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

In the Matter of the Application of San Diego Gas & Electric Company (U902G) and Southern California Gas Company (U904G) for a Certificate of Public Convenience and Necessity for the Pipeline Safety & Reliability Project.

Application 15-09-013

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING ACCEPTING IN PART, DENYING IN PART, THE NOVEMBER 2, 2017 SUPPLEMENTAL MOTIONS AND DECEMBER 15, 2017 MOTION OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY FOR LEAVE TO SUBMIT CONFIDENTIAL MATERIALS UNDER SEAL**

**Summary**

San Diego Gas & Electric Company and Southern California Gas Company's (Applicants') Supplemental Motion for confidential treatment of information submitted for California Environmental Quality Act (CEQA) compliance purposes is granted in part and denied in part consistent with guidance in this Ruling. Applicants' Motion to keep confidential the Sauntry and Cook Declarations is denied. Applicants' motion for confidential treatment of Attachment C, Attachment E, and Attachment F to the December 15, 2017 Reply Brief of the Applicants on Phase One issues is granted.

**Procedural Background**

On September 30, 2015, Applicants moved to submit a confidential version of their Proponent's Environmental Assessment (PEA). On March 23, 2017, the Applicants filed an amended motion to seal that provided more information consistent with the

Commission's 2016 Decision (D.) 16-08-024. Applicants sought confidential treatment for two tranches of material: (1) geographic information system (GIS)<sup>1</sup> files setting forth the layout of the proposed project and its alternatives; and (2) Native cultural and historical resource information.<sup>2</sup>

As to the GIS files, on October 13, 2017, the assigned Administrative Law Judge (ALJ) denied the motion without prejudice. As noted in the ALJ ruling, some of the GIS files may be worthy of confidential treatment. But at least some of them appear to duplicate information that is already public, a point that the Applicants do not address.

As to the cultural information, the ALJ agreed that it should be out of the public eye consistent with California law. But California law also mandates that Commission staff share this information with the relevant tribes, and the Applicants seek relief that would prohibit, or at least hinder, that sharing. Therefore, the Applicants' motion to seal the cultural information was granted with the exception of any reference to the Commission's Public Utilities Code (Pub. Util. Code) Section (§) 583.

Among other things, in the October 13, 2017 ALJ ruling, the assigned ALJ also directed that if the Applicants wished to renew their March 23, 2017 amended motion to seal, they would do so by November 2, 2017 and answer the questions as posed in the ruling.<sup>3</sup> Otherwise, the GIS files would be made public; the Applicants would unseal

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<sup>1</sup> A GIS is “[a]n integrated collection of computer software and data used to view and manage information about geographic places, analyze spatial relationships, and model spatial processes. A GIS provides a framework for gathering and organizing spatial data and related information so that it can be displayed and analyzed.” (*Sierra Club v. Super. Ct.* (2013) 57 Cal.4th 157, 168 [quoting Wade & Sonner, A to Z GIS: An Illustrated Dictionary of Geographic Information Systems (2d ed. 2006) p. 90].).

<sup>2</sup> As itemized in a Revised Proposed Order at 1 that accompanied the March 23, 2017 Amended Motion, the confidential information includes the following: (1) confidential version of Volume II of the application, the PEA to protect information contained in portions of Chapter 1 and 4, including the geographic information system (or equivalent) data layers for the Proposed Project (Attachment 1-A; GIS Data); and (2) sensitive cultural and historical resources location information. (Attachment 4.5-B, Paleontological Resources Technical Report of Chapter 4, Section 4.5 Cultural Resources), collectively the “Confidential PEA.”

<sup>3</sup> ALJ Ruling at 13-14, 17-18.

previously submitted unredacted GIS related files marked confidential, and re-serve and re-file them to the service list.

On November 2, 2017, in response to the October 13, 2017, ALJ Ruling, Applicants filed and served a Supplemental Motion for leave to submit confidential materials under seal. No party filed and served a response. The Applicants moved for reconsideration of that portion of the ALJ Ruling denying confidential treatment of the Applicants' GIS files.

On November 2, 2017, the Applicants also moved the Commission for an order granting leave to submit confidential materials under seal, specifically the confidential version of the Supplemental Declaration of William C. Sauntry and the confidential version of the Declaration of Casey Cook (collectively, Declarations), filed concurrently in support of the Applicants' November 2, 2017 Supplemental Motion.

## **Discussion**

Applicants raise security concerns about revealing specific locations of: valves, piping details at compressor stations, meter stations, pipeline interconnections ("cross-ties"), the exact location of the pipeline within the right-of-way, and information that identifies a single point of failure (choke points). For the purposes of this proceeding, Applicants' motions are granted for this information. Applicants also raise concerns about providing the general location of the project and alternatives in GIS format. Applicants' motions are denied for this information.

