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CALIF ENERGY COMMISSION

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Mr. Robert L. Therkelsen
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5512

Re: Application for Designation of Confidentiality Electricity Demand Forecast Data, Docket No. 04-IEP-1D

Dear Mr. Therkelsen :

Southern California Edison Company ("SCE") is in receipt of your letter dated March 3, 2005, denying portions of SCE's Application for Confidential Designation of the above-referenced data submitted to the California Energy Commission ("CEC") on February 1, 2005. Pursuant to Title 20 of the California Code of Regulations, Section 2505(a)(3)(B), SCE appeals from the Executive Director's determination.

Specifically, SCE appeals the findings making public the following proprietary, confidential, and trade secret information:

1) SCE's 1998-2016 data for "Bundled Customer Peak at ISO," contained in forms 1.3 and 1.4;

2) SCE's 1998-2016 data for "Coincident Direct Access at ISO" and "Distribution Service Area Peak Demand at Generation," contained in form 1.4;

3) SCE's 2004-2016 data for Utility System Requirements under "1-in-2 Temperatures," contained in form 1.5; and

4) Limiting confidentiality for the information which the CEC has deemed non-public, "for three years from the date of [the CEC's] letter."

Each of these findings is erroneous and should be reversed. Each category of information set forth above constitutes a protected trade secret, or a component

of a protected trade secret and is information that is market sensitive. If released, this information would cause grave harm to SCE's customers.

First, the CEC denies SCE's request for confidentiality of its 1998-2016 data for "Bundled Customer Peak at ISO" contained in forms 1.3 and 1.4. The CEC states that this information "will not be given confidentiality since the annual net peak numbers are insufficient to arrive at hourly net short forecasts, and/or the information does not meet the criteria of a trade secret." This information, and the derivation of this information from other data sought by the CEC (for which the CEC also denied SCE's application for confidentiality), is at the heart of SCE's appeal.

The CEC's denial of trade secret protection for SCE's forecast "Bundled Customer Peak at ISO" is baseless. Under the CEC's own cited definition a trade secret "may consist of a formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it . . ." *See* March 3, 2005 letter denying SCE's Application for Designation of Confidentiality ("March 3 Letter"). SCE's forecast of its "Bundled Customer Peak at ISO" is exactly the type of information that, if revealed, would prevent SCE from obtaining the best pricing and contract terms on the purchases and sales it makes on behalf of its customers. Protection of the forecast, annual, "Bundled Customer Peak at ISO" allows SCE to remain competitive in transactions and contract negotiations because that number identifies the amount of power that SCE believes it must secure to be able to serve its customers' needs. SCE procures capacity to serve its forecast peak load, and the California Public Utilities Commission ("CPUC") sanctioned, capacity volume limits are based on forecast, peak load. Thus, if third parties knew this peak annual number and used it in conjunction with information about the amounts of capacity SCE has already secured, those third parties could determine how much SCE still needed to procure (the "net-short"). Knowledge of SCE's procurement requirement would allow third parties to charge SCE higher prices as SCE approached the final amounts it needed to procure to meet its forecast.[1] Such an effect on contract prices would directly and negatively affect SCE's customers.

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[1] Notably, the fact that third parties could use the information the CEC discloses publicly, and contrary to SCE's wishes, further renders the information a "trade secret" as that term is defined in the California Civil Code. There, a trade secret is defined as any "information, including a formula, technique, and process, that: derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Cal. Civil Code § 3426.1. SCE has set forth the potential impact on its customers of such information in the study conducted by Dr. Charles Plott, Ph.D, which finds that disclosure of market sensitive, confidential information to market participants will cause prices to rise. *See* SCE's Application for Confidential Designation, dated February 1, 2005, at Appendix A.

The CEC claims that SCE's Bundled Customer Peak at ISO is not confidential because revealing it would not allow a third party to derive SCE's hourly net short. The CEC's observation is irrelevant. SCE must procure to meet its bundled peak annual load, not just its hourly loads. Thus, any revelation of that number to third parties will impair SCE's negotiating position and provide a business advantage to prospective counterparties. Any such effect on SCE's position, will affect the rates that are charged to SCE's customers.

The CEC IEPR Process has become inextricably linked to the CPUC's procurement planning process. For example, in a ruling dated March 14, 2005, CPUC Commissioner Michael Peevey stated: "With narrow exceptions consistent with Public Resources Code Section 25302(f), the CPUC will not provide an additional opportunity for parties to re-examine IEPR determinations during its 2006 procurement proceedings. Parties will not be permitted to present evidence, testimony, or argument that they presented, or could have presented, in the CEC's IEPR proceeding."[2] The Legislature, in Assembly Bill 57, specifically charged the CPUC with ensuring the confidentiality of market sensitive procurement plan-related information. As the CEC has joined the procurement planning process, it must follow California law which requires the protection of "market-sensitive information" in accordance with procedures designed by the CPUC under Public Utilities Code Section 454.5(g), such as the April 4, 2003 Administrative Law Judges' Ruling Regarding Confidentiality Of Information And Effective Public Participation.[3]

