prepared and sent by Commission Staff to SDG&E in response to a Procurement Plan Compliance Submittal; (E) any materials submitted or produced in connection with the determination of the reasonableness of any energy procurement transaction which is the subject of any such Notice of Objection; and (F) any filing, submittal, or testimony pertaining or relating to the bids submitted in response to SDG&E’s May 16, 2003, Grid Reliability Capacity RFP, to the extent that the information in question was designated by the bidders as confidential, proprietary, commercially sensitive or trade secret. The reviews described in this paragraph are collectively referred to hereinafter as the “SDG&E Procurement Plan and Compliance Reviews.”

c) Protected Material shall also include: (A) any information contained in or obtained from the unredacted materials described in the preceding paragraph; (B) any other materials that are made subject to this Protective Order by any assigned ALJ, Law and Motion ALJ, or Assigned Commission, or by the CPUC or any court or other body having appropriate authority; (C) notes of Protected Materials; and (D) copies of Protected

Materials. SDG&E and Commission Staff, when creating any Protected Materials, shall physically mark such materials on each page (or in the case of non-documentary materials such as computer diskettes, on each item) as "PROTECTED MATERIALS", or with words of similar import as long as one or more of the terms, "Protected Materials," "Section 583" or "General Order No. 66-C" is included in the designation to indicate that the materials in question are Protected Materials.

d) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including information in electronic form) that copies or discloses materials described in Paragraph 3(b). Except as specifically provided otherwise in this Order, notes of Protected Materials are subject to the same restrictions as are Protected Materials.

e) Protected Materials shall not include: (A) any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court; or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order.

f) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto as Appendix A by which persons who have been granted access to the Protected Materials of SDG&E shall, as a condition of such access, certify their understanding that such access is provided pursuant to the terms and restrictions of this Protective Order, and that such persons have read such Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be sent to and retained by SDG&E.

g) The term Non-Market Participating Party ("NMPP") Reviewing Representative shall mean a person who is:

- 1) An employee of: (A) a state governmental agency other than the California Energy Commission (CEC) that (i) is not a Market Participating Party as defined in Paragraph 3(h)(1) hereof, and (ii) is statutorily authorized to obtain access to confidential data held by another state governmental agency upon execution of a written agreement to treat the data so obtained as confidential, as provided in Government Code Section 6254.5(e); or (b) any other consumer or customer group that SDG&E and the Director of the Commission's Energy Division or his designee ("Division Director") agree has a bona fide interest in participating on behalf of end-use customers in

Procurement Plan and Compliance Reviews regarding SDG&E, and which group is not a Market Participating Party as defined in paragraph 3(h)(1); or

- 2) An attorney, paralegal, expert or employee of an expert retained by an NMPP for the purpose of advising, preparing for or participating in Procurement Plan and Compliance Reviews regarding SDG&E.
- 3) NMPPs shall identify their proposed Reviewing Representatives to SDG&E and Division Director and provide a curriculum vitae of the candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. SDG&E and Division Director shall advise the proposing party in writing within three (3) business days from receipt of the notice if either or both of them object to the proposed Reviewing Representative, setting forth in detail the reasons therefor. In the event of such objection, the proposing party, SDG&E and Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the assigned ALJ or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plans or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting). Absent unusual circumstances as determined by the ALJ, a candidate who falls within the criteria set forth in the preceding sentence will ordinarily be deemed ineligible to serve as an NMPP Reviewing Representative;

h) The term Market Participating Party ("MPP") Reviewing Representative shall mean a person who is engaged or retained to advise, prepare for, or participate in SDG&E's May 16, 2003, Grid Reliability Capacity RFP and is:

- 1) An employee of a private, municipal, state or federal entity, which entity engages in the purchase, sale or

marketing of energy or capacity, or the bidding on or purchasing of power plants, or consulting on such matters, or an employee of a trade association comprised of such entities that engage in one or more of such activities, who is not engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting); or

