

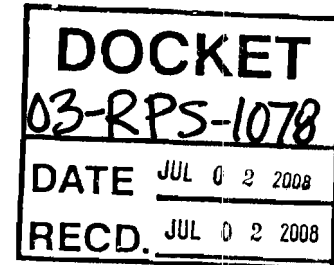
CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

July 2 , 2008

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

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



Dear Mr. Brown:

On May 19, 2008, Constellation NewEnergy, Inc. (CNE) filed an application for confidentiality in the above-captioned Docket. The application seeks confidentiality for information contained in:

CEC RPS Track Schedule 1 (Columns A-N)

CEC RPS Track Schedule 2 (Columns A-R, and row 30)

CNE's asserts that this information should be designated confidential since:

(1) the information is not otherwise publicly available or readily discoverable in the form or detail provided, (2) the information is market sensitive and constitutes trade secrets in terms of supply portfolio development and risk management, 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 is asking that this information be designated confidential for "at least one (1) year from the last month covered in the reports for Columns C and N of schedule 1 and Columns C and R and Cells A29 and H29" and "for a period of at least four (4) years from the time of production to the [Energy] Commission for all facility identifying details in Schedule 1 and facility identifying details and monthly procurement details in Schedule 2." We assume that CNE's request that information be designated confidential in RPS Track Schedule 2 row 30 is a typographical error, and assume the request actually refers to row 29 (row 30 does not contain data).

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 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 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, all facility identifying details in RPS Track Schedule 1 and facility identifying details (columns A, B, and D) and monthly procurement details in RPS Track Schedule 2 is granted confidentiality until December 31, 2011.

Specifically, facility identifying details in Schedule 1, including column A (facility name), column B (unit number) and column D (RPS Identification number) is granted confidentiality until December 31, 2011. In addition, Schedule 1 column N and Schedule 2 column R (annual generation procured and annual KWh procured, respectively) are granted confidentiality per individual facility until December 31, 2011. However, column C (fuel type) is granted confidentiality for the specific facility, but not in the aggregate, until December 31, 2009.

Finally, CNE's May 19, 2008, confidentiality application does not make a reasonable claim to grant confidentiality to the aggregate data identified in Schedule 1 column N, the aggregate data identified in Schedule 2 column R, or information in schedule 2 cell A29 and cell H29, since this information would not harm CNE if publicly disclosed or be reverse engineered to somehow reveal confidential information. Specifically, the information contained in Schedule 1, column N, constitutes aggregated annual generation procured; the information contained in Schedule 2, column R, contains total annual procurement in KWh. Cell A29 is total annual retail sales, and cell H29 is the total certified renewables procured. Consequently, this information is denied a designation of confidentiality since the Energy Commission has determined that similar information is already publicly available and does not rise to level of a trade secret. (Gov. Code, § 6254 (k).)

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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,



MELISSA JONES
Executive Director

cc: Docket Unit
Energy Commission Project Manager