



Memorandum

To: ISO Board of Governors
From: Nancy Saracino, Vice President, General Counsel & Corporate Secretary
Date: March 26, 2009
Re: ***Decision on appeal regarding response under Information Availability Policy***

This memorandum requires Board action.

EXECUTIVE SUMMARY

This memorandum explains Management's position opposing a March 23 appeal by Ms. Julie Ann Sarale under the ISO's Information Availability Policy. The appeal alleges that California Independent System Operator Corporation ("the ISO") staff failed to respond appropriately to requests for records. Management concedes the ISO did not timely respond to the requests for information in accordance with the Policy, but recommends the appeal be denied because Ms. Sarale has been provided all documents that she is entitled to receive under the Policy.

MOTION

Moved, that having considered the appeal submitted by Ms. Sarale on March 23, 2009, the supplement submitted by Ms. Sarale on March 25, 2009, the Memorandum dated March 26, 2009, and the information presented to the Board on March 27, 2009, Board of Governors denies the appeal submitted by Ms. Sarale.

In the event the Board decides to grant the appeal, the following alternative motion is suggested.

Moved, that having considered the appeal submitted by Ms. Sarale on March 23, 2009, the supplement submitted by Ms. Sarale on March 25, 2009, the Memorandum dated March 26, 2009, and the information presented to the Board on March 27, 2009, the Board of Governors grants the appeal submitted by Ms. Sarale and orders the following records previously withheld to be disclosed: _____

BACKGROUND

The ISO's Information Availability Policy (the "Policy") was adopted by the Board of Governors on October 22, 1998, and amended November 29, 2001.¹ The Policy, which states that the ISO will provide copies of certain corporate records upon request, incorporates a number of provisions of the California Public Records Act applicable to public agencies "to the extent they assist and enable the Corporation to serve its statutory purposes." The ISO is required by the Public Utilities Code to "maintain a policy that is no less consistent with the California Public Records Act than its policy in effect as of May 1, 2002." The Policy permits an appeal of a "request denied" to the Board.

The requests that are the subject of this appeal stem from a November 6, 2008 letter signed by Laura Manz, the ISO's Vice President, Market and Infrastructure Development, which is posted on the ISO's website (the "ISO's November 6 Letter"). A copy of this letter is attached to the appeal as Exhibit H. The letter is addressed to the public and "requests all landowners and agencies to cooperate in allowing the performance of [transmission] maintenance standards and practices," with a focus on "ensur[ing] that the transmission owners have access to the transmission facilities and other nearby areas."

The ISO's November 6 Letter identifies three types of "maintenance standards and practices" that apply to transmission owners. These terms are used throughout the requests and this memorandum:

- 1) The term "ISO Transmission Maintenance Standards" is the defined term used in the Transmission Control Agreement, which refers to Appendix C to the agreement. The ISO was required to adopt these standards under Section 348 of the Public Utilities Code.
- 2) The term "Maintenance Practices" is defined in the ISO Transmission Maintenance Standards as "[a] confidential description of methods used by a [transmission owner], and adopted by the ISO, for the maintenance of that [owner's] Transmission Facilities."
- 3) The Mandatory Reliability Standards established by the North American Electric Reliability Corporation ("NERC") are also referenced in the ISO's November 6 Letter.

On November 17, 2008, attorney Charles Keen sent an e-mail to Steve Rutty, the ISO Manager of Grid Assets, to request "assistance in obtaining a copy of your current standards as the[y] apply to trimming of vegetation below power transmission lines." This request was followed by a letter dated November 20, 2008 to Laura Manz, who signed the ISO's November 6 Letter, with the same request. ISO Assistant General Counsel Dan Shonkwiler answered both communications on November 26, 2008 by e-mailing Mr. Keen a link to the ISO Transmission Maintenance Standards. After additional e-mail correspondence, Mr. Keen

¹ The November 2001 amendments to the Policy, which were recently posted to the ISO's website, are minor and not material to this appeal. There is only one change in those amendments that might affect the appeal and, in that case, Management applied the stricter (i.e., favoring release) 1998 version, rather than the amendment, which is more protective.

called Mr. Shonkwiler to ask for additional information about vegetation management. Mr. Shonkwiler explained that Mr. Keen was looking for the Maintenance Practices, but that he believed they were confidential. Mr. Keen indicated that he would issue a request for information.

