

DOCKETED

Docket Number:	15-IEPR-02
Project Title:	Electricity Resource Plans
TN #:	204379
Document Title:	Constellation NewEnergy, Inc.'s 2015 IEPR Supply Form Confidentiality Application
Description:	Application for Confidential Designation
Filer:	Eric Janssen
Organization:	Ellison, Schneider & Harris L.L.P.
Submitter Role:	Applicant Representative
Submission Date:	4/24/2015 2:44:34 PM
Docketed Date:	4/24/2015

ELLISON, SCHNEIDER & HARRIS L.L.P.

ATTORNEYS AT LAW

2600 CAPITOL AVENUE, SUITE 400

SACRAMENTO, CALIFORNIA 95816

TELEPHONE: (916) 447-2166

<http://www.eslawfirm.com>

April 24, 2015

Robert Oglesby
Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, CA 95814-5504

**RE: Application for Confidential Designation – Constellation NewEnergy, Inc.
2015 IEPR Resource Plan Submission, Docket No. 15-IEPR-02.**

Dear Mr. Oglesby:

Constellation NewEnergy, Inc., (“CNE”), by this Application for Confidential Designation, respectfully requests protection of certain information provided to the Commission in the attached Resource Plan submission consistent with Title 20 California Code of Regulations (“CCR”) Sections 2501 *et seq.*

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

Sincerely,



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

Confidential Materials submitted via confidential e-filing.

**APPLICATION FOR CONFIDENTIAL DESIGNATION OF
IEPR RESOURCE PLAN SUBMISSION OF CONSTELLATION NEWENERGY, INC.**

Docket No. 15-IEPR-02

April 24, 2015

1. *Specifically indicate those parts of the record which should be kept confidential.*

CNE requests that the following information remain confidential, as also indicated by the yellow pattern cells on the Excel worksheet:

Form	Information to be held confidential
S-1 Capacity Resource Accounting Table (CRATs)	<ul style="list-style-type: none">• Peak Load Calculations for years 2014 through 2018, cells D11:H16, D19:H19, D21:H22, D25:H25;• Capacity Supply Resources for years 2014 through 2018, cells D54:H142;• Capacity Balance Summary for years 2014 through 2018, cells D146:H148;• Historic LSE Peak Load for 2014, cells D155, D161.
S-2 Energy Balance Table	<ul style="list-style-type: none">• Energy Demand Calculations for years 2014 through 2018, cells D11:H16, D19:H19, D21:H21;• Energy Supply Resources for years 2014 through 2018, cells D49:H49, D51, D74:H138;• Energy Balance Summary for years 2014 through 2018, cells D141:H143.
S-5 Bilateral Contracts Table	<ul style="list-style-type: none">• All non-renewable contracts details, cells A79:Z115.

Pursuant to the instructions provided in Appendix A to the *Forms and Instructions for Submitting Electricity Resource Plans Prepared in Support of the 2015 Integrated Energy Policy Report*, CNE has colored all cells containing information it seeks to keep confidential yellow.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

Because (1) the information is not otherwise publicly available or readily discoverable in the form or extensive detail provided, (2) the information is market sensitive and constitutes trade secrets in terms of supply portfolio development, risk management and

CNE's internal portfolio management practices, and (3) the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces relative to CNE'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, CNE asks that the identified data be held in confidence for a period of at least three (3) years from the time of production to the Commission. This requested period of time is appropriate as the detailed data is expected to retain validity and market value over that period insofar as it can be used with other data to discern CNE's internal operations, market strategies, including risk management efforts or expectations of future market activities, and because any lesser period would undermine existing protection of the same or substantially similar data by other entities, including the California Public Utilities Commission ("CPUC") and the California Independent System Operator ("CAISO"). This period of time is also consistent with the confidentiality previously provided by the Commission for Constellation's 2013 IEPR data submission of similar information.¹ As such, CNE continues to assert confidentiality for those years that remain within CNE's requested three year confidentiality window.

CNE requests that all the data indicated by yellow shading provided in this 2015 IEPR submission be kept confidential until December 31, 2018.

