

| <b>DOCKETED</b>         |   |
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| <b>Docket Number:</b>   | 21-IEPR-03  |
| <b>Project Title:</b>   | Electricity and Natural Gas Demand Forecast   |
| <b>TN #:</b>            | 240255  |
| <b>Document Title:</b>  | CEC IEPR Response Letter Constellation NewEnergy CNE Confidential Application of July 1 & 2, 2021 |
| <b>Description:</b>     | N/A   |
| <b>Filer:</b>           | Pam Fredieu   |
| <b>Organization:</b>    | California Energy Commission  |
| <b>Submitter Role:</b>  | Commission Staff  |
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August 25, 2021

**Via Email**

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**Application for Confidential Designation for Data in Integrated Energy  
Policy Report, Docket 21-IEPR-03**

Dear Andrew B. Brown,

The California Energy Commission (CEC) received the confidentiality applications submitted by Constellation NewEnergy, Inc. (applicant or CNE) on July 1 and July 2, 2021, for specified data contained in the 2021 Integrated Energy Policy Report (IEPR). Specifically, confidentiality is sought for:

Form 7.1

Retail Sales in megawatt-hours (MWh), actual and forecasted, for the years 2020-2024.

Peak Demand in megawatts (MW), actual and forecasted, for the years 2020-2024.

Customer Counts (Residential and Nonresidential, actual and forecasted, for the years 2020-2024.

Form 8.1a (ESP)

Total Estimated Power Supply Costs, actual and forecasted, for the years 2020-2024.

Confidential designation of this data is requested pursuant to Title 20, California Code of Regulations, section 2505, on the grounds that the information is not otherwise publicly available or readily discoverable in the form or detail provided at this time, that the information is market sensitive and constitutes trade secrets in terms of disclosing applicant's very recent wholesale and retail activities, and that the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces relative to applicant's ability to negotiate

future contracts for the purchase or resale of energy and/or capacity at wholesale, or negotiation of contracts with retail customers. The application also states that confidentiality is appropriate under Government Code section 6255(a) because the public interest in nondisclosure clearly outweighs the public interest in disclosure.

A properly filed Application for Confidentiality shall be granted under Title 20, California Code of Regulations, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 3426.1.) Government Code section 6255 also permits the CEC to withhold a public record where "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

California courts have traditionally used the following definition of trade secret:

A trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, section 757, comment b, p. 5.)

Title 20, California Code of Regulations, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Here, the application states that the data constitutes trade secrets or otherwise commercially sensitive data, which has not been disclosed to anyone except the applicant's employees, government agencies, or CAISO subject to confidentiality projections. The application states that the applicant operates in the competitive and dynamic retail energy markets and is a net purchaser in the competitive wholesale markets, so the confidentiality of data regarding its retail and wholesale market positions is a competitive advantage. The application also states that disclosure of this information can be used to directly or indirectly determine the applicant's market position and would result in a loss of

competitive advantage in the wholesale and retail marketplaces relative to its ability to negotiate future contracts for the purchase or resale of energy, or with respect to negotiation of contracts with retail customers. The application also states that confidential information contained in the annual reports may be disclosed if it is aggregated on a statewide basis with the same type of data reported by other energy service providers or load serving entities, and steps are taken to ensure that the applicant's specific data cannot be ascertained.

The applications do not specify how long CNE requests the data to be kept confidential. The application filed on July 2, 2021, does state that, with respect to Form 8.1(a) (ESP), it is a repeated application, pursuant to the California Code of Regulations, title 20, section 2505(a)(4), for information previously deemed confidential by CEC.

Based on this information, the applications are hereby approved. All data will remain confidential through December 31, 2024, or until it is publicly released, whichever is earlier.

The information may be released before December 31, 2024, or other public release, if applicant-specific information is aggregated with information from all other statewide energy service providers. Load serving entities provide quarterly annual retail sales under Title 20, California Code of Regulations, section 1306. As set forth in Title 20, California Code of Regulations, section 2507(e)(1)(A)(1), the quarterly data can be publicly disclosed for an individual load serving entity if aggregated at the statewide level by year. Therefore, data submitted consistent with this aggregation will not be confidential.

For Forms 7.1 and 8.1a (ESP), this grant of confidentiality is only for those specified portions listed above, which are marked by yellow highlighting on the forms themselves. Please file public versions of both forms to the docket. These public documents should be redacted only to the point necessary to protect confidentiality.

Be advised that persons may petition to inspect or copy records that the CEC has designated as confidential, the executive director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the Title 20, California Code of Regulations, sections 2506-2508.

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You may request confidentiality for similar data in a future annual report without submitting an application by following the procedures set forth in Title 20, California Code of Regulations, section 2505(a)(4).

If you have any questions, please contact Raj K. Dixit, attorney, at [raj.dixit@energy.ca.gov](mailto:raj.dixit@energy.ca.gov) or (916) 776-3055.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan  
Executive Director