Ms. Sarale, who is Mr. Keen's client, sent the request for information dated December 31, 2008, which the ISO received on January 7, 2009. The ISO did not initially reply to this request, or to follow up letters dated January 19 and February 2. Ms. Sarale then submitted a notice of appeal to the Corporate Secretary on February 19. The ISO submitted a formal response to the requests on March 3, along with responsive documents, and, following an e-mail from Mr. Keen, produced additional responsive documents on March 20. A copy of the March 3 letter (without enclosures) from the ISO to Mr. Keen is attached.

Ms. Sarale submitted her brief in support of her appeal on March 23, arguing that the ISO's response to the information request is incomplete. She submitted a "Supplement to the Statement of Appeal" on March 25, 2008.

THE MERITS OF THE APPEAL

An appeal under the Policy is limited to whether the ISO staff is improperly refusing to disclose information. Although Ms. Sarale makes a number of allegations regarding the fairness and propriety of utility practices using easements on agricultural land to perform vegetation management, Management does not address those arguments. The discussion below addresses each of the requests for information, what the ISO produced in response to the request, and what documents the ISO withheld pursuant to the Policy.

Requests for Maintenance Standards Related to Vegetation (Numbers 1-6 & 9)

These requests seek maintenance standards related to trimming, removing, or managing vegetation, including every such standard adopted by the ISO under Public Utilities Code section 348 and every such standard referenced in the ISO's November 6 Letter (including standards adopted by NERC).

The ISO's November 6 Letter indicates that transmission owners must comply with ISO Transmission Maintenance Standards and NERC Standards generally; it does not focus on standards related to vegetation management. Accordingly, the ISO provided the complete current ISO Transmission Maintenance Standards (38 pages). Because the NERC standards are regulations approved by FERC, the ISO referred Ms. Sarale to FERC, consistent with the ISO's Policy. In addition, for convenience, the ISO provided the internet address of a page on the NERC website that contains a complete set of the NERC standards. In the supplemental production on March 20, the ISO provided all previous versions of the ISO Transmission Maintenance Standards.

Ms. Sarale has two objections to the ISO's response. First, the appeal suggests on pages 9 and 10 that it was misleading for the ISO to provide the ISO Transmission Maintenance Standards. The appeal asserts that the ISO failed to adopt standards for maintenance of transmission lines as required by Public Utilities Code

section 348. This argument is based on an erroneous assumption about how the ISO Transmission Maintenance Standards should be written, as it assumes that the maintenance standards must be prescriptive.

The ISO Transmission Maintenance Standards, however, use performance-based standards rather than prescriptive standards. The use of performance standards is expressly permitted under the Public Utilities Code. Thus, the Transmission Maintenance Standards detail the standards for keeping transmission lines in operation (measures of availability) and areas that maintenance practices must address in order to meet those availability measures. The standards do mention vegetation management as one area that transmission owners must describe in their practices. Ms. Sarale has a complete copy of the ISO Transmission Maintenance Standards, which was sent to her attorney on November 26, 2008.

Second, the appeal claims at pages 10 and 11 that the ISO should have identified and provided copies of particular NERC standards that relate to vegetation management, rather than referring Ms. Sarale to FERC and the NERC website. This argument is inconsistent with the Policy. The NERC Standards are not ISO records. The Policy dictates that, in these circumstances, the ISO refer Ms. Sarale to FERC, as it did. *See* Policy § 4.2.2 (“[r]equestors will be referred to the applicable public agency for documents that are not submitted by the Corporation and are maintained by the public agency as part of its proceedings involving the Corporation. For example, the Corporation will make available copies of its pleadings filed with FERC, but will refer requestors to FERC for copies of pleadings filed by any other party.”)

The appeal also claims on pages 10 and 11 that the ISO should have identified particular NERC standards that relate to vegetation management. The ISO’s November 6 Letter does not refer to any particular NERC standards, let alone standards related to vegetation management. Identifying applicable federal regulations is legal research, not disclosure of ISO records.

Request for Documents from PG&E Relating to the November 6 Letter (Number 7)

This request seeks every document that the ISO received from PG&E related to the ISO’s November 6 Letter.

In response, the ISO provided 44 pages of e-mails and other responsive documents. The appeal does not contend that this response was deficient.

Requests for Transmission Owner Maintenance Practices (Numbers 10, 11 & 13)

These requests seek every “description of maintenance practices” related to vegetation management that either PG&E or SDG&E submitted under Section 2.3 of the ISO Transmission Maintenance Standards, and every document relating to PG&E’s vegetation management maintenance practices submitted to the ISO pursuant to Section 5.2.1.1 of the ISO Transmission Maintenance Standards. Both referenced sections require transmission owners submit “description[s] of [their] maintenance practices” to the ISO.

