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October 27, 2021

Via Email

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**Application for Confidential Designation for Data in Integrated Energy Policy
Report, Docket 21-IEPR-02**

Dear Andrew B. Brown,

The California Energy Commission (CEC) received the confidentiality application(s) submitted by Constellation NewEnergy, Inc. (applicant or CNE) on September 17, 2021, for specified data contained in the 2021 Integrated Energy Policy Report (IEPR). Specifically, confidentiality is sought for:

Form S-1

Capacity / Energy Requirement Form:
Lines 1-2e, 4-8, and 11, for 2019-2024
Lines 12-13e, 16, and 18, for 2019-2024
Lines 19 and 25 for 2019 and 2020

Form S-2

Capacity / Energy Supply Resources Form:
Lines 7a, 7c, and 8-11, for 2019-2024

Form S-5

Bilateral Contracts Table:
Line 7c, Cell K35

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 requests that all specified data for the year 2019 should be kept

confidential through December 31, 2022, with all other specified data requested to be kept confidential through December 31, 2024.

The confidentiality application for the specified information for 2019 contained in Forms S-1, S-2, and S-5 is granted through December 31, 2022, or until such time as it may be publicly released, whichever is earlier. The confidentiality application for the specified information for 2020-2024 contained in Forms S-1, S-2, and S-5 is granted through December 31, 2024, or until such time as it may be publicly released, whichever is earlier. The information may be released before December 31, 2024 (or December 31, 2022, for the specified data for 2019) or publication of the power content label 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.

This grant of confidentiality is only applicable to the specific fields, highlighted in yellow, on the forms described above. Please file a public version of those forms to the docket. These public documents should be redacted only to the extent necessary to protect the data for which confidentiality has been granted. Please file a public version of Form S-3 to the docket.

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.

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 III, at raj.dixit@energy.ca.gov or (916) 776-3055.

Sincerely,



Drew Bohan
Executive Director