

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

In the Matter of the Application of)
San Diego Gas & Electric Company)
(U-902) for a Certificate of Public)
Convenience and Necessity for the)
Sunrise Powerlink Transmission Project.)

Application No. 06-08-010
(Filed August 4, 2006)

**RESPONSE OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION TO THE
REQUESTS FOR RELEASE OF CONFIDENTIAL
INFORMATION AND MOTION FOR CONFIDENTIAL
TREATMENT OF CERTAIN INFORMATION**

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Pursuant to the instructions given by the ALJ at the June 26, 2007, prehearing conference in this proceeding, on July 2, 2007, five parties identified confidential information that had been used in testimony and submitted under seal in accordance with non-disclosure agreements. Of these, the Division of Ratepayer Advocates (DRA), Rancho Penasquitos Concerned Citizens (RPCC) and UCAN moved that the Commission remove confidential protection for the identified information and the data be publicly disclosed. To the extent that the some of this information was marked as “confidential” by the California Independent System Operator Corporation (CAISO), the CAISO hereby responds to the motions filed by UCAN and RPCC.¹

I. INFORMATION IDENTIFIED BY UCAN.

In many instances, UCAN has not clearly identified the source documents that contain the confidential information discussed in the direct testimony of David Marcus (Marcus testimony). However, CAISO has attempted to identify the source of the information for which UCAN is seeking public disclosure, and responds as follows:

A. Marcus testimony, p. 21 (cells 28 and 29, p. 9 of the UCAN motion).

It is the CAISO’s understanding that UCAN seeks public disclosure of the number of MWs that could be imported over Path 44 after a G-1/N-1 outage of Outay

¹ None of the confidential information identified by the DRA involved any data considered to be confidential by the CAISO.

Mesa and IV-Miguel. That number, 2897, is the output of a confidential sensitivity study conducted by the CAISO for UCAN, but it is not confidential. The same is true for the number of MWs that could be imported over Path 44 in the “UCAN02” case. Because UCAN does not seek to introduce the confidential source documents into the public record, the CAISO does not object to the public disclosure of these numbers.²

B. Marcus testimony, p. 21 (cells 30-33, p. 9 of UCAN motion).

The CAISO could not locate the source document for the redacted numbers found in footnote 58 of the Marcus testimony and therefore cannot respond to this request for public disclosure. The CAISO believes that this information may be based on confidential data provided by SDG&E. The CAISO reserves the right to modify this response based on additional information from UCAN regarding identification of source documents.

C. Marcus testimony, p. 22 and 23 (cells 34-44, pp. 10-11 of UCAN motion).

Similar to paragraph A. above, UCAN seeks public disclosure of output results contained in the confidential CAISO documents identified in footnotes 61, 62, 63 and 67 on pages 22 and 23 of the Marcus testimony. The redacted numbers on those pages are not confidential and may be publicly disclosed.

D. Marcus testimony, p. 24 (cells 45-50, pp. 11-12 of UCAN motion).

On page 24 of the Marcus testimony, UCAN seeks to introduce outage rate information regarding Southern California Edison’s (SCE’s) Del Amos-Ellis line, and then this information is extrapolated into statistical information about overlapping outages of IV-Miguel and Del Amos-Ellis. Although not entirely clear from footnotes 70 and 72 on that page, it appears that this is outage information that was provided to UCAN by the CAISO subject to a specific non-disclosure agreement between UCAN and SCE. The CAISO has contacted counsel for SCE regarding UCAN’s request for public disclosure of this data, and SCE has agreed that the data may be publicly disclosed.

² To the extent that the CAISO has misunderstood UCAN’s motion and UCAN is seeking public disclosure of the CAISO’s confidential source documents, the CAISO requests the opportunity to expand this motion for confidential treatment. Specifically, source documents “UCAN3-30post-transient_thermal_contingency_v01confidential.xls” and “UCAN3-30post-transient_thermal_normal_v01confidential.xls” contain line ratings and loading information that should be afforded confidential treatment as discussed in Section III below.