The maintenance practices of individual transmission owners are expressly confidential under the Transmission Control Agreement. Section 5.3 of the Policy addresses requests for confidential information belonging to third parties:

In event of a reasonable doubt as to whether the Corporation should make a third party's Records available to the public, the Corporation will refer the request directly to the third party for appropriate resolution. The Corporation will not take further action unless and until the third party authorizes the Corporation in writing to release the Records.

Accordingly, the ISO referred these requests to PG&E and SDG&E for further instruction. Both utilities authorized the ISO to release certain documents or portions thereof, which the ISO has forwarded to Ms. Sarale's attorney within a day of receiving authority to release them from the utilities.

The appeal argues at pages 7 through 10 that the descriptions of PG&E's maintenance practices should not be treated as confidential under the Policy, because the maintenance practices are not related to competition or trade secrets. This argument misunderstands the Policy. Section 4.3.2 requires confidential treatment for "[r]ecords that contain information required to be kept confidential . . . by any tariff or agreement accepted by FERC for filing and now in effect." The currently effective version of the Transmission Control Agreement, which is filed as a tariff, requires the ISO to "maintain the confidentiality of all of the documents . . . provided to it by any [transmission owner] that reflects or contains . . . technical information and materials that constitute valuable, confidential, and proprietary information, know-how, and trade secrets." TCA Section 26.3.

The maintenance practices fall within this requirement. The term "maintenance practices" is defined as: "[a] *confidential* description of methods used by a [transmission owner], and adopted by the ISO, for the maintenance of that [owner's] Transmission Facilities." (Emphasis added.) In addition, PG&E's maintenance practices from 2002, 2004, and 2006 are marked on every page as "proprietary and confidential," with the instruction "do not copy or distribute without permission of Pacific Gas and Electric Company." Accordingly, there is at least "reasonable doubt" as to whether the practices should be provided to the public, which is the standard set in Section 5.3 of the Policy.

Both PG&E and SDG&E responded to the ISO by authorizing release of portions of their maintenance practices that relate to vegetation management. The utilities provided redacted copies that they authorized the ISO to release. These copies were forwarded to Ms. Sarale's attorney on March 13 (PG&E records) and March 20 (SDG&E records). On March 25, PG&E identified and produced additional pages from its 1999 standards that had been inadvertently omitted in the copying and scanning process. The ISO provided these documents to Mr. Keen that same day.

Request for Documents Related to PG&E's Maintenance Practices (Number 11)

Request 11 was initially referred to PG&E in whole, as detailed above. In an e-mail dated March 13, Mr. Keen clarified that the request seeks all documents related to PG&E's maintenance practices for vegetation,

whether or not the documents were submitted under the Transmission Control Agreement. On March 20, after a careful review, the ISO produced an additional 144 pages of responsive documents. For additional responsive documents that appeared to be confidential, the ISO requested instructions from PG&E. In response, PG&E provided additional documents and portions of documents that it authorized the ISO to release. These documents were provided on March 21.

The March 25 supplement to the appeal suggests that some of these documents – Annual Maintenance Reports – were not confidential, and therefore should not have been referred to PG&E for instructions. The supplement relies on section 348 of the Public Utilities Code which states, in pertinent part, as follows: “[t]he Independent System Operator shall require each transmission facility owner or operator to report annually on its compliance with the standards. That report shall be made available to the public.” This argument confuses PG&E’s Annual Maintenance Report with its Annual Availability Report. It is the Annual Availability Report that is provided under this statute. The ISO produced the 2006 report, which was the only responsive report, without referring the matter to PG&E.

The appeal at page 3 also complains that this production included “large quantities of irrelevant material.” All of the documents produced by the ISO refer to PG&E maintenance practices for vegetation, which was what Mr. Keen requested in his clarification on March 13. Although large portions of the documents concern other subjects, in each case the entire document provided is responsive to the request.

Request for Other Documents Relating to the November 6 Letter (Number 8)

This request seeks every document related to the purpose, content, or issuance of the ISO’s November 6 Letter. The ISO provided 38 pages of e-mails and other documents. The ISO also explained that

The ISO has withheld preliminary drafts, notes and memoranda pursuant to Policy § 4.3.1, including internal drafts and communications related to the development and posting the November 6, 2008 letter, and internal drafts and notes that were generated in response to your inquiries. Some of these withheld documents are also privileged communications (see Policy § 4.3.4).

