

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



October 8, 2015

Advice Letter 3943-E

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177

**SUBJECT: Proposed Model Protective Order and Model Nondisclosure Agreement
Pursuant to D.11-07-028**

Dear Mr. Jacobson:

Advice Letter 3943-E is effective as of October 1, 2015, per Resolution E-4468
Ordering Paragraphs.

Sincerely,

A handwritten signature in cursive script that reads "Edward Randolph".

Edward Randolph
Director, Energy Division



Brian K. Cherry
Vice President
Regulation and Rates

Pacific Gas and Electric Company
77 Beale St., Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

Fax: 415-973-6520

November 10, 2011

Advice 3943-E

(Pacific Gas and Electric Company U 39-E)

Advice 2653-E

(Southern California Edison Company U 338-E)

Advice 2301-E

(San Diego Gas & Electric Company U 902-E)

Public Utilities Commission of the State of California

Subject: Proposed Model Protective Order and Model Nondisclosure Agreement Pursuant to Decision 11-07-028

Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E") (jointly "Utilities") submit this joint advice letter as required in Decision ("D.") 11-07-028, Ordering Paragraph ("OP") 6. This advice letter includes a proposed, updated version of the Model Protective Order ("MPO") approved by the Commission in D.08-04-023 and a Model Nondisclosure Agreement ("MNDA"). The Utilities request that the Commission approve the proposed MPO and MNDA attached as Appendices A and C, respectively, to this advice letter.

Background

In D.06-12-030, the Commission adopted a procedure for protecting market sensitive information and established restrictions on access to this information for market and non-market participants. The Commission subsequently adopted a form MPO in D.08-04-023. D.11-07-028 clarified the Commission's confidentiality procedures by allowing market participants to participate in Commission proceedings through reviewing representatives, identifying who can act as a reviewing representative, and modifying the status of certain parties as to whether the party is a market or non-market participant. The Commission also required:

The parties shall convene a collaborative process designed to achieve consensus versions of an updated version of the Model Protective Order, as well as a Model Nondisclosure Agreement for use with confidential documents governed by this proceeding.

The utilities thereafter shall submit these documents via joint Advice Letter for Commission approval by Resolution.¹

The Parties' Collaborative Process

Pursuant to the Commission's direction in D.11-07-028, in early August the Energy Producers and Users Coalition ("EPUC") sent to some of the parties in this proceeding a draft MNDA. On August 31, 2011, PG&E sent to the service list in this proceeding a draft MNDA which included PG&E's edits on the draft MNDA circulated by EPUC.

On September 7, 2011, PG&E hosted a conference call for the parties to discuss the revised MNDA circulated by PG&E on August 31, and to discuss next steps to review and finalize the MNDA and MPO. During the conference call, PG&E agreed to circulate a draft MPO the following week and asked parties to comment on the draft MNDA and MPO by no later than Friday, September 23, 2011. PG&E sent out an e-mail to the service list on September 8, 2011 summarizing the call and attaching a copy of the draft MNDA. PG&E circulated the draft MPO to the service list the following week.

A number of parties provided proposed edits and comments on the draft MNDA and MPO by the September 23 deadline. PG&E consolidated these edits and circulated clean drafts of the MNDA and MPO to the service list on September 30, 2011 and asked for comments and edits by no later than October 5, 2011. On October 3, 2011, counsel for the Independent Energy Producers Association ("IEP") raised some substantive concerns regarding the draft MNDA and MPO and indicated that IEP would not be able to provide comments by October 5, 2011. To allow sufficient time for comments, PG&E sent out an e-mail to the service list extending the deadline for comments to October 7, 2011. PG&E also indicated that if parties had substantive concerns, PG&E would be willing to host a second conference call so that the parties could discuss these concerns.

Parties provided edits and comments by the October 7 deadline, raising a number of substantive issues. On October 10, 2011, PG&E circulated to the service list by e-mail revised copies of the draft MNDA and MPO. PG&E's e-mail included clean copies of the draft MNDA and MPO reflecting edits received the previous week, as well as redline versions of the MNDA and MPO showing all of the changes that had been made between the September 30 drafts and the October 10 drafts.

On October 13, 2011, PG&E hosted a conference call for all of the parties in this proceeding to discuss any remaining substantive concerns regarding the draft MNDA and MPO. The parties participating in the call discussed substantive issues and proposed specific changes to the MPO and MNDA language. IEP and EPUC

¹ D.11-07-028, OP 6. D.11-07-028 included a draft Model Nondisclosure Agreement as Appendix A. However, this appendix was subsequently deleted by the Commission. See D.11-08-018. Thus, while the Commission has approved a Model Protective Order in D.08-04-023, it has not yet issued or approved a Model Nondisclosure Agreement.

expressed concern about the scope of the MNDA and MPO and whether the definition of “Protected Materials” was too broad in both documents. IEP and EPUC also expressed concern about the process for determining if an individual satisfied the Reviewing Representative criteria. IEP and EPUC were concerned about the amount of time needed for a Disclosing Party² to review a proposed Reviewing Representative and whether the Disclosing Party could later challenge whether a designated individual qualified as a Reviewing Representative.

The parties on the October 13 conference call agreed that IEP and EPUC would have the “pen” to propose revisions to the draft MNDA and MPO. On October 21, 2011, IEP circulated proposed edits to the MNDA and MPO. On October 26, 2011, EPUC circulated its proposed edits to the MNDA. The Utilities reviewed and agreed to incorporate most, but not all, of the proposed IEP and EPUC edits.

On November 7, 2011, PG&E circulated to the service list in this proceeding final, clean copies of the proposed MPO and MNDA and indicated that the Utilities would be filing these documents on Thursday, November 10, 2011.

The Proposed MPO and MDNA

Attached to this advice letter are three documents. Appendix A is a clean copy of the updated MPO and Appendix B is a redline version comparing the updated MPO to the MPO that was attached to D.08-04-023. Appendix C is a clean copy of the MNDA.

Most of the changes in the updated MPO are non-substantive, but are instead intended to provide clarity. The MPO included a number of terms that were undefined, terms that were inconsistent, provisions that were unclear or incomplete, and needed restructuring to improve the document flow. The MNDA was modeled on the MPO. As described above, the parties participated in several rounds of edits and two conference calls to make sure that the updated MPO and MNDA were consistent and clear. In addition, the parties worked to make the terms of the MPO and MNDA consistent with each other.

The collaborative process was very helpful in developing consensus on the MPO and MNDA, and was effective in narrowing disputed issues. Although the parties were able to agree on most of the language in the proposed MPO and MNDA, there were two areas of substantive dispute.

