

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

**DECLARATION OF JOSHUA M. GERBER
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Joshua M. Gerber, do declare as follows:

1. I am the Manager of Advanced Technology Integration within the Asset Management Department for San Diego Gas & Electric Company (“SDG&E”). I have reviewed my prepared direct testimony 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:

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> <p>-JG-15: line 20 -JG-16: lines 1-22 -JG-17: lines 1-4 -JG-20: Table 2 in its entirety JG-20: Footnote 16 in its entirety -JG-21: lines 11-20 -JG-21: Footnote 17 in its entirety -JG-22: lines 1-4 -JG-24: Table 3 in its entirety -JG-24: Footnote 18 in its entirety</p> <p style="text-align: center;">And</p>	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p> <p>Identify the Matrix category or categories to which the data corresponds</p> <p>Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data</p> <p>Affirm that the information is not already public</p>	<p>The redacted data in includes bid information and information specifically describing certain contract terms included in Build, Own and Transfer agreement with AES Energy Storage, and the Engineer, Procure and Construct Agreement with RES Americas.</p> <p>Matrix categories VII B (contract terms) and VIII A (bid information)</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>SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.</p>

<p>the entirety of Attachments B and C (the Build, Own and Transfer agreement with AES Energy Storage, and the Engineer, Procure and Construct Agreement with RES Americas)</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 a way that accurately and fully describes the Build, Own and Transfer agreement with AES Energy Storage, and the Engineer, Procure and Construct Agreement with RES Americas 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.</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 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/}

^{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.")

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.

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

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

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

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 Build, Own and Transfer agreement with AES Energy Storage, and the Engineer, Procure and Construct Agreement with RES Americas. Disclosure of this extremely sensitive information could harm developers' ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

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/ Joshua M. Gerber

Joshua M. Gerber
Manager, Advanced Technology Integration