

**DOCKETED**

<b>Docket Number:</b>	23-IEPR-02
<b>Project Title:</b>	Electricity Resource Plans
<b>TN #:</b>	251403
<b>Document Title:</b>	Constellation NewEnergy, Inc IEPR Demand Form 8_1a Repeated Application for Confidential Designation
<b>Description:</b>	N/A
<b>Filer:</b>	Eric Janssen
<b>Organization:</b>	Ellison Schneider Harris & Donlan LLP
<b>Submitter Role:</b>	Applicant Representative
<b>Submission Date:</b>	7/31/2023 2:44:19 PM
<b>Docketed Date:</b>	7/31/2023



**Andrew B. Brown**  
abb@eslawfirm.com

July 31, 2023

Mr. Drew Bohan  
Executive Director  
California Energy Commission  
715 P Street  
Sacramento, CA 95814

**RE: Repeated Application for Confidential Designation  
Constellation NewEnergy, Inc. 2023 IEPR Electricity Demand Forecast  
Submission, Form 8.1a (ESP), Docket No. 23-IEPR-02.**

Dear Mr. Bohan:

Constellation NewEnergy, Inc., (“CNE”) respectfully requests protection of certain information provided to the Commission in its accompanying Electricity Demand Forecast Form 8.1a (ESP) submission.

Information submitted to the Energy Commission can be deemed confidential without the need for a new application under California Code of Regulations, Title 20, Sections 2505(a)(1)(G) and 2505(a)(4) if CNE files a certification under penalty of perjury that the new information is substantially similar to the information previously granted confidentiality. By letter dated August 25, 2021 (see Attachment A hereto) you approved CNE’s request for confidential designation for information submitted in CNE’s 2021 IEPR Electricity Demand Forecast submission in Docket 21-IEPR-03 related to Forms 7.1 and 8.1a (ESP).

CNE’s 2023 Electricity Demand Forecast Form 8.1a (ESP) submission contains information that is substantially similar to its previously submitted IEPR Electricity Demand Forecast Form 8.1a (ESP) noted above, and information and all facts and circumstances relevant to the confidentiality of the information remain unchanged.

Specifically, CNE requests that the following information, as also indicated by the yellow pattern cells on the accompanying Excel workbook remain confidential through December 31, 2026:

Executive Director Drew Bohan  
California Energy Commission  
July 31, 2023  
Page 2

<b>Form</b>	<b>Information to be held confidential</b>
2023 IEPR Electricity Demand Forecast Form 8.1a (ESP): Estimated Power-Supply Costs	All data corresponding to Years 2023-2026, cells D9:G10, and D12:G12 (cells are highlighted yellow on Form 8.1a (ESP))

*I certify under penalty of perjury that the information contained in this repeated application for confidential designation is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to make this repeated application and certification on behalf of Constellation NewEnergy, Inc.*

Please feel free to contact me at (916) 447-2166 should you or Staff have any questions or require additional information regarding this Repeated Application. Thank you for your consideration of our request.

Sincerely,



Andrew B. Brown  
Ellison Schneider Harris & Donlan LLP  
Attorneys for Constellation NewEnergy, Inc.

Submitted via Confidential e-filing.

**ATTACHMENT A**

California Energy Commission August 25, 2021 Letter Granting  
Constellation NewEnergy, Inc.'s Application For Confidential Designation for Data in  
*Integrated Energy Policy Report*, Docket No. 21-IEPR-03

<b>DOCKETED</b>	
<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
<b>Submission Date:</b>	11/4/2021 11:26:43 AM
<b>Docketed Date:</b>	11/4/2021



August 25, 2021

**Via Email**

Andrew B. Brown  
Ellison Schneider Harris & Donlan LLP  
Attorneys for Constellation NewEnergy, Inc.  
2600 Capitol Ave, Suite 400  
Sacramento, California 95816  
[abb@eslawfirm.com](mailto:abb@eslawfirm.com)

**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.



Mr. Brown  
August 25, 2021  
Page 4

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