

ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON
ANNE J. SCHNEIDER
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
MARGARET G. LEAVITT, OF COUNSEL

ATTORNEYS AT LAW
2015 H STREET
SACRAMENTO, CALIFORNIA 95811-3109
TELEPHONE (916) 447-2166 FAX (916) 447-3512

JEDEDIAH J. GIBSON
LYNN M. HAUG
PETER J. KIEL
CHRISTOPHER M. SANDERS
WILLIAM W. WESTERFIELD III
GREGGORY L. WHEATLAND

August 1, 2007

DOCKET	
03-RPS-1078	
DATE	AUG 0 1 2007
RECD.	AUG 0 1 2007

Mr. B.B. Blevins
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Appeal of Constellation NewEnergy, Inc. Regarding Application for
Confidentiality, RPS Track Form Submission, Docket No. 03-RPS-1078

Dear Mr. Blevins:

Constellation NewEnergy, Inc. ("CNE") is in receipt of your letter dated June 18, 2007 regarding our application for confidentiality in the above cited docket.

CNE's application sought confidentiality for the following calendar year 2006 data:

1. CEC-RPS-Track Schedule 1: "Facility Name"; "Unit Number"; "Fuel Type"; "CEC RPS Certification Number"; and "Annual Generation Procured (in kWh)"; and
2. CEC-RPS-Track Schedule 2: "Facility Name"; "Unit Number"; "Fuel Type"; "CEC RPS Certification Number"; "July kWh Procured"; "August kWh Procured"; "September kWh Procured"; "Annual Procurement in kWh"; "Total Annual Retail Sales in kWh"; and "Total Certified Renewables Procured"

Your letter denies our application for confidentiality on the grounds that the information contained in 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."

CNE must respectfully disagree with your finding. The information provided in the 2006 RPS Track Schedules is not at all generalized as CNE submitted specific data pertaining to our 2006 RPS purchases which included the listing of counterparties, renewable facilities, total annual retail sales in 2006, and monthly and annual renewable purchases. With the exception of CNE's 2006 Total Annual Retail Sales data (which was disaggregated by utility in the Electricity Retail Demand Form 6), the information provided in the RPS Track Schedules differ from that provided in Demand Form 6 because the former contained CNE's specific RPS purchases for 2006 whereas the latter contained historical, annual retail sales, peak demand and customer counts disaggregated by utility.

Mr. B.B. Blevins
August 1, 2007
Page 2

Even if we assume for the sake of argument that the 2006 RPS Track Form data is more generalized than the information that was previously found to be confidential, this information is still of sufficient detail that it would harm CNE if publicly disclosed. This harm is clearly established by the fact that energy service providers ("ESPs") like CNE are not required to submit their RPS contracts to the Commission for pre-approval review if supplemental energy payments are not sought so the release of CNE's RPS procurement data through the RPS Track Forms would expose CNE's sensitive RPS procurement activities. CNE considers such activities to be highly sensitive and trade secrets due to the following factors which currently exist in the state's retail electricity market: 1) Direct Access ("DA") is currently suspended which renders the retail market rather illiquid; and 2) the few remaining ESPs are competing with each other and with the investor-owned utilities for a finite pool of eligible renewable resources to satisfy the state's RPS requirements. Therefore, any public disclosure of CNE's renewable procurement activities would cause CNE to suffer a competitive disadvantage in the state's current retail market.

At a minimum, CNE believes that the 2006 RPS procurement data should be granted confidential protection through December 31, 2007, as Commission precedent exists for historical data to be granted confidentiality for a period of twelve months following the close of the historical period. CNE, as well as the state's other load-serving entities, routinely provides historical sales data to the Department of Energy's Energy Information Administration ("EIA") but the earliest that the EIA publicly releases such data is not until twelve months after the close of the historical period. For example, any calendar year 2006 data provided to the EIA isn't publicly released until January 2008 at the earliest. Furthermore, the data provided to the EIA does not include specific counterparty and facility information so CNE believes that such information should be granted indefinite confidentiality protection.

In short, your determination that the data contained in the 2006 RPS Track Form is more generalized than the data previously found to be confidential is not supported by the record before the Commission. Not only should this material be protected under the trade secret privilege and the public interest balancing test of the Public Records Act, it is also market sensitive under Section 454.5 of the Public Utilities Code. CNE respectfully urges the Commission to ensure that the 2006 RPS Track Form data listed above be granted confidential protection.

Respectfully submitted,



Andrew B. Brown
Greggory L. Wheatland
Ellison, Schneider and Harris LLP
Attorneys for Constellation NewEnergy, Inc.