These motions implicate how Commission staff may use information provided by utilities in the context of CEQA review. CEQA is clear on the issue that the public must be provided adequate information to understand a project's potential environmental impacts. Staff proposes to make maps available in an electronic format that clearly show all areas where potential environmental impacts could occur for both the proposed and alternative projects.

Public participation is an essential part of the CEQA process. (CEQA Guidelines Section 15201; *Emmington v. Solano County Redevelopment Agency* 195 Cal.App.3d

491, at 503.) Information relevant to the significant effects of a project, alternatives and mitigation measures shall be made available to the public as soon as possible by a lead agency. (Public Resources Code (PRC) Section 21003.1.) An Environmental Impact Report (EIR) is “the heart of CEQA.” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 392 (Laurel Heights I). “The Legislature has made clear that the purpose of an EIR is ‘an informational document’ and that ‘[t]he purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized, and to indicate the alternatives to such a project.’” (*Id.* at 390; PRC Section 21061.)

Applicants cite to federal regulations—18 Code of Federal Regulations (C.F.R.) § 388.113, and a federal statute—6 United States Code (U.S.C.) § 133—to support their argument that the Commission should keep GIS files confidential. Applicants assert that all of the GIS files amount to “critical energy infrastructure information” (CEII) within the definition of 18 C.F.R. § 388.113(c)(2). Applicants assert that the GIS files are exempt from disclosure under the federal Freedom of Information Act, 5 U.S.C. § 552. However, the Commission has already stated in Rulemaking 08-08-009, *Decision Adopting the Renewable Auction Mechanism* issued 12/17/2010, (D.10-12-048) that these federal regulations do not create a requirement on the Commission to treat infrastructure information that it receives from utilities confidentially.

D.10-12-048 addressed a utility’s arguments claiming substation and distribution system infrastructure information was protected by the Critical Infrastructure Information Act of 2002 (CII Act), 18 U.S.C § 388.113. The utility argued that precise substation location, substation design, circuit design capacity, voltage, and load information is CEII and must be protected. (D.10-12-048 at 72-73.)

D.10-12-048 found that the CII Act has no bearing on the Commission's decision about whether information provided to the Commission by a utility should be treated

confidentially. D.10-12-048 concluded that the CII Act does not allow a utility to self-identify information as CEII; the CEII designation is only relevant when a federal agency is involved with sharing information for the purpose of security planning. (*See Id.*)

Because the Applicants' critical energy infrastructure arguments are inapplicable, we review Applicants' confidentiality arguments from the perspective of whether the public is better off having the information kept confidential than made public. (*See Government Code Section 6255*).

Applicants' proposal to keep confidential the general location of the project in GIS is inconsistent with CEQA's broad informational mandate. There is a clear public interest in information showing the full extent of all disturbance corridors evaluated in the environmental document for both the proposed and the alternatives considered. This information is required to alert the public to the possible environmental impacts of the project - and inform public participation in the CEQA process. Additionally, Applicants' have failed to demonstrate a state interest in withholding information regarding the general location of large infrastructure projects – many of which are readily identifiable due to their size or the existence of ground markers identifying the location of pipelines to prevent accidental harm from excavations. Thus, the public interest in disclosing the information clearly outweighs the public interest in keeping the general location of infrastructure projects confidential.

The Applicants shall produce a non-confidential GIS data set that includes the general location of the project that the Commission is considering, specifically: the full disturbance corridor being studied (alignment) of the pipeline and alternatives, the name of the pipeline and alternatives as specified in the environmental documents (e.g., pipeline 3010, pipeline 1600, and proposed pipeline 3602), including all work areas, sites of environmental impact and features such as waterways, culverts, biological resources,

vegetation, land cover types, and survey areas.<sup>4</sup> Consistent with this Ruling, the burden is on Applicants to produce a publicly available data set of the proposed project in GIS format; this GIS data set need not include specific engineering information that the Applicants argue could lead to malicious harm to their system. Energy Division should make available in an electronic format the full extent of all disturbance corridors evaluated in the environmental document for both the proposed and alternative projects.

Additionally, with regard to more specific infrastructure information that continue to receive confidential protections via this Ruling, the Applicants shall clearly and precisely identify whether any of the data has already been officially and specifically designated by the Federal Energy Regulatory Commission as CEII pursuant to 18 C.F.R. § 388.113.

As to the Sauntry and Cook Declarations, we see no reason to treat as confidential the supply capability of Line 3010 and Line 1600 and potential for outages since this information is readily available in the pending proposed decision. Similarly, even without identifying the location of specific pipeline equipment (e.g., mainline valves for high-throughput backbone transmission pipelines), the potential for bad actors to disrupt pipeline supply or use online information, interactive maps, and software packages for nefarious purposes on *any* pipeline (including the proposed Line 3602) is also well known. Further, there is no reason to withhold already public Department of Homeland Security and Federal Bureau of Investigation bulletins pertaining to use of the internet for attack planning. Therefore, we are not convinced that this general information should be withheld from the public since it is already in the public domain.

