

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

**DECLARATION OF PATRICK K. CHARLES
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Patrick K. Charles, do declare as follows:

1. I am the Origination Analytics Manager in the Electric & Fuel Procurement Department for San Diego Gas & Electric Company (“SDG&E”). I have reviewed my prepared direct testimony, (including the Independent Evaluator Report of PA Consulting dated April 10, 2017) submitted in support of SDG&E’s Application of San Diego Gas & Electric Company (U 902 E) for Approval of the Results From its 2016 Track IV Local Capacity Requirement Preferred Resources Request for Offers (A.17-04-xxx), submitted concurrently herewith (the “Preferred Resources Testimony”). In addition, I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066, *et seq.*, to demonstrate that the confidential information (“Protected Information”) provided in the Preferred Resources Testimony submitted concurrently herewith (described below) falls within the scope of data protected as confidential pursuant to the IOU Matrix attached to the Commission’s confidentiality decision, D.06-06-066 (the “IOU Matrix”) and/or under relevant statutory provisions.^{1/}

^{1/} The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (*See* D.06-06-066). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if information is eligible for statutory protection, it must be protected under the Matrix. (*See Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, *38-39) Thus, by claiming applicability of the Matrix, SDG&E relies upon and simultaneously

3. In D.06-06-066, the Commission adopted rules governing confidentiality of certain categories of electric procurement data submitted to the Commission by investor owned utilities (“IOUs”) and energy service providers (“ESPs”). The Commission established two matrices – one applicable to IOUs, the other to ESPs – setting forth categories and sub-categories of data and providing a confidentiality designation for each.^{2/}

4. To the extent information matches a Matrix category, it is entitled to the protection the Matrix provides for that category of information. In addition, the Commission has made clear that information must be protected where “it matches a Matrix category exactly . . . or consists of information from which that information may be easily derived.”^{3/} In order to claim the protection afforded by the relevant Matrix, the party seeking confidential treatment must establish:

- 1) That the material it is submitting constitutes a particular type of data listed in the Matrix,
- 2) Which category or categories in the Matrix the data correspond to,
- 3) That it 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.^{4/}

claims the protection of applicable statutory provisions including, but not limited to, Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

^{2/} See, D.06-06-066, as amended by D.07-05-032, *mimeo*, Appendices 1 and 2.

^{3/} See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

^{4/} D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

5. SDG&E’s Protected Information: The Protected Information, consisting of the information described below, is protected pursuant to the following Matrix categories (note that Table 1 pertains to everything in the Preferred Resources Testimony except Attachment J, the Independent Evaluator Report – 2016 LCR RFO dated April 10, 2017 (the “IE Report”), and Table 2 pertains to the IE Report) :

**Table 1
(Pertains to the Preferred Resources Testimony except the IE Report)**

Data at Issue	Matrix Requirements	How Moving Party Meets Requirements
<p>Highlighted / shaded portions of my Preferred Resources Testimony on the following pages / line numbers:</p> <ul style="list-style-type: none"> - PKC-4: within footnote 12. - PKC-38: lines 18-22 - PKC-41: lines 2-16 and lines 19-21 - PKC-42: lines 1-5, lines 17-24 - PKC-43: lines 1-3 and lines 6-13 - PKC-44: lines 1-17 and lines 1-24 <p align="center">And</p> <p>The entirety of Attachments G, H and I (the Enel, AMS and Powin contracts)</p>	Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix	The redacted data in includes bid information and information specifically describing certain contract terms included in the Enel, AMS and Powin third party, energy storage tolling agreements
	Identify the Matrix category or categories to which the data corresponds	Matrix categories VII B (contract terms) and VIII A (bid information)
	Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	<p>VII B - In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that the information be kept confidential for a period of three (3) years from the date the contract begins deliveries or until one (1) year following expiration, whichever comes first.</p> <p>VIII A - In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that other than the required summary information, that the information be kept confidential.</p>
	Affirm that the information is not already public	SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	The information is provided in a way that accurately and fully describes the Enel, AMS and Powin contracts for Commission evaluation and bid information. The data cannot be aggregated, redacted, further summarized, masked or otherwise protected in a way that allows partial disclosure.