The appeal on page 10 argues that “[i]t would appear that there are some memoranda or other notes which ‘were maintained in a normal course of business.’ They should be produced.” (Emphasis in original.) In the case of this request, the ISO withheld a number of preliminary drafts and *internal* e-mails related to those drafts under this exemption. These are deliberative materials and are the products of individual employees. They are not filed in a corporate file for retention. The employees are free to delete them at any time. They are not “retained by the Corporation in the ordinary course of business,” and were appropriately withheld.

ADDITIONAL MATTERS RAISED IN THE APPEAL

Concerns regarding procedure

The appeal claims on page 2 that the ISO's March 3 letter improperly "assum[ed] the authority of the Board" and "dispos[ed] of my appeal." The March 3 letter advised Mr. Keen that "[t]he next meeting of the ISO Board of Governors will be March 26 and 27, 2009. Your appeal has been placed on the agenda." This concern is addressed by the Board hearing the appeal at its March meeting.

Privilege log

For documents that the ISO is withholding under the Policy because they are privileged, the appeal demands a "privilege log." The Policy does not require such an itemization. The ISO treats this issue the same as the State of California. The California Supreme Court considered and rejected a similar demand related to documents withheld under the California Public Records Act ("CPRA"). In *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1073 (2001), the court noted: "Although the CPRA describes its procedures and 'exceptions in exceptionally careful detail' . . . , it contains no equivalent provision describing an agency's duty to create a log of documents exempt from disclosure." The court held: "Preparing an inventory of potentially responsive records is not mandated by the CPRA." *Id.* at 1075. The appeal makes an unsupported claim for a privilege log that should be rejected.

Waiver

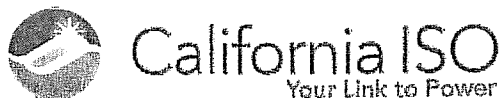
The appeal also argues that the ISO and PG&E "waived" provisions of the Policy about treatment of confidential material – the ISO by failing to submit a written response in 10 days, and PG&E by publicly describing and relying on its practices for vegetation management. The Policy, however, nowhere provides that the scope of available documents will be expanded under these circumstances. This is consistent with how these issues are treated under the California Public Records Act. In *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 1072 (2006), the California Supreme Court was presented a similar argument in connection with a late response by a public agency under the Public Records Act and found there was no waiver of exemptions because of a late response. It stated:

Petitioner also argues that, even if the records at issue were exempt from advance disclosure, the city was obliged to disclose them because it failed to comply with the timing requirements of the Act (e.g., Gov. Code, § 6253, subds. (c) [requiring agency decision within 10 days as to whether it will comply with disclosure request], (d) [proscribing delay in disclosure].) But we believe that requiring disclosure of otherwise exempt records as a penalty for delay in complying with the Act's timing requirements is unduly harsh. Certainly, the Act does not expressly provide such a remedy.

(Alterations in original.) Since there is no basis for a claim of waiver, this argument should be rejected.

MANAGEMENT RECOMMENDATION

Management recommends that the Board deny the appeal because, as detailed above, Ms. Sarale has received all of the documents that should have been provided under the Policy.



California Independent
System Operator Corporation

March 3, 2009

Via E-Mail and U.S. Mail

Charles E. Keen, Esq.
Geiger, Coon & Keen LLP
311 East Main Street, Suite 400
Stockton, California 95202

Re: Request for Information

Dear Mr. Keen,

I am writing on behalf of the California Independent System Operator Corporation (the ISO) in response to the request for information dated December 31, 2008 from Julie Ann Sarale, and the "notice of appeal of denial of request for records," dated February 19, 2009.

The ISO's Information Availability Policy (the "Policy") provides that the ISO's records be made available to the public unless they are confidential. Documents that are available under the Policy should be transmitted by email whenever practicable. Policy § 6.1. Records that are considered confidential under the Policy include "[r]ecords that contain information required to be kept confidential . . . by any tariff or agreement accepted by FERC for filing and currently in effect." See Policy § 4.3.2. In addition, the ISO is precluded from disclosing "[r]ecords that refer to commercially sensitive matters, disclosure of which may affect the competitive position of the Corporation's market participants . . ."). See Policy § 4.3.6. "In the event of reasonable doubt as to whether the Corporation should make a third party's records available," the request must be referred directly to the third party. Policy § 5.3. Finally, the Policy provides that when a request seeks documents maintained by a government agency, the ISO may refer the requestor to the agency for the information. See Policy § 4.2.2.