First, IEP and EPUC disputed the definition of the term “Protected Materials” included in the proposed MPO and MNDA. The definition of Protected Materials is largely consistent with the definition of Protected Materials in the MPO approved in D.08-04-023; the language in the approved MPO has been simplified but the scope of what

² Disclosing Party” is defined in the MNDA and MPO as the entity producing Protected Material. This could be any party in a Commission proceeding, including the Utilities, ratepayer advocate groups, environmental groups, industry groups and other intervenors in Commission proceedings.

qualifies as Protected Materials has remained the same.³ During the collaborative process, IEP and EPUC maintained that the term Protected Materials should be more narrowly defined to only include materials covered by D.06-06-066 (*i.e.*, the reference to General Order 66-C, Public Utilities Code section 454.5(g), etc. in the definition of “Protected Materials” should be removed).⁴ The Utilities oppose IEP’s and EPUC’s proposal because it is inconsistent with the definition of Protected Material already approved by the Commission in D.08-04-023 and unnecessarily limits the definition of Protected Materials. Moreover, limiting the definition of Protected Materials will result in inefficiency and the need to create multiple MPOs and MNDAs. In Commission proceedings, the Utilities may designate some material as confidential under D.06-06-066 and other material as confidential under General Order 66-C or another Commission rule or decision addressing confidentiality. If the MPO and MNDA are narrowly limited to materials that are confidential under D.06-06-066, the Utilities may have to create and execute completely separate MNDAs and MPOS for material that is confidential under different Commission orders, rules or decisions, such as General Order 66-C. In that case, the Utility would need to have multiple NDAs with a single party – one to cover materials that are confidential under D.06-06-066 and a second NDA to cover materials that are confidential under General Order 66-C, or a similar Commission order, rule or decision. Rather than having multiple MNDAs or MPOs in a proceeding, the Commission should instead use the current definition of Protected Materials from the MPO approved in D.08-04-023 with the clarifications proposed by the Utilities. IEP’s and EPUC’s proposal to unnecessarily limit the definition of Protected Materials should be rejected.

Second, the parties disagreed on the process for determining whether a designated individual is an appropriate Reviewing Representative. Section 5 of the proposed MPO and MNDA attached to this advice letter describes the process for identifying Reviewing Representatives. In short, a party signing an MNDA or subject to the MPO may identify an individual that the party has retained as a Reviewing Representative. The requirements for a Reviewing Representative were adopted by the Commission in D.11-07-028.⁵ After a party provides written notification identifying a Reviewing Representative, including providing necessary background information and materials, the Disclosing Party has five business days to object because the identified individual does not qualify as a Reviewing Representative. If the parties are unable to agree as to whether an individual qualifies as a Reviewing Representative, the dispute will be resolved by the Commission. In addition, at any subsequent point, a Disclosing Party may object to an individual who has already been designated as a Reviewing Representative. The subsequent ability to object is necessary if circumstances change (*e.g.*, the Reviewing Representative becomes a Market Participant), the Reviewing

³ See Appendix B, § 2.A (red-line showing changes to definition of the term “Protected Materials” between the MPO approved in D.08-04-023 and the same term in the proposed MPO).

⁴ IEP and EPUC also discussed the possibility of a “check-list” approach to the definition of Protected Materials, but IEP expressed reservations about a check-list approach.

⁵ D.11-07-028, OP 2.

Representative fails to comply with certain requirements (e.g., failure to wall off a Reviewing Representative), or information subsequently comes to light that demonstrates that the individual does not qualify as a Reviewing Representative.

IEP and EPUC expressed concern about the amount of time that a Disclosing Party was provided to object to an identified Reviewing Representative (i.e., five business days). IEP and EPUC also indicated that once the initial review period has passed, and if no objection has been raised, the Disclosing Party should not be able to subsequently object to a Reviewing Representative. The Utilities believe these concerns are unfounded. Five business days is a relatively short period of time, and given that the Disclosing Party may be required to review and confirm information provided by the Reviewing Representative, as well as circulate the designation internally, five days is certainly a reasonable amount of time. Moreover, it is appropriate to provide a Disclosing Party the opportunity to subsequently object to a Reviewing Representative during the course of a proceeding, especially if circumstances change (i.e., the Reviewing Representative becomes a Market Participant) or information comes to light which calls into question whether an individual qualifies as a Reviewing Representative.

Other than these two substantive areas, the parties were in general agreement on the language and terms of the proposed MNDA and MPO.

The Utilities Request That the Commission Approve the MNDA and MPO

The Utilities respectfully request that the Commission approve the proposed MPO and MNDA attached to this advice letter through the issuance of a Resolution. The proposed MPO and MNDA are the results of a collaborative process among the parties in this proceeding and reflect Commission decisions regarding confidential information.

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, by facsimile or electronically, any of which must be received no later than **November 30, 2011**, which is 20 days after the date of this filing. Protests should be mailed to:

CPUC Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Avenue
San Francisco, California 94102
Facsimile: (415) 703-2200
E-mail: jjj@cpuc.ca.gov and mas@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to the addresses shown below on the same date it is mailed or delivered to the Commission:

Pacific Gas and Electric Company
Attention: Brian K. Cherry
Vice President, Regulation and Rates
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177
Facsimile: (415) 973-6520
E-Mail: PGETariffs@pge.com

Southern California Edison Company
Attention: Akbar Jazayeri
Vice President of Regulatory Operations
2244 Walnut Grove Avenue
Rosemead, California 91770
Facsimile: (626) 302-4829
E-mail: AdviceTariffManager@sce.com

San Diego Gas and Electric Company
Attention: Megan Caulson
Regulatory Tariff Manager
8330 Century Park Court, Room 32C
San Diego, CA 92123-1548
Facsimile: (858) 654-1879
E-mail: mcaulson@semprautilities.com

Effective Date

The Utilities request that this advice letter be approved no later than January 10, 2012, with an effective date of **January 10, 2012**. The Utilities submit this request as a Tier 3 advice letter.

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and the service list for Order Implementing Rulemaking to Implement Senate Bill 1488, R.05-06-040. Address changes to the General Order 96-B service list and all electronic approvals should be directed to e-mail PGETariffs@pge.com. For changes to any

other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>.

A handwritten signature in black ink that reads "Brian Cherry". The signature is written in a cursive style with a vertical line through the middle of the name.

Vice President – Regulation and Rates

cc: Service List R.05-06-040

Attachments

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type:

ELC GAS
 PLC HEAT WATER

Contact Person: Linda Tom-Martinez

Phone #: (415) 973-4612

E-mail: lmt1@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
 PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **PG&E 3943-E, SCE 2653-E, SDG&E 2301-E**

Tier: 3

Subject of AL: **Proposed Model Protective Order and Model Nondisclosure Agreement Pursuant to Decision 11-07-028**

Keywords (choose from CPUC listing): Compliance, Agreements

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: D.11-07-028

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL¹: _____

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for:

Confidential information will be made available to those who have executed a nondisclosure agreement: Yes No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: _____

Resolution Required? Yes No

Requested effective date: **January 10, 2012**

No. of tariff sheets:

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected:

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division

Tariff Files, Room 4005

DMS Branch

505 Van Ness Ave.,

San Francisco, CA 94102

jnj@cpuc.ca.gov and mas@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Brian Cherry

Vice President, Regulation and Rates

77 Beale Street, Mail Code B10C

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

PG&E Advice 3943-E
SCE Advice 2653-E
SDG&E Advice 2301-E

Appendix A

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

[Insert Proceeding Caption]

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)

Docket No. XX-XX-XXX

[MODEL] PROTECTIVE ORDER

1. Scope. This Protective Order shall govern access to and the use of Protected Materials, produced by, or on behalf of, any Disclosing Party (as defined in Paragraph 2 below) in this proceeding.

