

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO CA 95814-3512

July 18, 2007

Mr. Andrew B. Brown  
Ellison, Schneider & Harris  
2015 H Street  
Sacramento, CA 95814-3109

<b>DOCKET</b>	
<b>03-RPS-1078</b>	
DATE	JUL 18 2007
RECD.	JUL 18 2007

RE: **Application for Confidentiality,  
RPS Track Form Submission,  
Docket No. 03-RPS-1078**

Dear Mr. Brown:

On June 1, 2007, Constellation NewEnergy, Inc. (CNE) filed an application for confidentiality in the above-captioned Docket. The application seeks confidentiality for information contained in the 2006 RPS Track Form. Specifically, CNE is seeking confidentiality for the following:

Data for annual retail sales, annual procurement, total certified renewable energy procured and specific facilities from which the energy was procured for the year 2006. . . . Similar or identical information was previously granted confidentiality on March 5, 2007 under 06-IEP-11 for information CNE submitted in the Electricity Retail Demand Forecast Form 6 on February 2, 2007 (March Confidentiality Determination"). . . . the information is market sensitive and constitutes trade secrets in terms of supply portfolio development and risk management, and (3) 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 at least a period of three (3) years from the time of production to the Commission.

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1040.) The 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

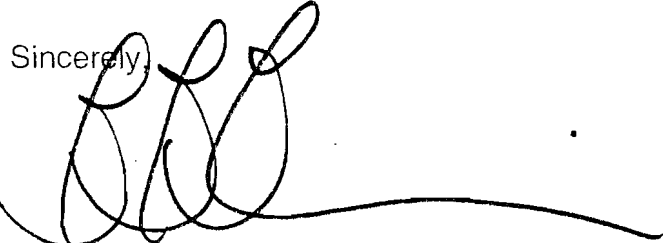
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which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

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

CNE's June 1, 2007, confidentiality application does not make a reasonable claim to grant confidentiality to the data identified above since it does not rise to the level of a trade secret. (Gov. Code, § 6254 (k).) The information contained on the 2006 RPS Track Form is more generalized than the confidential data that was provided to the Energy Commission in the Electricity Retail Demand Form 6. I have determined that the information found on the 2006 RPS Track Form contains information that would not harm CNE if publicly disclosed or could it be reverse engineered to somehow reveal confidential information. Accordingly, the data identified in your application is denied confidentiality.

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 the California Code of Regulations, title 20, section 2506. An appeal of my decision to grant confidentiality must be filed within fourteen days from the date of this decision. The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, title 20, section 2505. If you have any questions concerning this matter, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,  


B. B. BLEVINS  
Executive Director

cc: Docket Unit  
Energy Commission Project Manager