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FILED
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 AUG 8 2013
 CENTRAL DISTRICT OF CALIFORNIA
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13 [Appearances Continued On Next Page]

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 15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17
 18 DYNEGY MOSS LANDING, LLC,
 19 Plaintiff,
 20 v.
 21 SOUTHERN CALIFORNIA EDISON
 COMPANY,
 22 Defendant.

Case No. CV13-00996 JAK (Ex)
 Assigned to the Honorable John A.
 Kronstadt for all purposes.

~~PROPOSED~~ AMENDED
 STIPULATED PROTECTIVE
 ORDER

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~~Proposed~~ Amended Stipulated Protective Order
 Case No. CV13-00996 JAK (Ex)

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2 IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the
3 parties, and subject to the approval of the Court, that the following Amended Stipulated
4 Protective Order (“Order”) shall govern the designation, disclosure, and use of
5 information, documents, or things produced or exchanged during discovery in this
6 matter. In order to protect confidential information obtained by the parties in
7 connection with this case, the parties, by and through their respective undersigned
8 counsel and subject to the approval of the Court, hereby agree as follows:

9 **Part One: Use Of Confidential Materials In Discovery**

10 1. Any party may designate as “Confidential” (by stamping the relevant
11 document or as otherwise set forth herein) any document or response to discovery
12 which that party considers in good faith to contain, reveal or reflect its own
13 confidential business information or that of a third party, where there is a pre-existing
14 obligation to keep that third party’s information confidential, including, but not limited
15 to, market quotations and competitive financial information, transaction terms, and
16 regulatory information which is not publicly known; as well as any other information
17 or materials prohibited from public disclosure by SCE’s tariffs. Any document or
18 response designated as “Confidential” shall be subject to protection under Rule 79-5.1,
19 79-5.2, and 79-5.3 of this Court’s Local Rules (“Local Rules”) and any other relevant
20 provisions or decisions of law.

21 2. A party may designate information disclosed during a deposition or in any
22 response to written discovery as “Confidential” by so indicating in said responses or on
23 the record at the deposition and requesting the preparation of a separate transcript of
24 such material. In addition, a party may designate in writing, within thirty (30) calendar
25 days after receipt of said responses or of the deposition transcript for which the
26 designation is proposed, that specific pages of the transcript and/or specific responses
27 be treated as “Confidential.” After any designation made according to the procedure
28 set forth in this paragraph, the designated documents or information shall be treated

1 according to the designation until any dispute over the designation is resolved
2 according to the procedures described in Paragraph 10 of this Order, and counsel for the
3 parties shall be responsible for marking all previously unmarked copies of the
4 designated material in their possession or control with the specified designation.

5 3. All "Confidential" information produced or exchanged in the course of
6 this case shall be used by the party to whom the information is produced solely for the
7 purpose of this case. "Confidential" information shall not be used for any commercial,
8 competitive, personal, or other purpose.

9 4. Except with the prior written consent of the other party, or upon prior
10 order of this Court obtained upon notice to opposing counsel, "Confidential"
11 information shall not be disclosed to any person other than:

- 12 (a) counsel for the respective parties to this litigation;
- 13 (b) employees of such counsel;
- 14 (c) individual parties or officers or employees of a party, to the extent
15 deemed necessary by counsel for the prosecution or defense of this
16 case;
- 17 (d) consultants or expert witnesses retained for the prosecution or
18 defense of this case, provided that each such person shall execute a
19 copy of the Certification attached to this Order as Exhibit A (which
20 shall be retained by counsel to the party disclosing the
21 "Confidential" information and made available for inspection by
22 opposing counsel during the pendency or after the termination of
23 the case only upon good cause shown and upon order of the Court)
24 before being shown or given any "Confidential" information;
- 25 (e) any authors or recipients of the "Confidential" information;
- 26 (f) the Court, court personnel, and court reporters; and
- 27 (g) deposition witnesses, who, if not otherwise described in Paragraph
28 4 of this Order, shall sign the Certification before being shown a

1 “Confidential” document. At the request of either party, the portion
2 of the deposition transcript involving the “Confidential”
3 information shall be designated “Confidential” pursuant to
4 Paragraph 2 of this Order. Deposition witnesses shown
5 “Confidential” information shall not be allowed to retain copies.