2. Definitions

In addition to the terms defined and capitalized in other sections of this Protective Order, the following terms are defined for the purposes of this Protective Order:

A. For purposes of this Protective Order, the term “Protected Materials” means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Disclosing Party in accordance with the provisions of Decision (“D.”) 06-06-066 and subsequent decisions, General Order 66-C, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Protective Order by the Assigned Administrative Law Judge (“Assigned ALJ”), Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the California Public Utilities Commission (“Commission”), or any court or other body having appropriate authority. Protected Materials also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or compiles other Protected Materials or from which such materials may be derived (except that any derivative

materials must be separately shown to be confidential). Protected Materials do not include: (i) any information or document contained in the public files of the Commission or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Protected Material in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed.

C. The term “Disclosing Party” means a party who initially discloses any specified Protected Material in this proceeding.

D. The term “Requesting Party” means any party that is requesting receipt of Protected Material from a Disclosing Party.

E. The term “Party” refers to the Requesting Party or the Disclosing Party and the term “Parties” refers to both the Requesting Party and the Disclosing Party.

F. The term “Market Participant” refers to a Requesting Party that is:

- 1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below.
- 2) A trade association or similar organization, or an employee of such organization,
 - a) whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
 - b) a majority of whose members purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or

- c) formed for the purpose of obtaining Protected Materials; or
 - d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.
- 3) A person or entity that meets the criteria of 1) above is not a Market Participant for purpose of access to Protected Materials unless the person/entity seeking access to Protected Materials has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:
- a) the person or entity's participation in the California electricity market is *de minimis* in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 § 3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a *de minimis* amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or
 - b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, *i.e.*, where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or
 - c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for Protected Materials.

G. The term "Non-Market Participant" refers to a Requesting Party that does not meet the definition of Market Participant. The California Independent System Operator is deemed a Non-Market Participant for purposes of this Protective Order.

H. “Reviewing Representatives” are limited to person(s) designated in accordance with Paragraph 5 who meet the following criteria:

- 1) Reviewing Representatives may not currently be engaged in: (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) engagement in such a transaction); (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction); or (c) knowingly providing electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction or consulting).
- 2) Reviewing Representatives may not be an employee of a Market Participant. If the Market Participant or Non-Market Participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall consistent with the ethics wall requirements in D.11-07-028, as that decision may be subsequently modified or changed by the Commission, from those in the firm who are involved in wholesale commercial dealings.
- 3) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.
- 4) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Market Participants and Non-Market Participants.
- 5) All Reviewing Representatives are required to execute the Nondisclosure Certificate attached to this Protective Order and are bound by the terms of this Protective Order.

I. The term “Authorized Reviewers” refers to: (1) a Requesting Party that is a Non-Market Participant; or (2) a Reviewing Representative of a Requesting Party. A

Requesting Party that is a Market Participant is not an Authorized Reviewer but it may designate a Reviewing Representative in accordance with Paragraph 5.

J. The term “Nondisclosure Certificate” refers to the Nondisclosure Certificate attached as Appendix A.

3. Designation, Filing, and Service of Protected Materials.

When filing or providing in discovery any documents or items containing Protected Materials, a party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “PROTECTED MATERIALS SUBJECT TO PROTECTIVE ORDER,” or with words of similar import as long as one or more of the terms “Protected Materials” or “Protective Order” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Paragraph 14 hereof; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Protective Order or any other nondisclosure agreement or protective order.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Protective Order. Such documents shall only be served upon Authorized

Reviewers and persons employed by or working on behalf of the Commission. Service upon Authorized Reviewers and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by the same means and at the same time.

4. Redaction of Documents. Whenever a Party files, serves or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

5. Designation of Reviewing Representatives. The Requesting Party shall provide written notice identifying its proposed Reviewing Representative(s) to the Disclosing Party before the Disclosing Party provides any Protected Materials to the Requesting Party's Authorized Reviewers. The written notice shall include the information identified in this paragraph. If the Requesting Party decides to designate any additional Reviewing Representative(s) after the Requesting Party's Authorized Reviewers receive Protected Materials, the Requesting Party shall identify the additional proposed Reviewing Representative(s) to the Disclosing Party before the Requesting Party provides Protected Materials to the additional Reviewing Representative(s). Within five (5) business days after receiving written notice of the identity of any Reviewing Representative, the Disclosing Party

may provide the Requesting Party with a written objection to a specific Reviewing Representative stating the grounds for the objection. Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in Paragraph 11 of this Protective Order. If a Disclosing Party objects to a specific Reviewing Representative within five (5) business days after the Reviewing Representative is identified, the Parties shall not provide any Protected Materials to the disputed Reviewing Representative until the Parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 11. Failure by the Disclosing Party to object within five (5) business days does not waive the Disclosing Party's right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 11.

Reviewing Representative(s) have a duty to disclose to the Disclosing Party any potential conflict of interest that puts the Reviewing Representative in violation of D.06-12-030, as modified by subsequent decisions of the Commission. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

6. Nondisclosure Certificates. A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Nondisclosure Certificate, attached hereto as Appendix A, and delivered the signed Nondisclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Nondisclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to Commission Staff upon request.

7. Access to Protected Materials and Use of Protected Materials. Subject to the terms of this Protective Order, Authorized Reviewers shall be entitled to access any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. Authorized Reviewers may make notes of Protected Materials, which shall be treated as Protected Materials if such notes disclose any Protected Materials. Protected Materials obtained by a Party in this proceeding may also be requested by that Party in a subsequent Commission proceeding, subject to the terms of any nondisclosure agreement or protective order governing that subsequent proceeding, without constituting a violation of this Protective Order.

8. Maintaining Confidentiality of Protected Materials. Each Authorized Reviewer shall treat Protected Materials as confidential in accordance with this Protective Order and the Nondisclosure Certificate. Protected Materials shall not be used except as necessary for participation in this proceeding, and shall not be disclosed in any manner to any person except: (i) Authorized Reviewers; (ii) an Authorized Reviewer's employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Authorized Reviewer, provided that they shall first ensure that such personnel are familiar with the terms of this Protective Order and have signed a Nondisclosure Certificate; and (iii) persons employed by or working on behalf of the Commission. Authorized Reviewers shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Protective Order, and shall treat such Protected Materials in the same manner as they treat their own most highly confidential information.

Authorized Reviewers shall be liable for any unauthorized disclosure or use by themselves and/or employees, paralegals, or administrative staff. In the event any Authorized Reviewer 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 of Protected Materials, the Authorized Reviewer shall immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Authorized Reviewer shall cooperate in good faith with such Party either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where an Authorized Reviewer has been ordered to produce certain specific Protected Materials, the Authorized Reviewer may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. Return or Destruction of Protected Materials. Protected Materials shall remain available to Authorized Reviewers until an order terminating this proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, the Authorized Reviewers shall, within fifteen days after such request, return the Protected Materials to the Disclosing Party that produced such Protected Materials, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and notes of Protected Materials may be retained, if such Protected Materials are maintained in accordance with Paragraph 8. Within such time period each Authorized Reviewer, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best of its knowledge, all Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 8. To the extent Protected Materials are not returned or destroyed, they shall remain subject to this Protective Order.