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<sup>4</sup> On May 2, 2018, the ALJ issued a proposed decision in this proceeding that denies a Certificate of Public Convenience and Necessity for the proposed Line 3602. If the Commission approves this decision in the near future, the issue regarding the development of a GIS data set that provides more detail pertaining to the proposed Line 3602 is moot.

In summary, the Applicants' Supplemental Motion for leave to submit: 1) the confidential version of Volume II of the above application, the PEA to protect sensitive information in Chapter 1, specifically the GIS (or equivalent) data layers for the Proposed Project (Attachment 1-A: GIS Data) is accepted in part and denied in part based on the guidance established in this Ruling.

The Applicants' motion for leave to submit: 2) the Confidential Declaration of William C. Sauntry, Appendix B to the Amended Motion of the Applicants (Sauntry Declaration); 3) the Supplemental Confidential Declaration of William C. Sauntry, Appendix B to the Supplemental Motion of the Applicants (Supplemental Sauntry Declaration); and 4) the Confidential Declaration of Casey Cook, Appendix C to Supplemental Motion of the Applicants (Cook Declaration) is denied.

### **Other Outstanding Motion for Confidential Treatment**

This portion of the ruling addresses the Applicants' motion to submit confidential materials under seal outside the CEQA process and within the briefing process that occurred after evidentiary hearings.

On December 15, 2017, the Applicants filed a motion to file under seal the confidential versions of Attachment C, Attachment E, and Attachment F to the Reply Brief of the Applicants on Phase One issues. According to the Applicants, the confidential versions of Attachment C, Attachment E, and Attachment F to the Reply Brief should not be disclosed to the general public. Among other things, we agree that publicly releasing some of this information could be used in pre-operational planning of attacks by malicious actors, allowing them to plan an attack on the gas system remotely, without having seen or been present at any of the facilities. Protective measures are necessary to minimize the potential use of this information to attack and disrupt California's natural gas system, causing damage to both public health and the environment.

For good cause shown, the Applicants' motion that Attachment C, Attachment E, and Attachment F to the Reply Brief of the Applicants, filed concurrently with the

Supplemental Motion is granted in order to maintain the confidentiality of sensitive information in those materials. Attachment C, Attachment E, and Attachment F shall remain under seal and shall not be made accessible nor disclosed to anyone other than Commission staff except on the execution of mutually acceptable nondisclosure certificates, further order of ruling of the Commission, the assigned ALJ, or the ALJ designated as Law and Motion Judge.

Therefore, **IT IS RULED** that:

1. The Applicants' motion for leave to submit 1) the confidential version of Volume II of the above application, the Proponent's Environmental Assessment to protect sensitive information in Chapter 1, specifically the geographic information system (or equivalent) data layers for the Proposed Project (Attachment 1-A: Geographic Information System (GIS) Data is accepted in part and denied in part.

2. Within 30 days of the issuance of this decision, the Applicants shall provide Energy Division with the requisite data in a Geographic Information System format (or as specified by Energy Division, e.g., Google Earth kml/kmz files) that allow the full extent of all disturbance corridors and the perimeter boundaries of each discrete disturbance site evaluated in the environmental document for both the proposed project and alternatives to be made available to the public either on the Energy Division website for the proposed project or as deemed appropriate by Energy Division.

3. The San Diego Gas & Electric Company and Southern California Gas Company's motion for leave to submit: 2) the Confidential Declaration of William C. Sauntry, Appendix B to the Amended Motion of the Applicants ("Sauntry Declaration"); 3) the Supplemental Confidential Declaration of William C. Sauntry, Appendix B to the Supplemental Motion of the Applicants ("Supplemental Sauntry Declaration"); and 4) the Confidential Declaration of Casey Cook, Appendix C to Supplemental Motion of the Applicants ("Cook Declaration") is denied.

4. San Diego Gas & Electric Company and Southern California Gas Company's motion for leave to submit Attachment C, Attachment E, and Attachment F to the

December 15, 2018 Reply Brief of the Applicants, filed concurrently with the Supplemental Motion, is granted. Attachment C, Attachment E, and Attachment F shall remain under seal and shall not be made accessible nor disclosed to anyone other than Commission staff except pursuant this order, further order of ruling of the Commission, the assigned Administrative Law Judge (ALJ), or the ALJ designated as Law and Motion Judge.

5. The unredacted, confidential materials submitted by the Applicants to the Commission in protective envelopes and submitted as sealed documents shall remain under seal and shall not be made accessible or disclosed to anyone other than Commission Staff except on the execution of mutually acceptable nondisclosure certificates or on further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ designated as Law and Motion Judge.

Dated May 23, 2018, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph  
Assigned Commissioner

/s/ COLETTE E. KERSTEN

Colette E. Kersten  
Administrative Law Judge