E. Marcus testimony, p. 25 (cell 51, p. 12 of UCAN motion).

At page 25 (incorrectly identified as page 24 in cell 51 of the motion), UCAN refers again to the results of a confidential CAISO study of power flows on Path 44 for 2015 loads and with AMI. The MW number that has been redacted is not confidential and can be publicly disclosed. There is also a reference at footnote 76 to a CAISO confidential Supplemental Analysis of UCAN Alternatives, but the testimony text describes these results without using confidential information. As long as UCAN does not seek to introduce the confidential source documents into the record, the CAISO does not object to public disclosure of the results and general, non-confidential, discussions of the results and conclusions contained in these documents.

F. Marcus testimony, pp. 36-37 (cells 68-84, pp. 14-16 of UCAN motion).

The redacted information set forth in the Marcus testimony on pages 36-37 (subsection “N-1-1 contingencies identified by the ISO on May 11, 2007”) is based on the CAISO confidential Supplemental Analysis of UCAN Alternatives provided to UCAN on May 11, 2007. This two page document is mostly a narrative description of CAISO concerns with the UCAN 2015 alternatives that had been previously identified in the CAISO Initial Testimony, Part III, submitted on April 20, 2007, and additional studies conducted by the CAISO to investigate these concerns. The Supplemental Analysis does contain some information that the CAISO considers to be confidential; in particular specific line ratings and path loadings, and these are set forth on Table 2 of the document. It is the CAISO’s understanding that UCAN is not seeking public disclosure of the Supplemental Analysis document.

Starting on page 36 of the Marcus testimony, the redacted information in the first, second and third paragraphs (cells 68-72 of the motion) is not confidential and can be publicly disclosed.³ In the fourth paragraph that begins on page 36 and continues on page 37, the description of the third overload is not confidential but the MW Path 44 loading limits (cells 73-74) are confidential. In the first full paragraph on page 37, the identification of the final overload is not confidential and may be publicly disclosed (cell

³ The CAISO notes that the direct quote in the first paragraph on page 36 could not be located in the source document, but it is a non-confidential description of the study conclusions.

75). The source document for the information following the phrase “as discussed above, the ISO has already...” could not be located and therefore the CAISO cannot comment on whether this information can be released (cell 76). Once again, in the second full paragraph on that page the final overload description is not confidential, but the emergency rating is confidential (cells 77-84).

G. Marcus testimony, pp. 39-40 (cells 85-87, p. 16 of UCAN motion)

The CAISO could not identify the source document for the redacted information contained in footnote 144 on page 39 of the Marcus testimony and therefore cannot comment on the public/confidential nature of this information (cell 85). The redacted information at the top of page 40, as well as the description of the information contained in Table 2 of the Supplemental Analysis set forth in footnote 147, is confidential (cells 86-87).

H. Marcus testimony, pp. 88-89 (cells 115-120, p. 20 of UCAN motion)

At page 88 of the Marcus testimony, the redacted Mw limitation range reflecting generation that can be constructed in the Imperial Valley is not confidential and may be publicly disclosed (cell 115). Similarly, assuming that the source documents identified in footnote 298 on that page are not being placed on the public record, the summaries of the confidential documents contained in the footnote are not confidential (cells 116-118).

At the top of page 89, the MW amount of renewable generation that the CAISO wants to “write off” is not confidential (cell 119). However, the CAISO cannot locate the source of the next two redacted numbers in the same sentence, as well as the source for the “final problem” with the Mexican frequency violations text in the last paragraph on that page (cell 120).

I. Marcus testimony, p. 171 (cell 134, p. 22 of UCAN motion)

The redacted import level on page 171 of the Marcus testimony is not confidential and may be publicly disclosed.