In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated and the Reviewing Representative shall immediately return or destroy all Protected Materials, or provide an affidavit stating that all Protected Materials and all notes of Protected Materials will be maintained in accordance with Paragraph 8. Even if a Reviewing Representative is no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Protective Order and the Nondisclosure Certificate.

10. Access and Use by Governmental Entities.

A. In the event the Commission receives a request from the California Energy Commission (“CEC”) for a copy of or access to any Party’s Protected Materials, the procedure for handling such requests shall be as follows. Not less than five (5) business days after delivering written notice to the Disclosing Party of the request, the Commission shall release such Protected Materials to the CEC upon receipt from the CEC of an Interagency Information Request and Confidentiality Agreement (“Interagency Confidentiality Agreement”). Such Interagency Confidentiality Agreement shall: (i) provide that the CEC will treat the requested Protected Materials 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 Materials to employees or representatives of the CEC does not, by itself, make such Protected Materials public. In addition, the Interagency Confidentiality Agreement shall include an express acknowledgment of the Commission’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 Commission receives a request for a copy of or access to a party's Protected Materials 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 Commission may, not less than five (5) business days after giving written notice to the Disclosing Party of the request, release such Protected Materials to the requesting governmental agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that contains the same provisions described in Paragraph 10.A above.

C. The CEC may use Protected Materials when needed to fulfill its statutory responsibilities or cooperative agreements with the Commission. Commission confidentiality designations will be maintained by the CEC in making such assessments, and the CEC will not publish any assessment that directly reveals the data or allows the data submitted by an individual load serving entity to be "reverse engineered."

11. Dispute Resolution. All disputes that arise under this Protective Order, including but not limited to alleged violations of this Protective Order and disputes concerning whether materials were properly designated as Protected Materials, shall first be addressed by the parties through a meet and confer process in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, either party may present the dispute for resolution to the Assigned ALJ or the Law and Motion ALJ.

12. Other Objections to Use or Disclosure. Nothing in this Protective Order shall be construed as limiting the right of a Party, the Commission Staff, or a state governmental agency

covered by Paragraph 10 to object to the use or disclosure of Protected Materials on any legal ground, including relevance or privilege.

13. Remedies. Any violation of this Protective Order shall constitute a violation of an order of the Commission. Notwithstanding the foregoing, the parties and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

14. Withdrawal of Designation. A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such Party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all Requesting Parties that the Disclosing Party has agreed to withdraw its designation of Protected Materials for specific documents or material.

15. Modification. This Protective Order shall remain in effect unless and until it is modified or terminated by the Commission or the Assigned ALJ. The identity of the parties submitting Protected Materials may differ from time to time. In light of this situation, modifications to this Protective Order may become necessary. The Parties shall work cooperatively to develop such modifications and, to the extent the Parties are able to agree to modifications, shall file a motion with the Assigned ALJ or the Commission seeking approval of the modifications. To the extent Parties are unable to agree on modifications after a good faith effort, each party governed by this Protective Order has the right to seek modifications in it as appropriate from the Assigned ALJ or the Commission.

16. Interpretation. Headings are for convenience only and may not be used to restrict the scope of this Protective Order.

Entered: _____
Administrative Law Judge

Date: _____

**APPENDIX A TO MODEL PROTECTIVE ORDER
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

[Insert Proceeding Caption] _____)
_____)

Docket No. XX-XX-XXX

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of California Public Utilities Commission.

Signed: _____

Name _____

Title: _____

Organization: _____

Dated: _____

PG&E Advice 3943-E
SCE Advice 2653-E
SDG&E Advice 2301-E

Appendix B

~~APPENDIX A~~ BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

~~Order Instituting Rulemaking to Implement
Senate Bill No. 1488 (2004 Cal. Stats., CH. 690
(Sept. 22, 2004)) Relating to Confidentiality of
Information~~ [Insert Proceeding Caption]

) Docket No. ~~05XX-06XX-040XXX~~

[MODEL] PROTECTIVE ORDER

1. Scope. This Protective Order shall govern access to and the use ~~in this~~
~~proceeding~~ of Protected Materials, produced by, or on behalf of, any Disclosing Party (as defined
in Paragraph 2 below) in this proceeding.

~~2. Modification.~~ This Protective Order shall remain in effect until it is modified or
terminated by the Commission or Assigned Administrative Law Judge (“Assigned ALJ”). ~~The~~
~~parties acknowledge that the identity of the parties submitting Protected Materials may differ~~
from time to time. ~~In light of this situation, the parties agree that modifications to this Protective~~
~~Order may become necessary, and they further agree to work cooperatively to devise and~~
~~implement such modifications in as timely a manner as possible. Each party governed by this~~
~~Protective Order has the right to seek changes in it as appropriate from the Assigned ALJ or the~~
~~Commission.~~

~~3. Definitions~~ 2. Definitions

In addition to the terms defined and capitalized in other sections of this Protective Order,
the following terms are defined for the purposes of this Protective Order:

A. ~~The~~ For purposes of this Protective Order, the term “Protected
~~Material(s)~~ Materials” means: (i) trade secret, market sensitive, or other confidential and/or
proprietary information as determined by the Disclosing Party in accordance with the provisions
of Decision (“D.”) 06-06-066 and subsequent decisions, General Order 66-~~Can~~ C, Public

Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Protective Order by the Assigned ~~ALJ~~Administrative Law Judge (“Assigned ALJ”), Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the California Public Utilities Commission (“Commission”), or any court or other body having appropriate authority. Protected Materials also ~~includes~~include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or compiles other Protected Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential). Protected Materials do not include: (i) any information or document contained in the public files of the ~~CPUC~~Commission or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Protected ~~Materials~~Material in a document, whether the document is in paper or electronic form, have been covered, blocked out, ~~or removed~~. ~~The term “unredacted” refers to situations in which the Protected Materials in a document, whether in paper or electronic form, have not been covered, blocked out,~~ or removed.

C. The term “Disclosing Party” means a party who initially discloses any specified Protected ~~Materials~~Material in this proceeding.

D. The term “Requesting Party” means any party that is requesting receipt of Protected Material from a Disclosing Party.

E. The term “Party” refers to the Requesting Party or the Disclosing Party and the term “Parties” refers to both the Requesting Party and the Disclosing Party.

E. The term “Market Participant” (~~“MP”~~) refers to a ~~party~~Requesting Party that is:

- 1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below.
- 2) A trade association or similar organization, or an employee of such organization,
 - a) whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
 - b) a majority of whose members purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
 - c) formed for the purpose of obtaining ~~market sensitive information~~Protected Materials; or
 - d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.
- 3) A person or entity that meets the criteria of 1) above is ~~nonetheless~~-not a ~~market participant~~Market Participant for purpose of access to ~~market sensitive data~~Protected Materials unless the person/entity seeking access to ~~market sensitive information~~Protected Materials has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:
 - a) the person or entity’s participation in the California electricity market is *de minimis* in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 § 3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving

entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a *de minimis* amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or

- b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, *i.e.*, where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or
- c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for ~~market sensitive information~~ Protected Materials.

