

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

Order Instituting Rulemaking to Continue
Electric Integrated Resource Planning and
Related Procurement Processes.

Rulemaking 20-05-003
(Filed May 7, 2020)

**MOTION OF SAN DIEGO GAS & ELECTRIC COMPANY
(U 902 E) FOR LEAVE TO FILE UNDER SEAL ITS DECEMBER 2023
INTEGRATED RESOURCE PLAN COMPLIANCE FILING**

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December 1, 2023

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Pursuant to Rule 11.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”) and Decision (“D.”) 06-06-066, *et seq.*, San Diego Gas & Electric Company (“SDG&E”) respectfully submits this motion for leave to file under seal the unredacted version of its December 2023 Integrated Resource Plan Compliance Filing and related documents (together, the “Compliance Filing”), filed concurrently herewith.

Public Utilities Code § 454.5(g) requires the Commission to protect from disclosure all “market sensitive information submitted in an electrical corporation's proposed procurement plan.”^{1/} In D.06-06-066, *et seq.*, the Commission adopted rules governing confidentiality of certain categories of electric procurement data routinely submitted to the Commission by investor-owned utilities (“IOUs”). The Commission established a confidentiality matrix (“IOU Matrix”) setting forth categories and sub-categories of IOU procurement data and providing a confidentiality designation for each.^{2/}

^{1/} All statutory references herein are to the Public Utilities Code unless otherwise noted.

^{2/} D.06-06-066, as amended by D.07-05-032, Appendix 1.

To the extent information matches an IOU Matrix category, it is entitled to the protection the IOU 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 IOU Matrix category, the party seeking confidential treatment must establish:

- 1) That the material it is submitting constitutes a particular type of data listed in the IOU Matrix,
- 2) Which category or categories in the IOU Matrix the data correspond to,
- 3) That it is complying with the limitations on confidentiality specified in the IOU 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/}

SDG&E demonstrates below that the confidential information provided in support of the Compliance Filing (the “Protected Information”) falls within the scope of data protected as confidential pursuant to the IOU Matrix (Table 1) and/or under relevant statutory provisions (Table 2):^{5/}

^{3/} *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, p. 81, Ordering Paragraph 2.

^{5/} The IOU Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the IOU 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 IOU Matrix. (See *Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, *38-39) Thus, by claiming applicability of the IOU Matrix, SDG&E relies upon and simultaneously claims the protection of applicable statutory provisions including, but not limited to, Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k), as well as General Order 66-D.

TABLE 1

Protected Information	D.06-06-066 Requirements	How Requirement is Met
<ul style="list-style-type: none"> • Data in Attachment A - CONFIDENTIAL <i>Resource Data Template (sdge_rdtv3_38mmt_confidential_v1.xlsx)</i> highlighted in the unique_contracts sheet not pertaining to contract online or end date • Attachment B2.a • Attachment B2.g • Attachment B5.a • Attachment B5.e • Attachment B6.a • Attachment B7.a • Attachment B8.a • Attachment B9.c • Attachment B10.a • Attachment B11.a (highlighted information) • Attachment B12.b 	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>Submitted material contains bilateral contract information regarding the current status of the contracts (other than: contract summaries, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date). For each resource listed, contract deliveries have not started more than three years ago.</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>IOU Matrix category VII.B</p>
	<p>Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data</p>	<p>In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that the information be kept confidential as directed in the Matrix.</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 in the required format and cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.</p>

TABLE 2

Protected Information	Legal Citations	Narrative Justification
<ul style="list-style-type: none"> • Data in Attachment A - CONFIDENTIAL <i>Resource Data Template (sdge_rdtv3_38mmt_confidential_v1.xlsm)</i> highlighted in the unique_contracts sheet pertaining to amended contract online or end date • Highlighted cells in Attachment B1 • Attachment B2.b • Attachment B2.c • Attachment B2.d • Attachment B2.e • Attachment B2.f • Attachment B5.b • Attachment B5.c • Attachment B5.d • Attachment B9.a • Attachment B9.b • Attachment B12.a • Attachment B12.c 	<p>Pub. Util. Code §§ 454.5(g) and §583^{6/} as well as trade secret information protected under Government Code §6254(k)^{7/}</p>	<p>The Protected Information contains confidential projects development information and is entitled to confidential treatment under applicable law, including, but not limited to, the legal authority cited herein. The information does not expressly fall within any category of the IOU Matrix applicable to electric procurement information, but is material, market-sensitive, electric procurement-related information analogous to (1) Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS), Category VII-B in the Matrix and (2) Renewable Resource Contracts under RPS program – Contracts without SEPs, Category VII-G.</p>

^{6/} Public Utilities Code §583 establishes a right to confidential treatment of information otherwise protected by law (*see* D.06-06-066 at pp. 26-28). If disclosed, the Protected Information could provide insight into SDG&E’s procurement needs to parties with whom SDG&E is currently negotiating, 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, disclosure of the Protected Information could act as a disincentive to developers. Accordingly, pursuant to Public Utilities Code §583, SDG&E seeks confidential treatment of this data, which falls within the scope of Public Utilities Code §454.5(g) and Evidence Code §1060.

^{7/} Under the Public Records Act, Government Code §6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed (See also Govt Code §6254.7(d)). 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.

SDG&E respectfully moves this Commission for an order directing that the Protected Information, which has been redacted in the public version of the Compliance Filing, shall continue to remain under seal for the period identified in the IOU Matrix.

Respectfully submitted this 1st day of December, 2023.

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PROPOSED ORDER

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ORDER

Pursuant to Rule 11.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”) and D.06-06-066, *et seq.*, San Diego Gas & Electric Company (“SDG&E”) filed a motion on December 1, 2023 (the “Motion”) requesting authority to file and maintain certain confidential, commercially sensitive and proprietary information under seal. The Motion sought confidential treatment of specific information appearing in the unredacted version of its December 2023 Integrated Resource Plan Compliance Filing and related documents (together, the “Compliance Filing”).

The information for which confidential treatment is sought is protected under the IOU Matrix adopted in D.06-06-066. In addition, the information complies with the limitations on confidentiality specified in the IOU Matrix for that type of data and SDG&E has not publicly disclosed this information. The data cannot be aggregated, further redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

Therefore, it is ordered that:

1. The confidential information contained in SDG&E's Compliance Filing shall remain sealed and is not to be disclosed to anyone other than Commission staff, the Assigned Commissioner, the assigned Administrative Law Judge ("ALJ") or an ALJ designated to decide this motion;
2. Further proceedings, if any, held with respect to matters contained in the confidential information shall be conducted in a manner the assigned ALJ deems reasonably necessary to protect the confidentiality of the materials described herein;
3. Non-market participants may request access to the confidential information pursuant to applicable rules; and
4. All additional documentary evidence in this proceeding that addresses or relates to the subject matter of the confidential information must be treated in the confidential manner described in paragraphs 1 and 2, above.

Administrative Law Judge

Dated: _____