6 5. Any persons receiving “Confidential” information shall not reveal or
7 discuss such information to or with any person who is not entitled to receive such
8 information, except as set forth herein. If a party or any of its representatives, including
9 counsel, inadvertently discloses any “Confidential” information to persons who are not
10 authorized to use or possess such material, the party shall provide immediate written
11 notice of the disclosure to the party whose material was inadvertently disclosed. If a
12 party has actual knowledge that “Confidential” information is being used or possessed
13 by a person not authorized to use or possess that material, regardless of how the
14 material was disclosed or obtained by such person, the party shall provide immediate
15 written notice of the unauthorized use or possession to the party whose material is
16 being used or possessed.

17 6. In any proceeding where a party wishes to file documents designated as
18 “Confidential” by the other party, such filings shall be made provisionally under seal
19 according to the procedures described in Local Rule 79-5.1. The Court shall thereafter
20 seal the filing, as requested, unless objection is made by the opposing party pursuant to
21 Paragraph 10 of this Order or good cause is shown by a non-party. If such objection is
22 made by a party or non-party, the filing shall remain provisionally under seal until the
23 Court resolves the dispute.

24 7. If another court or administrative agency subpoenas or orders a party to
25 produce documents or information designated as “Confidential” by the other party,
26 the party receiving the subpoena or order shall promptly notify opposing counsel of
27 the issue and provide counsel a copy of said subpoena or order.

1 8. A party may designate as "Confidential" documents or discovery
2 materials produced by a non-party by providing written notice of the relevant
3 document number(s) or other identification to the opposing party within thirty (30)
4 calendar days of receiving such documents or discovery materials. Thereafter, the
5 parties shall follow the procedures in Paragraph 10 of this Order.

6 9. Either party may voluntarily disclose to others without restriction any
7 information that it, alone, designated as "Confidential," although any document
8 containing such "Confidential" information will lose its confidential status if it is
9 made public by the designating party. Such documents will not, however, lose their
10 confidential status if they are made public through no fault of the designating party. If
11 a party produces materials designated "Confidential" information in compliance with
12 this Order, that production shall be deemed to have been made consistent with any
13 confidentiality or privacy requirements mandated by local, state or federal laws.

14 10. If a party contends that any material is not entitled to confidential
15 treatment, such party may at any time give written notice to the party who designated
16 the material as "Confidential." The party who designated the material shall have
17 twenty (20) calendar days from the receipt of such written notice to apply to the Court
18 for an order designating the material "Confidential." The party seeking the order has
19 the burden of establishing that the document is entitled to protection.

20 11. Notwithstanding any challenge to the designation of material as
21 "Confidential," all documents shall be treated as such and shall be subject to the
22 provisions hereof unless and until one of the following occurs:

- 23 (a) the party who claims the material is "Confidential" withdraws such
24 designation in writing or makes the material public; or
25 (b) the party who claims the material is "Confidential" fails to apply to
26 the Court for an order designating the material confidential within
27 the time period specified above after receipt of a written challenge
28 to such designation; or

1 (c) the Court rules the material is not “Confidential” information.

2 12. All provisions of this Order restricting the communication or use of
3 “Confidential” information shall continue to be binding after the conclusion of this
4 litigation, unless otherwise agreed or ordered. Upon conclusion of the litigation, a
5 party in the possession of “Confidential” information, other than that which is
6 contained in the pleadings, correspondence, and deposition transcripts, shall either (a)
7 return such documents no later than (30) calendar days after conclusion of this case to
8 counsel for the party or non-party who provided such information, or (b) destroy such
9 documents within that time period upon consent of the party or non-party who provided
10 the information and notify the other party and any relevant non-party in writing within
11 thirty (30) calendar days that the documents have been destroyed. Any material
12 designated “Confidential” that is not returned or destroyed remains “Confidential” and
13 subject to this Order.