- 2) An attorney, paralegal, expert or employee of an expert retained by an MPP, who is not himself or herself engaged in, or who does not provide legal or expert consulting services on either (1) the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or (2) the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting).
- 3) MPPs shall identify their proposed Reviewing Representatives to SDG&E and Division Director and provide a curriculum vitae of the candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. SDG&E and Division Director shall advise the proposing party in writing within three (3) business days from receipt of the notice if either or both of them object to the proposed Reviewing Representative, setting forth in detail the reasons therefor. In the event of such objection, the proposing party, SDG&E and Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the assigned ALJ or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plans or

consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting). Absent unusual circumstances as determined by the ALJ, a candidate who falls within the criteria set forth in the preceding sentence will ordinarily be deemed ineligible to serve as an MPP Reviewing Representative;

i) The term "ISO Reviewing Representative" shall mean a person who is employed by the California Independent System Operator, a nonprofit public benefit corporation created pursuant to Article 3, Chapter 2.3 of the Public Utilities Act (Public Utilities Code Sections 345, *et seq.*). The ISO shall identify its proposed Reviewing Representative to SDG&E and Division Director and provide a curriculum vitae of the candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. In addition, the ISO shall provide for each proposed ISO Reviewing Representative a copy of the ISO's Employees Code of Conduct signed by the proposed ISO Reviewing Representative. SDG&E and Division Director shall advise the ISO in writing within three (3) business days from receipt of the notice if either or both of them object to the proposed Reviewing Representative, setting forth in detail the reasons therefor. In the event of such objection, the ISO, SDG&E and Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the assigned ALJ or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting). Absent unusual circumstances as determined by the ALJ, a candidate who falls within the criteria set forth in the preceding sentence will ordinarily be deemed ineligible to serve as an ISO Reviewing Representative; provided however that for purposes of this protective order, the ordinary operation by the ISO of ISO Controlled Grid and the ordinary administration by the ISO of the ISO administered markets, including markets for Ancillary Services, Supplemental Energy, Congestion Management, and Local Area Reliability Services, shall not be deemed to be the purchase, sale or marketing of energy or capacity.

4. Access of NMPP and MPP Reviewing Representatives to Protected Materials shall be granted only pursuant to the terms of this Protective Order. Access of MPP Reviewing Representatives to Protected Materials shall only be to Protected Materials marked as such in the phase of this proceeding addressing

SDG&E's May 16, 2003, Grid Reliability Capacity RFP. Access of ISO Reviewing Representatives to Protected Materials shall be granted, but only pursuant to the terms of this Protective Order and SDG&E may redact price information from materials made available to an ISO Reviewing Representative. All other participants in this proceeding shall not be granted access to Protected Material, but shall instead be limited to reviewing redacted versions of documents that contain Protected Material.

5. Whenever SDG&E submits a document in this proceeding that includes data SDG&E contends is confidential or proprietary, SDG&E shall also prepare a redacted version of such document. The redacted version shall be sufficiently detailed in organization so that persons familiar with this proceeding can determine with reasonable certainty the nature (but not magnitude) of the data that has been redacted. The redacted version of any document required by this paragraph shall be served on all persons on the service list (or, in the case of discovery, on all persons entitled to the discovery responses) who are not entitled to obtain access to Protected Material hereunder. All disputes regarding redacted versions of documents shall be submitted for resolution to the CPUC in accordance with Paragraph 13 of this Protective Order.

6. Within thirty (30) days after (a) the issuance of a Commission resolution regarding an SDG&E Procurement Plan, or (b) the date on which an SDG&E Procurement Plan Compliance Review becomes final and no longer subject to judicial review, NMPP Reviewing Representatives, MPP Reviewing Representatives, and ISO Reviewing Representatives shall, if requested to do so in writing by SDG&E, return or destroy the Protected Materials. Within the same 30-day time period, NMPP and MPP Reviewing Representatives and ISO Reviewing Representatives shall also submit to SDG&E and Commission Staff an affidavit

stating that, to the best of the NMPP and MPP Reviewing Representatives' or the ISO's Reviewing Representative's knowledge, as applicable, all Protected Materials subject to the request have been returned or destroyed. Notwithstanding the two preceding sentences, NMPP and MPP Reviewing Representatives and ISO Reviewing Representatives may retain Notes of Protected Materials and copies of filings, official transcripts and exhibits, if any, prepared in the course of the NMPP and MPP Reviewing Representatives' or the ISO Reviewing Representative's, as applicable, review of the Protected Materials, provided that such retained materials are maintained in accordance with Paragraphs 9 and 12 below. In the event the CEC receives a request that Protected Materials should be returned or destroyed, but the CEC Executive Director determines that the CEC needs to retain some or all of these Protected Materials to carry out its statutorily-mandated tasks, the CEC may retain the Protected Materials, and the CEC Executive Director shall furnish SDG&E and Commission Staff with a letter setting forth the CEC's reasons for retaining the Protected Materials, as well as a list enumerating with reasonable particularity the Protected Materials so retained. To the extent Protected Materials are not returned or destroyed pursuant to this paragraph, they shall remain subject to this Protective Order, Section 583 of the California Public Utilities Code and CPUC General Order No. 66-C.