Contrary to the assertions in the February 19 notice of appeal, the ISO responded to your initial request for information, presented in an email dated November 17, 2008, with an email providing you with a link to the publicly-available documents and an explanation of how that link was responsive to your request. A copy of that email exchange is attached (Attachment A). This initial response by the ISO provided you with documents that included the complete ISO Transmission Maintenance Standards, which were responsive to your subsequent requests for these maintenance standards. In addition to the documents provided to you via email link on November 26, the ISO is attaching documents responsive to your other requests of December 31.

When we talked on or around December 18, I advised you of my understanding the ISO is prohibited from disclosing information regarding maintenance practices of individual utilities. There are two separate reasons for this. First, these practices are expressly protected as confidential under the Transmission Control Agreement, which is a tariff approved by the Federal Energy Regulatory Commission ("FERC") (and which you received via the ISO's November 26 email). Section 26.3 prohibits the ISO from releasing "information and materials that constitute valuable, confidential, and proprietary information, know-how, and

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trade secrets belonging to” a transmission owner. (The ISO’s tariff sheets covering this provision are attached). The Transmission Control Agreement expressly designates “Maintenance Practices” as “confidential.” See Section 1 on Sheet 139-140 (in attached pages). Second, each transmission owner has its own maintenance standards, which reflect its own unique “equipment, operating conditions, and environmental conditions,” Sheet 142 (attached), and which are generally kept confidential from the other transmission owners. The ISO protects these records as confidential third party documents and does not disclose them absent written authorization from the third party. See Policy § 5.3.

The ISO’s responses to the specific information requests are as follows:

1. *Every maintenance standard related to vegetation management adopted by CAISO pursuant to Public Resources [sic] Code § 348 since formation of CAISO.*

The ISO provided the link to the ISO Transmission Maintenance Standards (Appendix C of the Transmission Control Agreement) via email on November 26, 2008. There are no further documents responsive to this request.

2. *Every maintenance standard related to vegetation trimming adopted by CAISO pursuant to Public Resources Code § 348 since formation of CAISO.*

The ISO provided the link to the ISO Transmission Maintenance Standards (Appendix C of the Transmission Control Agreement) via email on November 26, 2008. There are no further documents responsive to this request.

3. *Every maintenance standard related to vegetation removal adopted by CAISO pursuant to Public Resources Code § 348 since formation of CAISO.*

The ISO provided the link to the ISO Transmission Maintenance Standards (Appendix C of the Transmission Control Agreement) via email on November 26, 2008. There are no further documents responsive to this request.

4. *Every maintenance standard related to vegetation management which are subject of the request for cooperation by landowners made by Vice President Laura Mantz in the second paragraph of her letter dated November 6, 2008, a copy of which is attached for your reference at Exhibit “A” to this request.*

The ISO provided the link to the ISO Transmission Maintenance Standards (Appendix C of the Transmission Control Agreement) via email on November 26, 2008. There are no further documents responsive to this request.

5. *Every maintenance standard related to trimming of vegetation which are subject of the request for cooperation by landowners made by Vice President Laura Mantz in the second paragraph of her letter dated November 6, 2008, a copy of which is attached for your reference at Exhibit “A” to this request.*

Charles E. Keen, Esq.
March 3, 2009

The ISO provided the link to the ISO Transmission Maintenance Standards (Appendix C of the Transmission Control Agreement) via email on November 26, 2008. There are no further documents responsive to this request.

6. *Every maintenance standard related to vegetation removal which are subject of the request for cooperation by landowners made by Vice President Laura Mantz in the second paragraph of her letter dated November 6, 2008, a copy of which is attached for your reference at Exhibit "A" to this request.*

The ISO provided the link to the ISO Transmission Maintenance Standards (Appendix C of the Transmission Control Agreement) via email on November 26, 2008. There are no further documents responsive to this request.

7. *Every document received by CAISO from PG&E or its agents or attorneys which was in any way related to the letter of Vice President Laura Mantz of November 6, 2008, a copy of which is attached for your reference at Exhibit "A".*

The ISO is providing documents that fit this description, as follows: a presentation delivered by a PG&E representative at an April 17, 2008 meeting of the Transmission Maintenance Coordinating Committee, and e-mails from representatives of PG&E, which are stamped 0001 – 0044.