14 13. Nothing herein shall be deemed to waive any applicable privilege or work
15 product protection, or to affect the ability of a party to seek relief for an inadvertent
16 disclosure of material protected by privilege or work product protection. Any witness
17 or other person, firm or entity from which discovery is sought may be informed of and
18 may obtain the protection of this Order by written advice to the parties’ respective
19 counsel or by oral advice at the time of any deposition or similar proceeding.

20 **Part Two: Use of Confidential Materials in Court**

21 The following provisions govern the treatment of “Confidential” information
22 used at trial or submitted as a basis for adjudication of matters other than discovery
23 motions or proceedings.

24 14. A party that files with the Court, or seeks to use at trial, materials
25 designated as “Confidential,” and who seeks to have the record containing such
26 information sealed, shall submit to the Court a motion or an application to seal
27 pursuant to Local Rule 79-5.1.

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1 designation (or, in the case of anticipated testimony, must be considered by an attorney
2 prior to such designation). The designation will constitute a certification by the
3 reviewing attorney that he or she in good faith believes the document, material, or
4 information in question requires the heightened level of protection under Fed. R. Civ. P.
5 26(c)(1)(g).

6 18. Documents and materials produced by a party to this action and
7 containing information for "Outside Counsel's Eyes Only" must be so designated on
8 each page at the time of service. The parties may designate information disclosed in
9 response to any written discovery as "Outside Counsel's Eyes Only" by so indicating
10 the designation in their written responses. The parties also may designate documents
11 and materials produced by any third party as "Outside Counsel's Eyes Only" by so
12 indicating within ten (10) calendar days of receipt of such materials from the third
13 party.

14 19. Either party may designate testimony given during any deposition as
15 "Outside Counsel's Eyes Only" by so indicating the designation on the record and
16 facilitating the preparation of a separate transcript that is suitable to share with the other
17 party's employees. In that event, the designating party shall have five (5) business days
18 following receipt of those deposition transcripts to ensure that they accurately reflect all
19 "Outside Counsel's Eyes Only" designations (the "Review Period"). Outside counsel
20 for the non-designating party may not provide any version of the deposition transcript
21 (*i.e.*, neither the complete nor modified transcript) to any employee of the non-
22 designating party (except as specifically described in Paragraph 21(f) of this Order)
23 during the Review Period. On or before the expiration of the Review Period, the
24 designating party shall notify the non-designating party's outside counsel in writing of
25 any error(s) in the transcripts regarding "Outside Counsel's Eyes Only" designations
26 and work expeditiously with the court reporter to correct such error(s). Outside counsel
27 for the non-designating party shall allow the designating party a reasonable time to
28 correct the transcripts; however, the designating party waives any right to make

1 corrections to the transcripts regarding “Outside Counsel’s Eyes Only” designation if it
2 does not provide written notice of the errors to the non-designating party’s outside
3 counsel during the Review Period.

4 20. All “Outside Counsel’s Eyes Only” information produced or exchanged
5 in the course of this case shall be used solely for the purpose of this case. “Outside
6 Counsel’s Eyes Only” information shall not be used for any commercial, competitive,
7 personal, or other purpose.