II. INFORMATION IDENTIFIED BY RPCC.

Unlike UCAN, RPCC attached two CAISO confidential source documents, under seal, to the direct testimony of William Stephenson. Unfortunately, because RPCC

embedded links to these documents in a “PDF” version of its testimony, the CAISO has been unable to actually view the attachments to the testimony. However, based on the document descriptions contained in the RPCC listing of confidential information, the confidential attachments to the RPCC testimony consist of two Excel spreadsheets entitled 1) RPCC1vs2010sunrise_3500mw_FLOWconfid.xls, and 2) RPCC1vs2010sunrise_4200mwFLOWconfid.xls. These documents do contain confidential information, consisting of line ratings and loadings (Columns H, K and M). As described below, both with respect to the UCAN confidential studies and to the RPCC confidential studies, this type of line rating data provides sensitive and security-constrained information about the transmission network and is never publicly disclosed. The information set forth on the spreadsheets was taken from the WECC database and also from specific network information in the possession of the CAISO regarding the IID network.

From a review of Mr. Stephenson’s testimony, however, it does not appear that the RPCC recommendations are based on the line rating and loading data in the columns identified above such that the public disclosure of this information is necessary for the Commission to make a determination as to the reasonableness of the RPCC position. Rather, it appears that the pertinent information contained in the CAISO confidential worksheets is set forth in other columns on the spreadsheets, and this information is not confidential. Thus, the CAISO suggests that the two spreadsheet attachments to the RPCC testimony simply be submitted on the public record with the confidential data redacted (Columns H, K and M). Alternatively, the CAISO would submit that the testimony descriptions of the results set forth on these worksheets provide sufficient evidence to support the RPCC conclusions, and the confidential attachments could be deleted from the testimony (with a footnote reference to the source documents). The CAISO does not intend to dispute RPCC’s description of the worksheets, and the CAISO witnesses can respond to questions about the analysis without referring to confidential information on the public record. Thus, there does not appear to be a compelling need for the worksheets to be made a part of the record in this case.

The CAISO admits to a certain amount of confusion with respect to RPCC Data Request No. 5 to the CAISO, identified as Item 4 in RPCC’s list of confidential

documents. It does not appear that RPCC is attempting to introduce the document into evidence, but rather is acknowledging that the footnotes contained references to information contained in a confidential document. If the CAISO's understanding is correct, then the CAISO certainly has no objection to the testimony descriptions of the CAISO responses. If RPCC is seeking to submit the CAISO responses to Data Request No. 5 as a public exhibit in this proceeding, the CAISO would note that its responses to DR 5-3, 5-4(e), 5-5, 5-8 and 5-11 are not confidential. The entire document was marked "Confidential" because of the confidential information set forth in the CAISO response to DR 5-4(a) (requesting a current line rating). Thus, the CAISO responses to DR 5 that RPCC uses in its testimony can be made public as long as the responses are separated from the confidential information set forth at DR 5-4(a).

III. MOTION FOR CONFIDENTIAL TREATMENT OF CRITICAL INFRASTRUCTURE INFORMATION.

Line Ratings And Other Critical Energy Infrastructure Information Is Entitled To Confidential Treatment.

UCAN has argued that state law and Commission policy favor public disclosure of information in the regulatory process, and, citing the Commission language in D.06-06-066, notes that the party seeking protection of its documents always bears the burden of proof. UCAN then goes on to state that the documents for which public disclosure is being sought do not have the potential to affect market prices, do not compromise the interests of ESPs or generators, do not involve price or competitive bidding data, "nor do they force SDG&E or the ISO to disclose data that compromises its ability to operate the transmission grid safely and efficiently" (UCAN motion, 4). The CAISO disagrees with UCAN regarding the phrase in quotations, and submits that public disclosure of the line rating information for which confidential treatment is being sought could very well affect the safety and security of the transmission network. For this reason, the public policy interest in maintaining network security outweighs the benefits of making such confidential information publicly available.

Indeed, line ratings (and similar information about physical electric facilities) are considered to be Critical Energy Infrastructure Information (CEII) which is given a higher level of protective treatment by the Federal Energy Regulatory Commission (FERC) than other documents within the possession of the agency. 18 C.F.R. §388.113(c)(1) defines CEII as “information about proposed or existing infrastructure that: (i) relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) does not simply give the location of the critical infrastructure”. Critical infrastructure is defined at §388.113(c)(2) as “existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters”. Clearly line ratings for specifically identified transmission line segments fit within these definitions and would be considered by the FERC to be CEII.