G. The term “Non-Market Participant” refers to a Requesting Party that does not meet the definition of Market Participant. The California Independent System Operator is deemed a Non-Market Participant for purposes of this Protective Order.

~~E.—A Market Participant’s~~ H. “Reviewing Representatives” are limited to ~~persons~~ person(s) designated ~~by the Market Participant~~ in accordance with Paragraph 5 who meet the following criteria:

~~1.—Are outside experts, consultants or attorneys;~~

~~2.—Are~~ 1) Reviewing Representatives may not currently be engaged, directly or indirectly, in: (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) whose duties include such activities); engagement in such a transaction); (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) ~~whose duties include such activities~~); engagement in such a transaction); or (c) knowingly providing electricity or gas marketing consulting with or advising or advisory services to others in connection with any activity set forth in subdivisions (a) or (b) above a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) whose duties

~~include engagement in such activities a transaction or consulting); and.~~

~~3. Are not an employee of a market participant.~~

~~F. Persons or entities that do not meet the definition of market participant are non-market participants (“NMPs”), and may have access to market sensitive information through their designated Reviewing Representatives. An attorney or consultant that simultaneously represents market participant(s) and non-market participant(s) may not have access to market sensitive data. If, on the other hand, simultaneous representation is of market participant and non-market participant clients involved in completely different types of matters, there should be no bar (although there may be ethical implications of such representation that we do not address here). If, for example, an attorney represents a market participant in matters unrelated to procurement, resource adequacy, RPS, or the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, in a forum other than this Commission, and simultaneously represents a non-market participant in cases related to these topics before the Commission, there should be no bar to the attorney's receipt of market sensitive data (pursuant to a non-disclosure agreement and protective order) in the latter matter. In close cases, the balance should militate to bar simultaneous representation because of the risks it poses.~~

- 2) Reviewing Representatives may not be an employee of a Market Participant. If the Market Participant or Non-Market Participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall consistent with the ethics wall requirements in D.11-07-028, as that decision may be subsequently modified or changed by the Commission, from those in the firm who are involved in wholesale commercial dealings.
- 3) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.
- 4) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Market Participants and Non-Market

Participants.

~~H. 5)~~ All Reviewing Representatives are required to execute ~~a non-disclosure agreement~~ the Nondisclosure Certificate attached to this Protective Order and are bound by the terms of this Protective Order.

I. The term “Authorized Reviewers” refers to: (1) a Requesting Party that is a Non-Market Participant; or (2) a Reviewing Representative of a Requesting Party. A Requesting Party that is a Market Participant is not an Authorized Reviewer but it may designate a Reviewing Representative in accordance with Paragraph 5.

J. The term “Nondisclosure Certificate” refers to the Nondisclosure Certificate attached as Appendix A.

~~4. 3.~~ Designation of, Filing, and Service of Protected Materials.

When filing or providing in discovery any documents or items containing Protected Materials, a party shall physically mark such documents ~~on each page~~ (or in the case of non-documentary materials such as computer diskettes, on each item) as “PROTECTED MATERIALS SUBJECT TO PROTECTIVE ORDER,” or with words of similar import as long as one or more of the terms; “Protected Materials;” or “Protective Order;” ~~or “General Order No. 66-C”~~ is included in the designation to indicate that the materials in question are ~~protected~~ Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Paragraph ~~1714~~ hereof; ~~or~~; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or other the Commission representative makes a determination pursuant to Paragraph 4 hereof changing the designation makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Protective Order or any other nondisclosure agreement or protective order.

All documents containing Protected Materials that are ~~filed with the Commission or served~~tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding 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 only be served upon ~~Reviewing Representatives~~Authorized Reviewers and persons employed by or working on behalf of the ~~state governmental agencies referred to in Paragraph 12 hereof who are eligible and have requested to review such materials. Service upon the persons specified in the foregoing sentence~~Commission. Service upon Authorized Reviewers and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials 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~~the same means and at the same time.

5.4. Redaction of Documents. Whenever a ~~party~~Party files, serves or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such ~~party~~Party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

5. Designation of Reviewing Representatives. The Requesting Party shall provide written notice identifying its proposed Reviewing Representative(s) to the Disclosing Party before the Disclosing Party provides any Protected Materials to the Requesting Party's Authorized Reviewers. The written notice shall include the information identified in this paragraph. If the Requesting Party decides to designate any additional Reviewing Representative(s) after the Requesting Party's Authorized Reviewers receive Protected Materials, the Requesting Party shall identify the additional proposed Reviewing Representative(s) to the Disclosing Party before the Requesting Party provides Protected Materials to the additional Reviewing Representative(s). Within five (5) business days after receiving written notice of the identity of any Reviewing Representative, the Disclosing Party may provide the Requesting Party with a written objection to a specific Reviewing Representative stating the grounds for the objection. Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in Paragraph 11 of this Protective Order. If a Disclosing Party objects to a specific Reviewing Representative within five (5) business days after the Reviewing Representative is identified, the Parties shall not provide any Protected Materials to the disputed Reviewing Representative until the Parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 11. Failure by the Disclosing Party to object within five (5) business days does not waive the Disclosing Party's right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 11.

~~6. Selection of Reviewing Representatives.~~ Each MP and NMP selecting a Reviewing Representative shall first identify its proposed Reviewing Representative to the Disclosing Party.

~~An attorney or consultant that simultaneously represents market participant(s) and non-market participant(s) may not have access to market sensitive data, subject to the exception in paragraph 3.F. Any designated Reviewing Representative has(s) have~~ a duty to disclose to the Disclosing Party any potential conflict of interest that puts ~~him/her~~ the Reviewing Representative in violation of ~~Decision 06-12-030~~ D.06-12-030, as modified by subsequent decisions of the Commission. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

6. Nondisclosure Certificates. A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Nondisclosure Certificate, attached hereto as Appendix A, and delivered the signed Nondisclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Nondisclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to Commission Staff upon request.

7. Access to Protected Materials and Use of Protected Materials. Subject to the terms of this Protective Order, ~~Reviewing Representatives~~ Authorized Reviewers shall be entitled to access ~~to Protected Materials. All other parties in this proceeding shall not be granted access to Protected Materials, but shall instead be limited to reviewing redacted versions of documents. Reviewing Representatives~~ any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. ~~Reviewing Representatives~~ Authorized Reviewers may make notes of Protected Materials, which shall be treated as ~~Notes of~~ Protected Materials if ~~they~~ such notes disclose ~~the contents of~~ any Protected Materials. Protected Materials obtained by a ~~party~~ Party in this proceeding may also be requested by that ~~party~~ Party in a subsequent Commission proceeding, subject to the terms of any nondisclosure agreement or protective order

governing that subsequent proceeding, without constituting a violation of this ~~order.~~ Protective Order.