8. *Every document (other than those documents excepted from production under para 4.3.1, 4.3.3, and 4.3.5 of CAISO Information availability policy dated October 22, 1998) which is any way related to purpose, content, or issuance of the letter of Vice President Laura Mantz of November 6, 2008, a copy of which is attached for your reference at Exhibit "A".*

See response to item 7. In addition, the ISO is providing minutes of the Transmission Maintenance Coordinating Committee in 2008, a memorandum presented at the July meeting, external communications related to the development and posting of the November 6, 2008 letter, and the e-mail exchange that you initiated in November 2008. These documents are stamped 0045 – 0082. The ISO has withheld preliminary drafts, notes and memoranda pursuant to Policy § 4.3.1, including internal drafts and communications related to the development and posting the November 6, 2008 letter, and internal drafts and notes that were generated in response to your inquiries. Some of these withheld documents are also privileged communications (see Policy § 4.3.4).

9. *Every maintenance standard related to vegetation management, trimming, or removal including but not limited to North American Electric Reliability Standards approved by the Federal Energy Regulatory Commission to which transmission owners are subject which standards are referred to in the request for cooperation by landowners made by Vice President Laura Mantz in the first paragraph of her letter dated November 6, 2008, a copy of which is attached for your reference at Exhibit "A" to this request.*

With respect to the ISO Transmission Maintenance Standards, please see the response to item 1. The NERC Standards are rules approved by FERC, and are available from FERC (www.ferc.gov; many but not all standards are available in Docket No. RM06-16). A complete set is also available through NERC at http://www.nerc.com/files/Reliability_Standards_Complete_Set_1Dec08.pdf.

Charles E. Keen, Esq.
March 3, 2009

10. *Every description of maintenance practices related to vegetation management submitted by PG&E to CAISO pursuant to para 2.3 Appendix "C" CAISO FERC Electric Tariff No. 7, a copy of which is attached for your reference at Exhibit "B" to this request, for the years 1999 through 2007 inclusive.*

Documents responsive to this request are protected from disclosure as confidential under Section 26.3 of the Transmission Control Agreement, which is a FERC-approved tariff (see Policy § 4.3.2), and because they are commercially sensitive (see Policy §4.3.6). On March 3, 2009, the ISO referred the request to PG&E pursuant to section 5.3 of the Policy. The ISO will take no further action unless and until PG&E authorizes the release of the records.

11. *Every document relating to maintenance practices related to vegetation management relating to PG&E or submitted by PG&E to CAISO pursuant to para 5.2.1.1 Appendix "C" CAISO FERC Electric Tariff No. 7, a copy of which is attached for your reference at Exhibit "B" to this request, for the years 1999 through 2007 inclusive.*

Documents responsive to this request are protected from disclosure as confidential under Section 26.3 of the Transmission Control Agreement, which is a FERC-approved tariff (see Policy § 4.3.2), and because they are commercially sensitive (see Policy §4.3.6). On March 3, 2009, the ISO referred the request to PG&E pursuant to section 5.3 of the Policy. The ISO will take no further action unless and until PG&E authorizes the release of the records.

12. *Every document relating to complaints of excess trimming relating to PG&E for the years 1999 through 2007 inclusive.*

The ISO does not possess documents that fit this description.

13. *Every description of maintenance practices related to vegetation management submitted by SDG&E to CAISO pursuant to para 2.3 Appendix "C" CAISO FERC Electric Tariff No. 7, a copy of which is attached for your reference at Exhibit "B" to this request, for the years 2002 through 2007 inclusive.*

Documents responsive to this request are protected from disclosure as confidential under Section 26.3 of the Transmission Control Agreement, which is a FERC-approved tariff (see Policy § 4.3.2), and because they are commercially sensitive (see Policy §4.3.6). On March 3, 2009, the ISO referred the request to SDG&E pursuant to section 5.3 of the Policy. The ISO will take no further action unless and until SDG&E authorizes the release of the records.

The February 19 Appeal

The Policy provides the right to appeal "any request that is denied" to the ISO Board of Governors. The February 19 letter is an appeal of "refusal to provide the records." The next meeting of the ISO Board of Governors will be March 26 and 27, 2009. Your appeal has been placed on the agenda.

This letter denies your requests numbered 10, 11, and 13. You also have a right to appeal those determinations if you act within 30 days.

Charles E. Keen, Esq.
March 3, 2009

If you have any questions or if I can provide other assistance, do not hesitate to call me at (916) 608-7015.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Shenkwiler". The signature is fluid and cursive, with the first name "Daniel" and last name "Shenkwiler" clearly distinguishable.

Daniel J. Shenkwiler
Assistant General Counsel – Corporate

Attachments