Persons seeking access to CEII must follow the procedures described in §388.113(d)(3), which provides that once such a request is made, the CEII Coordinator “will balance the requester’s need for the information against the sensitivity of the information”. If the requester is deemed to be eligible to receive the CEII, the Coordinator may then put conditions on the disclosure, including entering into a confidentiality agreement [§388.113(d)(3)(ii)]. Thus, for certain CEII, it is possible that a requesting party may be deemed to be ineligible and denied access to the information under any circumstances, or under very limited circumstances.

In this proceeding, UCAN and RPCC were provided the CEII pursuant to confidentiality agreements and thus were given full access to the underlying documents supporting the conclusions reached by the CAISO as described in its testimony. Similarly, the Commission may review the information, if necessary to arrive at a decision in this proceeding. The nub of the issue is not whether the CEII will be made available, but under what terms and conditions. Neither UCAN nor RPCC have presented any compelling reason that the public should be given unfettered access to sensitive information, the disclosure of which could pose a security risk.

Providing confidential treatment for the CEII at issue herein does not conflict with the principles set forth in D.06-06-066. For example, in the language cited by UCAN on page 3 of its motion, the Commission discussed providing full access to confidential ESP data to non-market participants via non-disclosure agreements, noting that “it is common in litigation and in many other contexts for parties to receive information pursuant to a confidentiality agreement or protective order.” Indeed, the Commission clearly stated that SB 1488 requires a critical examination of information claimed to be confidential, but does not prohibit all use of confidential information.⁴ Furthermore, the Commission’s decision in D.06-06-066 focused on categories of data that would be called for in an electric procurement proceeding and related dockets. To the extent that a party seeks confidential treatment for other information, the Commission noted that the current rules apply: that party must file a motion describing the data at issue and proving that the information is entitled protection (by statute, privilege, GO-66C) or is otherwise required to be held confidential.⁵

The CAISO has complied with these requirements and has proven that the information for which confidential treatment is being sought is entitled to a high level of protection as CEII under 18 C.F.R. §388.113. The parties have provided no persuasive reason that the line ratings in the CAISO confidential documents should be publicly revealed⁶, and therefore the Commission should grant this motion for confidential treatment.

IV. CAISO-IDENTIFIED CONFIDENTIAL INFORMATION

In order to comply with the ALJ’s directives, the CAISO identified two potentially confidential documents that were described in footnote 52 of the CAISO rebuttal testimony. The first document is a spreadsheet containing the results of a UCAN transient stability study. The CAISO has reviewed this spreadsheet and has determined that the information contained therein can be publicly disclosed, although the CAISO

⁴ D.06-06-066, 13.

⁵ *Id.*, 20.

⁶ RPCC actually provided no compelling reason that the CAISO’s confidential spreadsheets should be placed on the public record except that they contained information that “the CAISO frequently cites within its own public reports.” (RPCC motion, 3). That is true for some of the information contained on the spreadsheets, as discussed above, but not for all of it.

does not intend to introduce this source document into evidence. The second document, identified as “supplementalUCANalternativeanalysis.doc”, has been described in detail above with respect to UCAN’s motion for public disclosure of much of the information contained in that document. Once again, the CAISO does not intend to introduce this source documents into evidence, and both UCAN and the CAISO have publicly described the results of the analyses set forth in the document.

V. CONCLUSION

The CAISO has agreed that much of the information provided under seal in the UCAN testimony can be publicly released, and the RPCC attachments can be made publicly available if certain information is redacted. The only data that remains confidential are the line ratings information that are used as inputs to the power flow studies conducted by the CAISO.. This is a very small amount of information when compared to the hundreds of publicly-available documents and testimony that the Commission will have before it on the record. Furthermore, in light of the fact that very little information must be kept confidential, it would seem that the hearing record can be kept completely public and that the attorneys and witnesses can carefully craft questions and answers so as to eliminate the need for a confidential hearing session. The CAISO’s request for confidential treatment of certain information is reasonable and should be approved.

Respectfully submitted,

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