**Table 2
(Pertains to the IE Report)**

Data at Issue	Matrix Requirements	How Moving Party Meets Requirements
<p>Highlighted / shaded portions of the IE Report on the following pages:</p> <p>15, 18, 19, 20, 21, 22, 24, 25, 26, 28, 29, 30 and 31</p>	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>The redacted material on the following pages of the IE Report includes bid information: 15, 18, 19, 20, 21, 24, 25, 28, 29, 30, 31</p> <p>The redacted material on the following pages of the IE Report pertains contract terms: 25, 26, 28, 30</p> <p>The redacted material on the following pages of the IE Report pertains to specific quantitative analysis of bids: 21, 22, 25, 26</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>Matrix categories VII B (contract terms) and VIII A (bid information), and VIII B (quantitative analysis)</p>
	<p>Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data</p>	<p>VII B - In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that the information be kept confidential for a period of three (3) years from the date the contract begins deliveries or until one (1) year following expiration, whichever comes first.</p> <p>VIII A - In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that other than the required summary information, that the information be kept confidential.</p> <p>VIII B – In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that this information be kept confidential for three years after the winning bidders were selected (as determined by the shortlist notification date of 10/28/2016)</p>
	<p>Affirm that the information is not already public</p>	<p>SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.</p>
	<p>Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.</p>	<p>The information is provided as included in the IE Report. The data cannot be aggregated, redacted, further summarized, masked or otherwise protected in a way that allows partial disclosure.</p>

6. SDG&E intends to comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

7. I am not aware of any instance of public disclosure of the Protected Information.

8. The Protected Information cannot be provided in a form that is further aggregated, redacted, or further summarized and still provide the level of detail requested and expected by the Commission.

9. As an alternative basis for requesting confidential treatment, SDG&E submits that the confidential information provided in the Preferred Resources Testimony (including the IE Report) is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under Govt. Code § 6254(k), and that the disclosure of this information would place SDG&E at an unfair business disadvantage, thus triggering the protection of G.O. 66-C.^{5/}

10. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.^{6/}

11. Public Utilities Code § 454.5(g) provides:

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.

^{5/} This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See, Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v. Tanforan*, 173 Cal. 270, 274 (1916) ("Since . . . inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.")

^{6/} *See, D.06-06-066, mimeo*, pp. 26-28.

12. Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.^{7/} Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

13. In addition, Commission General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

14. If disclosed, the Protected Information could provide parties with whom SDG&E is currently or will soon be negotiating insight into SDG&E’s procurement needs, which would unfairly undermine SDG&E’s negotiation position and could ultimately result in increased cost to ratepayers. In addition, if developers mistakenly perceive that SDG&E is not committed to assisting their projects or keeping Protected Information secure, disclosure of the Protected Information could act as a disincentive to developers for offering projects into SDG&E’s request for offers or negotiate higher prices based on knowledge of the Protected Information. Accordingly, pursuant to P.U. Code § 583, SDG&E seeks confidential treatment of this data, which falls within the scope of P.U. Code § 454.5(g), Govt. Code § 6254(k) and General Order 66-C.

15. Developers’ Protected Information: The Protected Information provided in the Preferred Resources Testimony may also constitute confidential trade secret information of the involved projected developers that SDG&E is obligated to protect. The project information set forth in the Preferred Resources Testimony relates directly to the pricing and contractual terms of the Enel, Powin and AMS Contracts. Disclosure of this extremely sensitive information could harm developers’ ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

^{7/} See also Govt. Code § 6254.7(d).

16. In accordance with the statutory provisions described herein, SDG&E hereby requests that the information set forth in the Preferred Resources Testimony be protected from public disclosure.

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

Executed this 18th day of April, 2017, at San Diego, California.

/s/ Patrick K. Charles

Patrick K. Charles
Origination Analytics Manager