8 21. Access to and disclosure of “Outside Counsel’s Eyes Only” material
9 marked and identified in accordance with Paragraphs 18 and 19 of this Order will be
10 limited solely to the following persons:

- 11 (a) outside counsel for the respective parties to this litigation;
- 12 (b) consultants or expert witnesses retained for the prosecution or
13 defense of this case, provided that each such person shall execute a
14 copy of the Certification attached to this Order as Exhibit A (which
15 shall be retained by counsel to the party disclosing the “Outside
16 Counsel’s Eyes Only” information and made available for
17 inspection by opposing counsel during the pendency or after the
18 termination of the case only upon good cause shown and upon order
19 of the Court) before being shown or given any “Outside Counsel’s
20 Eyes Only” information;
- 21 (c) any authors or recipients of the “Outside Counsel’s Eyes Only”
22 information, or other employees of the party that designated the
23 information as “Outside Counsel’s Eyes Only”;
- 24 (d) the Court, court personnel, and court reporters;
- 25 (e) third party deposition witnesses, who, if not otherwise described in
26 Paragraph 21 of this Order, shall sign the Certification, or otherwise
27 agree in writing or under oath to treat the document as
28 “Confidential” and protected in a manner consistent with the terms

1 of this Order, before being shown an “Outside Counsel’s Eyes
2 Only” document. At the request of either party, the portion of the
3 deposition transcript involving the “Outside Counsel’s Eyes Only”
4 information shall be designated “Outside Counsel’s Eyes Only”
5 pursuant to Paragraph 19 of this Order. Deposition witnesses
6 shown “Outside Counsel’s Eyes Only” information shall not be
7 allowed to retain copies; and

8 (f) a single in-house attorney for each party, specifically identified and
9 agreed to be Jason Kinzel for DML and Allan Johnson for SCE, on
10 condition that each such in-house attorney agrees to be bound by
11 the terms and conditions of this Order in all respects, including by
12 agreeing not to provide, show, make available or otherwise
13 communicate such “Outside Counsel’s Eyes Only” materials to any
14 other employee(s) of his or her company.

15 22. If a party contends that any material designated as “Outside Counsel’s
16 Eyes Only” is not entitled to or appropriate for such treatment, that party may at any
17 time give written notice to the party making the designation. The designating party
18 shall have twenty (20) calendar days from the receipt of such written notice to apply to
19 the Court for an order designating the material “Outside Counsel’s Eyes Only” pursuant
20 to this Order. The party seeking the order has the burden of establishing that the
21 document is entitled to and appropriate for such protection.

22 23. Notwithstanding any challenge to the designation of material as “Outside
23 Counsel’s Eyes Only,” all documents and materials so designated shall be treated as
24 such and shall be subject to the provisions hereof unless and until one of the following
25 occurs:

26 (a) the party who claims the material is “Outside Counsel’s Eyes Only”
27 withdraws such designation in writing or makes the material public;
28 or

1 (b) the party who claims the material is “Outside Counsel’s Eyes Only”
2 fails to apply to the Court for an order designating the material as
3 such within the time period specified in Paragraph 22 of this Order
4 after receipt of a written challenge to such designation; or

5 (c) the Court rules the material is not entitled to or appropriate for
6 treatment as “Outside Counsel’s Eyes Only” information.

7 24. Either party may voluntarily disclose to others without restriction any
8 information that it, alone, designated as “Outside Counsel’s Eyes Only,” although any
9 document containing such information will lose its confidential status if it is made
10 public by the designating party. Such documents will not, however, lose their
11 confidential status if they are made public through no fault of the designating party. If
12 a party produces materials designated “Outside Counsel’s Eyes Only” in compliance
13 with this Order, that production shall be deemed to have been made consistent with
14 any confidentiality or privacy requirements mandated by local, state or federal laws.