8. Maintaining Confidentiality of Protected Materials. Each Authorized Reviewer shall treat Protected Materials as confidential in accordance with this Protective Order and the Nondisclosure Certificate. Protected Materials shall not be used except as necessary for participation in this proceeding, and shall not be disclosed in any manner to any person except: (i) Authorized Reviewers; (ii) an Authorized Reviewer's employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Authorized Reviewer, provided that they shall first ensure that such personnel are familiar with the terms of this Protective Order and have signed a Nondisclosure Certificate; and (iii) persons employed by or working on behalf of the Commission. Authorized Reviewers shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Protective Order, and shall treat such Protected Materials in the same manner as they treat their own most highly confidential information.

~~8. Maintaining Confidentiality of Protected Materials. Each Reviewing Representative shall treat Protected Materials as confidential in accordance with this Protective Order and the Non-Disclosure Certificate executed pursuant to Paragraph 7 and 8 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) Reviewing Representatives who have executed Non-Disclosure Certificates; (ii) Reviewing Representatives' paralegal employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Reviewing Representatives, provided that they shall first ensure that such personnel are familiar with the terms of this Protective Order, and have signed a Non-Disclosure Certificate, (iii) persons employed by or working on behalf of the CEC or other state~~

~~governmental agencies covered by Paragraph 12. Reviewing Representatives shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Protective Order, and shall treat such Protected Materials in the same manner as they treat their own most highly confidential information. Reviewing Representatives~~ Authorized Reviewers shall be liable for any unauthorized disclosure or use by ~~their paralegal~~ themselves and/or employees, paralegals, or administrative staff. In the event any ~~Reviewing Representative~~ Authorized Reviewer 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 of Protected Materials, ~~they~~ the Authorized Reviewer shall immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the ~~Reviewing Representative~~ Authorized Reviewer shall cooperate in good faith with such ~~party~~ Party either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of ~~them~~ the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where ~~a Reviewing Representative~~ an Authorized Reviewer has been ordered to produce certain specific Protected Materials, the ~~Reviewing Representative~~ Authorized Reviewer may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. ~~Exception for California Independent System Operator (ISO). Notwithstanding any other provision of this Protective Order, with respect to an ISO Reviewing Representative only, participation in the ISO's operation of the ISO-controlled grid and in its administration of the~~

~~ISO-administered markets, including, but not limited to, markets for ancillary services, supplemental energy, congestion management, and local area reliability services, shall not be deemed to be a violation of this Protective Order.~~

~~10. Non-Disclosure Certificates. A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Non-Disclosure Certificate, attached hereto as Appendix A, and delivered the original, signed Non-Disclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Non-Disclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Non-Disclosure Certificates to Commission Staff upon request.~~

~~11. Return or Destruction of Protected Materials. Protected Materials shall remain available to ~~Reviewing Representatives until the later of the date that~~ Authorized Reviewers until an order terminating this proceeding becomes no longer subject to judicial review, ~~or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review.~~ If requested to do so in writing after that date, the ~~Reviewing Representatives~~ Authorized Reviewers shall, within fifteen days ~~of~~ after such request, return the Protected Materials ~~(including Notes of Protected Materials)~~ to the ~~Participant~~ Disclosing Party that produced ~~them~~ such Protected Materials, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and ~~Notes~~ notes of Protected ~~Material~~ Materials may be retained, if ~~they~~ such Protected Materials are maintained in accordance with Paragraph 8. Within such time period each ~~Reviewing Representative~~ Authorized Reviewer, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best of its knowledge, all ~~Protected Materials and all Notes of~~ Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 8. To the extent Protected Materials are not returned or destroyed,~~

they shall remain subject to ~~the Protective Order and CPUC General Order No. 66-C.~~ ~~In the event that a Reviewing Representative to whom Protected Material are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated.~~ ~~Even if no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate~~this Protective Order.

In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated and the Reviewing Representative shall immediately return or destroy all Protected Materials, or provide an affidavit stating that all Protected Materials and all notes of Protected Materials will be maintained in accordance with Paragraph 8. Even if a Reviewing Representative is no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Protective Order and the Nondisclosure Certificate.

~~12.10.~~ Access and Use by Governmental Entities.

~~(a)~~ A. In the event the ~~CPUC~~Commission receives a request from the ~~CEC~~California Energy Commission (“CEC”) for a copy of or access to any ~~party~~Party’s Protected Materials, the procedure for handling such requests shall be as follows. Not less than five (5) business days after delivering written notice to the Disclosing Party of the request, the ~~CPUC~~Commission shall release such Protected Materials to the CEC upon receipt from the CEC of an Interagency Information Request and Confidentiality Agreement (“Interagency Confidentiality Agreement”). Such Interagency Confidentiality Agreement shall: (i) provide that the CEC will treat the requested Protected Materials 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 Materials to employees or representatives of the CEC does not, by itself, make such Protected Materials public. In addition, the Interagency Confidentiality Agreement shall include an express acknowledgment of the ~~CPUC~~Commission'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)~~ B. In the event the ~~CPUC~~Commission receives a request for a copy of or access to a party's Protected Materials 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~~Commission may, not less than five (5) business days after giving written notice to the Disclosing Party of the request, release such ~~protected material~~Protected Materials to the requesting governmental agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that contains the same provisions described in Paragraph ~~10(a)~~10.A above.

~~(c)~~ C. The CEC may use Protected Materials when needed to fulfill its statutory responsibilities or cooperative agreements with the ~~CPUC~~Commission. Commission confidentiality designations will be maintained by the CEC in making such assessments, and the CEC will not publish any assessment that directly reveals the data or allows the data submitted by an individual load serving entity ~~(“LSE”)~~ to be “reverse engineered.”

~~13.~~11. Dispute Resolution. All disputes that arise under this Protective Order, including but not limited to alleged violations of this Protective Order and disputes concerning whether materials were properly designated as Protected Materials, shall first be addressed by the

parties through a meet and confer process in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, ~~the involved parties~~either party may present the dispute for resolution to the Assigned ALJ or the Law and Motion ALJ.

~~14.12.~~ Other Objections to Use or Disclosure. Nothing in this Protective Order shall be construed as limiting the right of a ~~party~~Party, the Commission Staff, or a state governmental agency covered by Paragraph ~~12 from objecting~~10 to object to the use or disclosure of Protected ~~Material~~Materials on any legal ground, ~~such as~~including relevance or privilege.

~~15.~~13. Remedies. Any violation of this Protective Order shall constitute a violation of an order of the ~~CPUC~~Commission. Notwithstanding the foregoing, the parties and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

~~16.~~14. Withdrawal of Designation. A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such ~~party~~Party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all ~~other parties~~Requesting Parties that the Disclosing Party ~~believes are in possession of such materials of the change of designation~~has agreed to withdraw its designation of Protected Materials for specific documents or material.

15. Modification. This Protective Order shall remain in effect unless and until it is modified or terminated by the Commission or the Assigned ALJ. The identity of the parties submitting Protected Materials may differ from time to time. In light of this situation, modifications to this Protective Order may become necessary. The Parties shall work cooperatively to develop such modifications and, to the extent the Parties are able to agree to modifications, shall file a motion with the Assigned ALJ or the Commission seeking approval of the modifications. To the extent Parties are unable to agree on modifications after a good faith

effort, each party governed by this Protective Order has the right to seek modifications in it as appropriate from the Assigned ALJ or the Commission.