CNE has also fashioned this request to reflect the scope of protection provided to energy service provider ("ESP") data in CPUC Rulemaking 05-06-040, and, in particular, Decision ("D.") 06-06-066, Appendix B ("ESP Matrix") and related modifications made in 08-04-023, in an effort to have consistency across California energy agencies.² The public release of the specified information, particularly to competitors and potential customers, would result in a loss of competitive advantage for CNE in the wholesale and retail markets, and may result in a loss in the ability to secure a favorable margin or return or result in disclosure of information about internal operating practices.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

CNE is submitting the information and data sets described above in accordance with the Forms and Instructions adopted by the Commission in December 2012 (*Forms and Instructions for Submitting Electricity Resource Plans Prepared in Support of the 2013*

¹ See Attachment A, Letter from Robert P. Oglesby to Andrew B. Brown (May 24, 2013) "Constellation NewEnergy's Application for Confidentiality for the 2013 *Integrated Energy Policy Report* Electricity Resource Plan Submission", Docket No. 13-IEP-1B.

² While CNE understands and acknowledges that the confidentiality rules granted by the California Public Utilities Commission and the California Energy Commission are different in some respects, CNE seeks to maintain consistency in the data it makes publically available. Consistency also prevents CNE from inadvertent disclosures of confidential information.

Integrated Energy Policy Report, CEC-200-2012-007-SF).

Under Public Resources Code Section 25322, the Commission is required to grant a request for confidential designation of information collected pursuant to Pub. Res. Codes Section 25301(a) if:

- (a) the information is exempt from disclosure under the California Public Records Act (Govt. Code §§ 6250 et seq.);
- (b) the information meets the confidentiality requirements set forth in the Commission's regulations; or
- (c) on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure.

The Public Records Act exempts "trade secrets" from public disclosure, including "any formula, plan,...production data, or compilation of information..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service...and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." (Govt. Code § 6254.7(d).)

The Commission's regulations provide for information to be designated as confidential if it "contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage." (20 CCR § 2505(a)(1)(D).)

The information identified above, and any supporting data submitted by CNE, contain trade secrets or otherwise commercially sensitive data the disclosure of which would cause loss of a competitive advantage. As an entity operating in the competitive and dynamic retail energy markets, as well as a net purchaser in the competitive wholesale markets, CNE closely holds information on its retail and wholesale market positions as well as its internal practices in confidence. The materials identified above should be subject to a three-year confidentiality protection because the information is commercially sensitive and not publicly available and/or constitutes trade secrets the public disclosure of which would harm CNE. Moreover, this information can be used to directly or indirectly determine CNE's market position or business plans or procurement strategies to the detriment of CNE and its customers. Accordingly, CNE requests that all of the information and data sets contained in those documents more specifically described in section 1 above, and any related, supporting data that may be provided pursuant to a subsequent Staff request, be designated as confidential.

CNE believes that the public interest in having an open, public debate on key energy issues facing the state can be satisfied by disclosure of information submitted by CNE

and the other ESPs collectively aggregated on a state-wide basis. Any greater granularity in the data released, including disclosure of any CNE-specific data that is not aggregated with other ESPs, could expose CNE's market position to its competitors, including other ESPs and the investor-owned utilities ("IOUs"). In addition, CNE's information for a customer class should be aggregated with the information of one or more other classes where only a small number of customers in the class are served by ESPs.

CNE requests that the identified information also be deemed confidential for the following additional reasons: The information is commercially sensitive and constitutes a trade secret and is therefore exempt from disclosure. Evidence Code §1060, Civil Code §3426.1(d). Moreover, the public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as release of this economic information may directly harm CNE's existing and future commercial opportunities and its ability to secure a return in the marketplace, and disclosure may also harm CNE's electric customers by foreclosing favorable commercial opportunities. Gov't Code § 6255.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

CNE has considered whether it would be possible to aggregate or mask the identified information. CNE can support the aggregation of CNE-specific information with similar information from all other ESPs and solely disclosed on a *statewide aggregated basis*. CNE believes that disclosure of CNE-specific data of the types collected here, even if aggregated on a statewide basis but specific to CNE, could lead to the disclosure of CNE's wholesale and retail market positions and thereby result in harm to CNE. Given the degree of competition between ESPs, and between ESPs and the IOUs, CNE asserts that any ESP-specific listing of data by utility territory would result in disclosure of confidential data.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

CNE has not disclosed any of the subject information to anyone other than their employees, attorneys and consultants working with the Company, or government agency employees or employees of the CAISO subject to confidentiality protection. CNE routinely keeps information of commercial value, like the subject information identified herein, confidential. In fact, all CNE "employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, suppliers, business partners or others in the course of conducting business with the company, except when disclosure is authorized or legally mandated."

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



Dated: April 24, 2015

Andrew B. Brown

Ellison, Schneider and Harris LLP
Attorneys for Constellation NewEnergy, Inc.