15 25. Outside counsel for the parties shall not reveal or discuss “Outside
16 Counsel’s Eyes Only” information or materials to or with any person who is not
17 entitled to receive such information, as set forth in Paragraph 21 of this Order. If
18 “Outside Counsel’s Eyes Only” information or material is inadvertently disclosed to
19 any person who is not authorized to use or possess such information or material,
20 outside counsel for the party that made the inadvertent disclosure shall provide
21 immediate written notice of the disclosure to the party whose material was
22 inadvertently disclosed. If outside counsel for either party has actual knowledge that
23 “Outside Counsel’s Eyes Only” information or material is being used or possessed by a
24 person not authorized to use or possess such information or material, regardless of how
25 the information or material was disclosed to or obtained by such person, the outside
26 counsel shall provide prompt written notice of the unauthorized use or possession to the
27 party whose material is being used or possessed.

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1 26. The parties must follow the procedures described in Paragraph 6 and Part
 2 Two of this Order when attempting to use documents or deposition testimony that has
 3 been designated "Outside Counsel's Eyes Only." In that event, the party that made the
 4 designation(s) may request that attendance for the portion of the hearing or trial where
 5 such documents or testimony will be used be restricted to only those individuals
 6 authorized to review such "Outside Counsel's Eyes Only" materials as described in
 7 Paragraph 21 of this Order. The designating party also may request that any
 8 corresponding hearing or trial transcripts be restricted to the same set of individuals.

9 27. All provisions of this Order restricting the communication or use of
 10 "Outside Counsel's Eyes Only" materials shall continue to be binding after the
 11 conclusion of this litigation, unless otherwise agreed or ordered. Upon conclusion of
 12 the litigation, outside counsel for each party shall dispose of all "Outside Counsel's
 13 Eyes Only" materials in its possession, other than that which is contained in the
 14 pleadings, correspondence, and deposition transcripts, by either (a) returning such
 15 documents no later than (30) calendar days after conclusion of this case to counsel for
 16 the party or non-party who provided such information, or (b) destroying such
 17 documents within that time period upon consent of the party or non-party who provided
 18 the information and notifying the other party and any relevant non-party in writing
 19 within thirty (30) calendar days that the documents have been destroyed. All materials
 20 designated "Outside Counsel's Eyes Only" must be returned or destroyed.

21 IT IS SO STIPULATED.

22 Dated: July 30, 2013

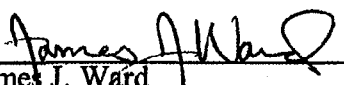
JACKSON WALKER L.L.P.

23
 24 By: 
 25 Joseph A. Fischer, III
 26 Attorneys for Plaintiff
 27 DYNEGY MOSS LANDING, LLC

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Dated: ~~July 30,~~ August 1, 2013

JONES DAY

By: 
James J. Ward

Attorneys for Defendant
SOUTHERN CALIFORNIA EDISON
COMPANY

IT IS SO ORDERED

Dated: 8/8/13



Honorable Charles F. Eick
United States Magistrate Judge

EXHIBIT A

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DYNEGY MOSS LANDING, LLC,

Plaintiff,

v.

SOUTHERN CALIFORNIA EDISON
COMPANY,

Defendant.

Case No. CV13-00996 JAK (Ex)

Assigned to the Honorable John A.
Kronstadt for all purposes

**DECLARATION OF
COMPLIANCE REGARDING
CONFIDENTIAL/OUTSIDE
COUNSEL'S EYES ONLY
INFORMATION**

DECLARATION OF COMPLIANCE

I, (print or type full name) _____, declare under penalty of perjury under the laws of the State of California that the following statements are true and correct:

I reside in _____ County, in the state of _____. I am employed by (state name and address of employer) _____ as (state position) _____.

1. I have read the Amended Stipulated Protective Order entered in this case, a copy of which has been given to me.
2. I understand and agree to comply with and be bound by the provisions of the Amended Stipulated Protective Order upon receipt of any "Confidential" and/or "Outside Counsel's Eyes Only" information, document, or thing.

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3. I will be personally subject to the Amended Stipulated Protective Order and all of its requirements and procedures, and will be subject to the jurisdiction of this Court for enforcement of the Amended Stipulated Protective Order.

Executed at _____ on this ____ day of _____, _____.

(Signature)