

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

August 29, 2007

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

DOCKET	
03-RPS-1078	
DATE	AUG 29 2007
RECD.	AUG 29 2007

RE: AMENDED EXECUTIVE DIRECTOR DECISION
Application for Confidentiality,
RPS Track Form Submission,
Constellation NewEnergy, Inc.,
Docket No. 03-RPS-1078

Dear Mr. Brown:

On June 1, 2007, Constellation NewEnergy, Inc. (CNE) filed an application for confidentiality to protect certain information provided to the California Energy Commission (Energy Commission) in the RPS Track Form submissions. On June 18, 2007, the Energy Commission's Executive Director issued a decision denying CNE's application for confidentiality. On August 1, 2007, CNE filed a timely appeal of that decision. Specifically, CNE has appealed the Executive Director's determination denying confidentiality to the following information:

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.

CNE's appeal asserts:

[R]elease 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 [sic] 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.

CNE's confidentiality assertions are reasonable to the extent that individual renewable facility identification information contained in RPS-Track Schedules 1 & 2 (Facility Name, Unit Number, and CEC RPS Certification Number) would provide competitors with information that could harm CNE economically. Therefore, this information is granted confidentiality until December 31, 2010.

In addition, fuel type per individual renewable facility will be held confidential and the "annual amount procured in KWh" per individual renewable facility will also be confidential until December 31, 2010. The quantity of renewable facilities that CNE procures from as identified by the number of rows filled out in RPS-Track Schedules 1 & 2 is also granted confidentiality (procurement per renewable facility is also referred to here as a "specific purchase") until December 31, 2010. The monthly procurement information (July kWh, August kWh, and September kWh) found in RPS Track Form 2 is likewise granted confidentiality until December 31, 2010.

However, CNE's confidentiality claim is not convincing with regard to data on CNE's aggregate annual procurement of renewable energy and its total annual retail sales. This information does not rise to the level of trade secret. In fact, similar information, from other energy service providers (ESPs), has been provided to the Energy Commission and is publicly available. Specifically, the following information is not granted confidentiality¹:

- RPS-Track Schedule 1, "Annual Generation Procured (in KWh)" aggregated for all of CNE's specific purchases;
- RPS-Track Schedule 2, "Annual Procurement in KWh" aggregated for all of CNE's specific purchases; and
- RPS-Track Schedule 2, "Total Annual Retail Sales in KWh" and "Total Certified Renewables Procured."

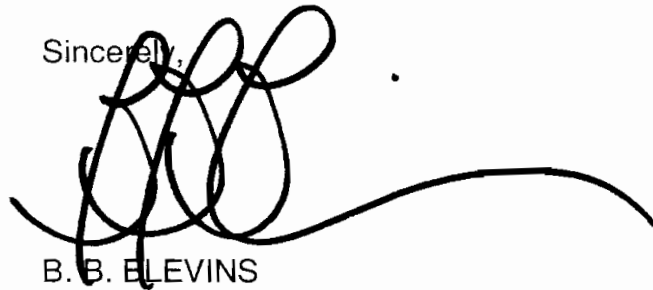
¹ In the event that CNE procures renewable energy from only one certified facility, the "Annual Generation Procured (in KWh)" (Schedule 1) "Annual Procurement in KWh" (Schedule 2), and "Total Certified Renewables Procured" (Schedule 2) remains publicly available in aggregated form; however, the fact that the procurement is purchased solely from one facility would be held confidential until December 31, 2010.

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Finally, the "Fuel Type" aggregated for all specific purchases made by CNE as reported on Schedules 1 and 2 is also denied confidentiality. This is consistent with information contained on the publicly available Power Content Label.

In light of this amended decision, CNE may wish to withdraw its appeal scheduled for the September 12, 2007, Business Meeting. If this is the case, please contact me as soon as possible. Finally, if you have any further questions concerning this matter, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

B. B. ELEVINS
Executive Director

cc: Docket Unit
Energy Commission Project Manager