Second, the CEC also denies SCE the protection of a confidential designation for SCE's 1998-2016 data for "Coincident Direct Access at ISO" and "Distribution Service Area Peak Demand at Generation" contained in form 1.4. As with the information regarding "Bundled Customer Peak at ISO," the CEC states that the information is "deemed public and will not be given confidentiality since the annual net peak numbers are insufficient to arrive at hourly net short forecasts, and/or the information does not meet the criteria of a trade secret." March 3 Letter at 2. SCE disputes the CEC's finding on the same grounds as set forth above in relation to "Bundled Customer Peak at ISO." The two categories, "Coincident Direct Access at ISO" and "Distribution Service Area Peak Demand at Generation," contained in form 1.4 are inextricably related to the category of information set forth in the category "Bundled Customer Peak at ISO" contained in form 1.3. If the two categories contained in form 1.4 are released, third parties will be able to calculate the "Bundled

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[2] Assigned Commissioner's Ruling Detailing How The California Energy Commission 2005 Integrated Energy Policy Report Process Will Be Used In The California Public Utilities Commission's 2006 Procurement Proceedings And Addressing Related Procedural Details, issued March 14, 2005 in Rulemaking 04-04-003.

[3] This Ruling was filed in R. 01-10-024.

Customer Peak at ISO." For the reasons stated earlier, such information cannot be released without significantly and negatively affecting SCE and its customers.

Third, the CEC denies SCE the protection of a confidential designation for SCE's 2004-2016 data for Utility System Requirements under "1-in-2 Temperatures" contained in form 1.5. Again, the CEC states that the information is "deemed public and will not be given confidentiality since the annual net peak numbers are insufficient to arrive at hourly net short forecasts, and/or the information does not meet the criteria of a trade secret." March 3 Letter at 2. This category of information represents the same information found under the heading "Distribution Service Area Peak Demand at Generation" in form 1.4, and is addressed above. Accordingly, if this category of information is released, third parties will be able to calculate the "Bundled Customer Peak at ISO" to the detriment of SCE's customers, as outlined above.

Lastly, in its Application for Confidentiality, SCE requested that the information contained in forms 1.3, 1.4 and 1.6 be held confidential for 15 years and that the information contained in form 1.5 be held confidential indefinitely. The CEC only granted limited protection to certain of SCE's information for a period of three years from the March 3 Letter.[4] SCE appeals from the CEC's determination of this time period.

The information contained in forms 1.3, 1.4, and 1.6 is relatively stable, and such information or the general trend it represents does not change substantially over short periods of time. This information only changes significantly at the end of a business cycle or when the electric industry undergoes a paradigm shift. Such a business cycle typically lasts about 15 years. That is why SCE seeks 15 years of protection for its data. Only after such period of time has elapsed will the information contained in forms 1.3, 1.4, and 1.6 truly be of no commercial value to third parties.

Additionally, the information contained in form 1.5 is weather-related and is not subject to much change during a typical, three year period. Accordingly, the formulas used by SCE in preparing its forecast during extreme weather conditions are extremely market sensitive. These formulas are prepared using measurement information that is not disclosed outside of SCE. Therefore, such information has independent economic value. These formulas allow SCE to determine how much it will need to procure to meet its customers' needs if SCE's service area is subject to an extraordinary weather year. Allowing this information to be disclosed after three years, may allow third parties to "reverse engineer" the formulas SCE uses to determine how much to procure under extreme weather conditions. This information, if made public,

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[4] For the other portions, the CEC granted no protection from disclosure.

would allow parties to determine SCE's needs, and, as explained above, allow such third parties superior pricing and negotiating positions relative to SCE. This would disadvantage SCE's customers. Because the information concerns SCE's needs during extreme weather conditions, increasing a third parties' competitive advantage would come at precisely the time when SCE would be at greatest need for resources. This would undoubtedly result in SCE's securing less than optimal pricing and contract terms for its customers. Accordingly, SCE urges the CEC to reconsider its request for indefinite confidentiality for the information provided in form 1.5.

For all of the aforementioned reasons, the CEC should revise its initial findings on SCE's Application for Confidential Designation of SCE's Electricity Demand Forecast Forms filed February 1, 2005, as follows:

1) SCE's 1998-2016 data for "Bundled Customer Peak at ISO" contained in forms 1.3 and 1.4 is deemed confidential and a trade secret whose release is likely to cause public harm. Such information is to be protected from disclosure for 15 years.

2) SCE's 1998-2016 data for "Coincident Direct Access at ISO" and "Distribution Service Area Peak Demand at Generation" contained in form 1.4 is deemed confidential and a trade secret whose release is likely to cause public harm. Such information is to be protected from disclosure for 15 years.

3) SCE's 2004-2016 data for Utility System Requirements for "1-in-2 Temperatures" contained in form 1.5 is deemed confidential and a trade secret whose release is likely to cause public harm. Such information is to be protected from disclosure indefinitely.

4) The CEC revises its previous finding regarding all of the information in SCE's form 1.6. The information contained in SCE's form 1.6 is protected from disclosure for 15 years, not three years as previously stated in the March 3 Letter.

Very truly yours,

Laura Genao

Laura I. Genao

cc: Fernando de Leon, Esq., California Energy Commission (via Overnight Delivery)

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