~~17.~~ 16. Interpretation. ~~Titles~~ Headings are for convenience only and may not be used to restrict the scope of this Protective Order.

Entered: _____
Administrative Law Judge

Date: _____

APPENDIX A TO MODEL PROTECTIVE ORDER
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

~~Order Instituting Rulemaking to Implement~~)
~~Senate Bill No. 1488 (2004 Cal. Stats., CH. 690~~)
~~(Sept. 22, 2004)) Relating to Confidentiality of~~)
~~Information~~ [Insert Proceeding Caption])

Docket No. ~~05~~XX-~~06~~XX-~~040~~XXX

~~NON-DISCLOSURE~~ NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of California Public Utilities Commission.

By: _____
Title: _____
Representing: _____
Date: _____

Signed: _____

Name _____

Title: _____

Organization: _____

Dated: _____

PG&E Advice 3943-E
SCE Advice 2653-E
SDG&E Advice 2301-E

Appendix C

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

[Insert Proceeding Caption]

)
)

Docket No. XX-XX-XXX

**[MODEL] NONDISCLOSURE AGREEMENT
REGARDING MARKET PROTECTED MATERIALS**

1. Scope. This Nondisclosure Agreement Regarding Protected Materials (“Nondisclosure Agreement”) shall govern access to and the use of Protected Materials, produced by, or on behalf of, a Disclosing Party (as defined in Paragraph 2 below) in this proceeding.

2. Definitions

In addition to the terms defined and capitalized in other sections of this Nondisclosure Agreement, the following terms are defined for the purposes of this Nondisclosure Agreement:

A. For purposes of this Nondisclosure Agreement, the term “Protected Materials” means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Disclosing Party in accordance with the provisions of Decision (“D.”) 06-06-066 and subsequent decisions, General Order 66-C, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Nondisclosure Agreement by the Assigned Administrative Law Judge (“Assigned ALJ”), Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the California Public Utilities Commission (“Commission”), or any court or other body having appropriate authority. Protected Materials also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or compiles other Protected Materials or from which such materials may be derived (except that any

derivative materials must be separately shown to be confidential). Protected Materials do not include: (i) any information or document contained in the public files of the Commission or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed.

C. The “Disclosing Party” is _____ [Insert entity name].

D. The “Requesting Party” is _____ [Insert entity name].

E. The term “Party” refers to the Requesting Party or the Disclosing Party and the term “Parties” refers to both the Requesting Party and the Disclosing Party.

F. The term “Market Participant” refers to a Requesting Party that is:

- 1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below.
- 2) A trade association or similar organization, or an employee of such organization,
 - a) whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
 - b) a majority of whose members purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
 - c) formed for the purpose of obtaining Protected Materials; or

- d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.
- 3) A person or entity that meets the criteria of 1) above is not a Market Participant for purpose of access to Protected Materials unless the person/entity seeking access to Protected Materials has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:
- a) the person or entity's participation in the California electricity market is *de minimis* in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 § 3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a *de minimis* amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or
 - b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, *i.e.*, where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or
 - c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for Protected Materials.

G. The term "Non-Market Participant" refers to a Requesting Party that does not meet the definition of Market Participant. The California Independent System Operator is deemed a Non-Market Participant for purposes of this Nondisclosure Agreement.

H. “Reviewing Representatives” are limited to person(s) designated in accordance with Paragraph 5 who meet the following criteria:

- 1) Reviewing Representatives may not currently be engaged in: (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) engagement in such a transaction); (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction); or (c) knowingly providing electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction or consulting).
- 2) Reviewing Representatives may not be an employee of a Market Participant. If the Market Participant or Non-Market Participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall consistent with the ethics wall requirements in D.11-07-028, as that decision may be subsequently modified or changed by the Commission, from those in the firm who are involved in wholesale commercial dealings.
- 3) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.
- 4) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Market Participants and Non-Market Participants.
- 5) All Reviewing Representatives are required to execute the Nondisclosure Certificate attached to this Nondisclosure Agreement and are bound by the terms of this Nondisclosure Agreement.

I. The term “Authorized Reviewers” refers to: (1) a Requesting Party that is a Non-Market Participant that has executed a Nondisclosure Agreement; or (2) a Reviewing Representative of a Requesting Party if the Requesting Party has executed a Nondisclosure

Agreement and the Reviewing Representative has executed a Nondisclosure Certificate. A Requesting Party that is a Market Participant is not an Authorized Reviewer but it may designate a Reviewing Representative in accordance with Paragraph 5.

J. The term “Nondisclosure Certificate” refers to the Nondisclosure Certificate attached as Appendix A.

3. Designation, Filing and Service of Protected Materials.

When filing or providing in discovery any documents or items containing Protected Materials, a Party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “ PROTECTED MATERIALS SUBJECT TO NONDISCLOSURE AGREEMENT,” or with words of similar import as long as one or more of the terms, “Protected Materials” or “Nondisclosure Agreement” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Paragraph 13 hereof; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected

and shall be endorsed to the effect that they are served under seal pursuant to this Nondisclosure Agreement. Such documents shall only be served upon Authorized Reviewers and persons employed by or working on behalf of the Commission. Service upon Authorized Reviewers and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by the same means and at the same time.

4. Redaction of Documents. Whenever a Party files, serves, or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

5. Designation of Reviewing Representatives. The Requesting Party shall provide written notice identifying its proposed Reviewing Representative(s) to the Disclosing Party before the Disclosing Party provides any Protected Materials to the Requesting Party's Authorized Reviewers. The written notice shall include the information identified in this paragraph. If the Requesting Party decides to designate any additional Reviewing Representative(s) after the Requesting Party receives Protected Materials, the Requesting Party shall identify the additional proposed Reviewing Representative(s) to the Disclosing Party before the Requesting Party provides Protected Materials to the additional Reviewing Representative(s). Within five (5)

business days after receiving written notice of the identity of any Reviewing Representative, the Disclosing Party may provide the Requesting Party with a written objection to a specific Reviewing Representative stating the grounds for the objection. Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in Paragraph 10 of this Nondisclosure Agreement. If a Disclosing Party objects to a specific Reviewing Representative within five (5) business days after the Reviewing Representative is identified, the Requesting Party shall not provide any Protected Materials to the disputed Reviewing Representative until the Parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 10. Failure by the Disclosing Party to object within five (5) business days does not waive the Disclosing Party's right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 10.

Reviewing Representative(s) have a duty to disclose to the Disclosing Party any potential conflict that puts the Reviewing Representative in violation of D.06-12-030, as modified by subsequent decisions of the Commission. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

6. Nondisclosure Certificates. A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Nondisclosure Certificate, attached hereto as Appendix A, and delivered the signed Nondisclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Nondisclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to Commission Staff upon request.