7. (a) In the event that the CPUC receives a request for a copy of or access to any Protected Material from the CEC, the procedure for handling such requests shall be as follows. The CPUC, after giving written notice to SDG&E of the request for the Protected Material, shall release such Protected Material to the CEC upon receipt from the CEC of an Interagency Information Request and Confidentiality Agreement (Interagency Confidentiality Agreement) identical in form to the agreement set forth in Appendix B hereto. Such Interagency Confidentiality

Agreement shall (i) provide that the CEC will treat the requested Protected Material as confidential in accordance with this Protective Order, (ii) include an explanation of the purpose for the CEC's request, as well as an explanation of how the request relates to furtherance of the CEC's functions, (iii) be signed by a person authorized to bind the CEC contractually, and (iv) expressly state that furnishing of the requested Protected Material to employees or representatives of the CEC does not, by itself, make such Protected Material public. In addition, the Interagency Confidentiality Agreement shall include an express acknowledgment of the CPUC's sole authority (subject to judicial review) to make the determination whether the Protected Materials should remain confidential or be disclosed to the public, notwithstanding any provision to the contrary in the statutes or regulations applicable to the CEC.

(b) In the event the CPUC receives a request for a copy of or access to Protected Material from a state governmental agency other than the CEC that is authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining confidentiality set forth in Government Code Section 6254.5(e), the CPUC may, after giving written notice to SDG&E of the request, release such Protected Material to the requesting governmental agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that contains the same provisions described in Paragraph 7(a) above, and that is otherwise substantively identical to the draft agreement set forth in Appendix B; *i.e.*, identical as to legal principles but with variations in language that are necessary due to the particular situation of the requesting agency.

8. If a request is made pursuant to the Public Records Act (PRA), Government Code §6250, *et seq.*, that the Protected Materials filed with or otherwise in the possession of the CPUC be produced, the CPUC will notify SDG&E

of the PRA request and will notify the requester that the Protected Materials are public records that fall within the exclusions listed in Section 2 of General Order No. 66(c), and/or that there is a public interest served by withholding the records. *See* paragraphs 2.2 and 3.3 of General Order No. 66-C. In the event the CPUC receives a request from a federal government agency or via a judicial subpoena for the production of Protected Materials in the CPUC's possession, the CPUC will also notify SDG&E of such request. In the event that a PRA requester brings suit to compel disclosure of Protected Materials, the CPUC will promptly notify SDG&E of such suit, and Commission Staff and SDG&E shall cooperate in opposing the suit.

9. Protected Materials shall be treated as confidential by each NMPP and MPP\_Reviewing Representative and by each ISO Reviewing Representative in accordance with the certificate executed pursuant to Paragraphs 3(f) and 11 hereof. Protected Materials shall not be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except (i) other NMPP and MPP Reviewing Representatives who are engaged in this proceeding and need to know the information in order to carry out their responsibilities, (ii) persons employed by or working on behalf of the CEC or other state governmental agencies covered by Paragraphs 7(a) and 7(b) and (iii) the ISO Reviewing Representatives (with the exception of price information). In the event that a NMPP not covered by Paragraphs 7(a) and 7(b) or the ISO is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any confidential information, the NMPP, MPP or the ISO agrees to oppose disclosure on the grounds that the requested information has already been designated by the Commission as Protected Materials subject to this Protective

Order lawfully issued by the Commission and therefore may not be disclosed. The ISO, MPP or NMPP shall also immediately inform the utility of the request, and the utility may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the NMPP, MPP or ISO shall cooperate with the utility to the maximum extent practicable to either oppose the disclosure of the Protected Materials consistent with applicable law, or obtain confidential treatment of Protected Materials by the entity that wishes to receive the Protected Materials prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where the NMPP, MPP or ISO has been ordered to produce certain specific Protected Materials, the ISO, MPP or NMPP may, upon request for substantially similar Protected Materials by a similarly situated party, respond in a manner consistent with that order to those substantially similar requests for those Protected Materials.