ATTACHMENT A

**CALIFORNIA ENERGY COMMISSION MAY 24, 2013 LETTER GRANTING
CONSTELLATION NEWENERGY, INC.'S APPLICATION FOR CONFIDENTIALITY OF
SPECIFIED DATA REPORTED IN
2013 IEPR ELECTRICITY RESOURCE PLANNING SUBMISSION**

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

RECEIVED MAY 28 2013



May 24, 2013

Mr. Andrew B. Brown
Ellison, Schneider & Harris, LLP
Attorneys for Constellation NewEnergy, Inc.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816

RE: Constellation NewEnergy's Application for Confidentiality for the *2013 Integrated Energy Policy Report* Electricity Resource Plan Submission
Docket No. 13-IEP-1B

Dear Mr. Brown:

On April 26, 2013, the California Energy Commission (Energy Commission) received an application for confidentiality from Constellation NewEnergy, Inc. (CNE) dated April 26, 2013. This application and a set of electricity resource plans were filed in the above-captioned Docket in connection with the *2013 Integrated Energy Policy Report*.

CNE requests that specific information be held confidential. Form S-1, the Capacity Resource Accounting Table, contains information about actual and forecasted capacity purchases for the years 2012-2016, including annual historical and forecasted peak loads for these years. CNE is not requesting that information on capacity data for the years 2011 or 2017 be held confidential.

Form S-2, the Energy Balance Accounting Table, contains information about actual and forecasted energy purchases for the years 2013-2016, including historical and forecasted annual energy demand by direct access customers served by CNE. CNE is not requesting that information on renewable energy purchases be held confidential and is not requesting that information on energy data for the years 2011, 2012, or 2017 be held confidential.

Table S-5, listing Bilateral Contract and Power Purchase Agreements, contains information on 63 non-renewable bilateral contracts including the Supplier/Seller, Starting and Expiration Dates, Contract Capacity, and Scheduling Coordinator. CNE is not requesting that similar information related to renewable wind and biomass purchases from Constellation Energy Commodities Group, Inc. be held confidential.

These designations correspond to a previous application dated May 27, 2011. The designations on the above-named forms also correspond to a previous grant of confidentiality by the Executive Director dated June 24, 2011.

CNE asserts that this information be designated confidential:

Because (1) the information is not otherwise publicly available or readily discoverable in the form or extensive detail provided, (2) the information is market sensitive and constitutes trade secrets in terms of supply portfolio development and risk management, and CNE's internal portfolio management practices, and (3) the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces relative to CNE'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,...

CNE requests that the above information be granted confidentiality for three years. The data can be released immediately if aggregated with data submitted on electricity resource plans by all other energy service providers.

A properly filed application for confidentiality shall be granted under California Code of Regulations, Title 20, Section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the California Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential."

CNE's confidentiality application makes a reasonable claim to grant confidentiality for the data identified above. The peak demand calculations, annual capacity purchases, annual energy demand, and annual bilateral contracted generation (other than renewable energy supplies) as described above are granted confidentiality based on trade secret. This information and data could place CNE at a competitive disadvantage if disclosed.

To prevent disclosure that would cause harm, confidential data that may be used in publicly available reports and presentations will be aggregated with resource plan information from other load serving entities in order to protect the confidential specifics of CNE's load forecasts, resource portfolio, or individual non-renewable supply contracts.

The identified confidential information contained on Form S-1, Form S-2, and Table S-5 will be kept confidential until December 31, 2016.

Persons may petition to inspect or copy the records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in California Code of Regulations, Title 20, Section 2506. Be advised that an appeal of this decision must be filed within 14 days from the date of this

Mr. Andrew B. Brown
May 24, 2013
Page 3

decision. The procedures and criteria for appealing any part of this decision are set forth in California Code of Regulations, Title 20, Section 2505.

If you have any questions concerning this matter, please contact Kerry Willis, Senior Staff Counsel, at (916) 654-3967.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. P. Oglesby', with a long horizontal line extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit
Sylvia Bender

ATTACHMENT B

CONSTELLATION NEWENERGY, INC.'S APRIL 24, 2015
CONFIDENTIAL IEPR ELECTRICITY RESOURCE PLANNING SUBMISSION,
(DOCKET NO. 15-IEPR-02)

*See MS Excel file “CNE 2015 IEPR Electricity Resource Planning Submission”
submitted concurrently herewith*