7. Access to Protected Materials and Use of Protected Materials. Subject to the terms of this Nondisclosure Agreement, Authorized Reviewers shall be entitled to access any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. Authorized Reviewers may make notes of Protected Materials, which shall be treated as Protected Materials if such notes disclose any Protected Materials. Protected Materials obtained by a Party in this proceeding may also be requested by that Party in a subsequent Commission proceeding, subject to the terms of any nondisclosure agreement or protective order governing that subsequent proceeding, without constituting a violation of this Nondisclosure Agreement.

8. Maintaining Confidentiality of Protected Materials. Each Authorized Reviewer shall treat Protected Materials as confidential in accordance with this Nondisclosure Agreement and the Nondisclosure Certificate. Protected Materials shall not be used except as necessary for participation in this proceeding, and shall not be disclosed in any manner to any person except: (i) Authorized Reviewers; (ii) an Authorized Reviewer's employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Authorized Reviewer, provided that they shall first ensure that such personnel are familiar with the terms of this Nondisclosure Agreement and have signed a Nondisclosure Certificate; and (iii) persons employed by or working on behalf of the Commission. Authorized Reviewers shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Nondisclosure Agreement, and shall treat such Protected Materials in the same manner as they treat their own most highly confidential information.

Reviewing Representatives shall be liable for any unauthorized disclosure or use by themselves and/or their employees, paralegal, or administrative staff. In the event any Requesting Party and/or its Reviewing Representative 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 of Protected Materials, the Requesting Party shall immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Requesting Party and its Reviewing Representative shall cooperate in good faith with such Party either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where a Requesting Party and/or Reviewing Representative has been ordered to produce certain specific Protected Materials, the Requesting Party and/or Reviewing Representative may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. Return or Destruction of Protected Materials. Protected Materials shall remain available to an Authorized Reviewer until an order terminating this proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, the Authorized Reviewer shall, within fifteen days after such request, return the Protected Materials to the Disclosing Party that produced such Protected Materials, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and notes of Protected Materials may be retained, if such Protected Materials are maintained in accordance with Paragraph 8. Within such time period each Authorized Reviewer, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best of its knowledge, all Protected Materials have been returned or have been destroyed, or will be

maintained in accordance with Paragraph 8. To the extent Protected Materials are not returned or destroyed, such Protected Materials shall remain subject to this Nondisclosure Agreement.

In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated and the Reviewing Representative shall immediately return or destroy all Protected Materials, or provide a declaration stating that all Protected Materials and all notes of Protected Materials will be maintained in accordance with Paragraph 8. Even if a Reviewing Representative is no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Nondisclosure Agreement and the Nondisclosure Certificate.

10. Dispute Resolution. All disputes that arise under this Nondisclosure Agreement, including but not limited to alleged violations of this Nondisclosure Agreement and disputes concerning whether materials were properly designated as Protected Materials, shall first be addressed by the Parties through a meet and confer process in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, either Party may present the dispute for resolution to the Assigned ALJ or the Law and Motion ALJ.

11. Other Objections to Use or Disclosure. Nothing in this Nondisclosure Agreement shall be construed as limiting the right of a Party to object to the use or disclosure of Protected Materials on any legal ground, including relevance or privilege.

12. Remedies. Any violation of this Nondisclosure Agreement shall constitute a violation of an order of the Commission. Notwithstanding the foregoing, the Parties reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

13. Withdrawal of Designation. A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such Party if, in its opinion,

confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all Requesting Parties that the Disclosing Party has agreed to withdraw its designation of Protected Materials for specific documents or material.

14. Modification. This Nondisclosure Agreement shall remain in effect unless and until it is modified or terminated by written agreement of the parties or by order of the Commission or Assigned ALJ. The Parties agree that modifications to this Nondisclosure Agreement may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible. Each Party governed by this Nondisclosure Agreement has the right to seek modifications in it as appropriate from the Assigned ALJ or the Commission.

15. Interpretation. Headings are for convenience only and may not be used to restrict the scope of this Nondisclosure Agreement.

REQUESTING PARTY

By: _____

Title: _____

Representing: _____

Date: _____

DISCLOSING PARTY

By: _____

Title: _____

Representing: _____

Date: _____

APPENDIX A TO MODEL NONDISCLOSURE AGREEMENT

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

[Insert Proceeding Caption]

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Docket No. XX-XX-XXX

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Nondisclosure Agreement between [REQUESTING PARTY] and [DISCLOSING PARTY] in this proceeding, that I have been given a copy of and have read the Nondisclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Nondisclosure Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of California Public Utilities Commission.

Signed: _____

Name _____

Title: _____

Organization: _____

Dated: _____

**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

AT&T	Dept of General Services	Northern California Power Association
Alcantar & Kahl LLP	Douglass & Liddell	Occidental Energy Marketing, Inc.
Ameresco	Downey & Brand	OnGrid Solar
Anderson & Poole	Duke Energy	Praxair
Arizona Public Service Company	Economic Sciences Corporation	R. W. Beck & Associates
BART	Ellison Schneider & Harris LLP	RCS, Inc.
Barkovich & Yap, Inc.	Foster Farms	Recurrent Energy
Bartle Wells Associates	G. A. Krause & Assoc.	SCD Energy Solutions
Bloomberg	GLJ Publications	SCE
Bloomberg New Energy Finance	GenOn Energy, Inc.	SMUD
Boston Properties	Goodin, MacBride, Squeri, Schlotz & Ritchie	SPURR
Braun Blasing McLaughlin, P.C.	Green Power Institute	San Francisco Public Utilities Commission
Brookfield Renewable Power	Hanna & Morton	Seattle City Light
CA Bldg Industry Association	Hitachi	Sempra Utilities
CLECA Law Office	In House Energy	Sierra Pacific Power Company
CSC Energy Services	International Power Technology	Silicon Valley Power
California Cotton Ginners & Growers Assn	Intestate Gas Services, Inc.	Silo Energy LLC
California Energy Commission	Lawrence Berkeley National Lab	Southern California Edison Company
California League of Food Processors	Los Angeles Dept of Water & Power	Spark Energy, L.P.
California Public Utilities Commission	Luce, Forward, Hamilton & Scripps LLP	Sun Light & Power
Calpine	MAC Lighting Consulting	Sunshine Design
Cardinal Cogen	MBMC, Inc.	Sutherland, Asbill & Brennan
Casner, Steve	MRW & Associates	Tabors Caramanis & Associates
Chris, King	Manatt Phelps Phillips	Tecogen, Inc.
City of Palo Alto	McKenzie & Associates	Tiger Natural Gas, Inc.
City of Palo Alto Utilities	Merced Irrigation District	TransCanada
City of San Jose	Modesto Irrigation District	Turlock Irrigation District
Clean Energy Fuels	Morgan Stanley	United Cogen
Coast Economic Consulting	Morrison & Foerster	Utility Cost Management
Commercial Energy	NLine Energy, Inc.	Utility Specialists
Consumer Federation of California	NRG West	Verizon
Crossborder Energy	NaturEner	Wellhead Electric Company
Davis Wright Tremaine LLP	Navigant Consulting	Western Manufactured Housing Communities Association (WMA)
Day Carter Murphy	Norris & Wong Associates	eMeter Corporation
Defense Energy Support Center	North America Power Partners	
Department of Water Resources	North Coast SolarResources	