10. It shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs Protected Material in a manner that could reveal all of a part of the Protected Material, or (ii) any model that relies upon Protected Material for algorithms or other computation(s) critical to the functioning of the model, shall also be considered Protected Material that is subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, and this Protective Order. However, models that merely use Protected Material as inputs will not themselves be considered Protective Material. It shall also be a rebuttable presumption that where the inputs to studies or models include Protected Material, or where the outputs of such studies or models reveal such inputs or can be processed to reveal the Protected Material, such inputs and/or outputs shall be considered Protected Material subject to this Protective Order, unless such inputs

and/or outputs have been redacted or aggregated to the satisfaction of the party producing the Protected Material. Unless a party, by means of notice and motion, obtains a ruling from the Assigned ALJ or the Law and Motion ALJ holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any party who devises or propounds a model or study that incorporates, uses or is based upon Protected Material shall label the model or study "Protected Material," and it shall be subject to the terms of this Protective Order.

11. No NMPP or MPP Reviewing Representative or ISO Reviewing Representative shall be permitted to inspect, participate in discussions regarding, or otherwise be granted access to Protected Materials pursuant to this Protective Order unless such NMPP or MPP Reviewing Representative or ISO Reviewing Representative has first executed a Non-Disclosure Certificate and delivered it to SDG&E. SDG&E shall provide copies of executed Non-Disclosure Certificates to Commission Staff. Attorneys qualified as NMPP or MPP Reviewing Representatives or as ISO Reviewing Representatives shall ensure that persons under their supervision or control comply with this Protective Order.

12. In the event that an NMPP or MPP Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in Procurement Plan and Compliance Reviews concerning SDG&E or the proceeding addressing SDG&E's Grid Capacity RFP, or an NMPP Reviewing Representative is employed or retained for a position whose employer is not qualified to be an NMPP under Paragraph 3(g)(1), then access to Protected Materials by that person shall be terminated. Even if no longer engaged in such reviews, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

13. All disputes arising under this Protective Order shall be presented for resolution to the Assigned ALJ or the Law and Motion ALJ. Prior to presenting any such dispute to the applicable ALJ, the parties to the dispute shall use their best efforts to resolve it. Neither SDG&E nor the Commission Staff waives its right to seek additional administrative or judicial remedies after the Assigned ALJ or the Law and Motion ALJ has made a ruling regarding the dispute.

14. All documents containing Protected Materials that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this Protective Order. Such documents shall be marked with the words "**PROTECTED MATERIALS**" or one of the other, similar terms set forth in paragraph 3(c) hereof, and shall be served upon all NMPP and MPP Reviewing Representatives and persons employed by or working on behalf of the state governmental agencies referred to in Paragraphs 7(a) and 7(b) who are eligible to see the Protected Materials. Service upon the persons specified in the foregoing sentence may either be (a) by electronic mail in accordance with the Electronic Service Protocols set forth in Appendix A to the Order Instituting Rulemaking in this docket, (b) by facsimile, or (c) by overnight mail or messenger service. In the event the serving party chooses to serve the foregoing persons entitled to see Protective Materials by overnight mail or messenger service, the serving party shall give all parties 24 hours' electronic notice of its intention to do so. Any affected party who objects on account of delay to being served with the document(s) at issue by overnight mail or messenger service shall promptly notify the serving party of such objection, and in such a case the serving party shall arrange to have the document(s) containing the Protected Material hand-delivered on the date service is due to the party so objecting. Whenever service of a document

containing Protected Material is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by hand on the date that service is due.

15. Nothing in this Protective Order shall be construed as limiting the right of SDG&E, Commission Staff, a NMPP, a MPP or a state governmental agency covered by Paragraph 7(a) or 7(b) from objecting to the use of Protected Material on any legal ground, such as relevance or privilege.

16. All Protected Materials filed with judicial or administrative bodies other than the Commission, whether in support of or as part of a motion, brief or other document or pleading, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials that are subject to this Protective Order.

17. Neither SDG&E nor the Commission Staff waives its right to pursue any other legal or equitable remedy that may be available in the event of actual or anticipated disclosure of Protected Materials.

18. SDG&E and Commission Staff may agree at any time to remove the "Protected Material" designation from any material if, in their mutual opinion, its confidentiality is no longer required. In such a case, SDG&E will notify all parties that SDG&E believes are in possession of such materials of the change of designation.

ADOPTED PER RULING OF ADMINISTRATIVE LAW JUDGE PETER V. ALLEN  
ON MAY 20, 2003, AND AMENDED PER RULING OF ADMINISTRATIVE LAW  
JUDGE CHRISTINE WALWYN ON JANUARY 14, 2004.

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judges' Ruling Regarding Confidentiality of Information and Effective Public Participation on all parties of record in this proceeding or their attorneys of record.

Dated January 14, 2004, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

**N O T I C E**

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

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

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