

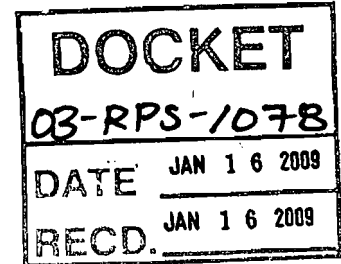
CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
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January 16, 2009

Andrew B. Brown, Esq.
Ellison, Schneider & Harris, L.L.P.
2600 Capital Avenue, Suite 400
Sacramento, CA 95816-5905



RE: Appeal of Constellation NewEnergy, Inc.
Application for Confidential Designation of RPS Track Form Submission
Docket No. 03-RPS-1078

Dear Mr. Brown:

This letter responds to your appeal of July 16, 2008, which was submitted on behalf of Constellation NewEnergy, Inc. (CNE) and requests that the California Energy Commission (Energy Commission) reconsider CNE's request for confidential designation of various data included in CNE's CEC-RPS-Track Form submission. CNE submitted its CEC-RPS-Track Form and original request for confidential designation on May 19, 2008. On July 2, 2008, I issued a determination pursuant to California Code of Regulations, title 20, section 2505, granting in part and denying in part CNE's request for confidential destination.

Table 1, enclosed, identifies the CEC-RPS-Track Form data for which CNE requested confidential designation, the period of confidential designation requested by CNE, and the period of confidential designation granted in the Energy Commission's determination. Your appeal challenges the denial of confidential designation of the CNE data provided in Schedule 1, Column N, and Schedule 2, Column R and Cells A29 and H29, of the CEC-RPS-Track Form submission. Column N and R identify the annual generation by facility procured by CNE in 2007 and Cells A29 and H29 identify CNE's total annual retail sales in 2007 and total certified renewable energy procured in 2007, respectively. CNE's original request for confidential designation requested the data in Columns N and R and Cells A29 and H29 be kept confidential through December 31, 2008.

I understand that you and CNE representatives have had various discussions with Energy Commission staff concerning the basis of your appeal and CNE's original request for confidential designation. Based on those discussions, as well as additional information supplied by CNE, Energy Commission staff now concur that the data provided by CNE in Schedule 1, Column N, and Schedule 2, Column R and Cells A29 and H29, of the CEC-RPS-Track Form, should be designated confidential and protected

as trade secret in accordance with Government Code section 6254 (k) and as requested by CNE. The July 2, 2008 determination rejected CNE's claim that the data in Columns N and R was protectable as trade secret, because Energy Commission staff believed that this data constituted aggregated annual procurement data and as such was publicly available and could be disclosed without harming CNE. Energy Commission staff have since confirmed that this data was not publicly available prior to December 31, 2008, from the Energy Information Administration of U.S. Department of Energy, the California Public Utilities Commission, or other private or governmental sources. Moreover, the data in Columns N and R could not be aggregated with the data from other retail sellers and publicly disclosed in a meaningful manner for purposes of verifying RPS procurement without disclosing CNE's specific data and potentially harming CNE and placing it at a competitive disadvantage with other retail sellers.

Similarly, the data in Cells A29 and H29 was not publicly available prior to December 31, 2008, and could not be aggregated with the data from other retail sellers and publicly disclosed in a meaningful manner without disclosing CNE's specific data and potentially harming CNE and placing it at a competitive disadvantage with other retail sellers.

For these reasons I am revising the July 2, 2008, determination to grant CNE's request for confidential designation of the data supplied in Schedule 1, Column N, and Schedule 2, Column R and Cells A29 and H29, of the CEC-RPS-Track Form. CNE has demonstrated that this data is trade secret in accordance with Government Code section 6254 (k) and entitled to protection through December 31, 2008.

In addition, in reviewing CNE's original request for confidential designation, Energy Commission staff discovered that the Energy Commission's July 2, 2008, determination inadvertently granted a longer period of confidential designation than had been requested or justified by CNE for certain data. Consequently, Energy Commission staff recommends that the period of confidential designation be revised for the CNE data provided in Schedule 1, Columns C and N, and Schedule 2, Columns C and R, of the CEC-RPS-Track Form. I understand that Energy Commission staff has discussed this with you and that you and your client accept these revisions. I further understand that CNE has agreed to withdraw its July 16, 2008, appeal based on the revised determination as provided herein.

Table 2, enclosed, shows the revised period of confidential designation for each data included in CNE's CEC-RPS-Track Form submission. The CNE data may be publicly disclosed by the Energy Commission after the corresponding period of confidential designation has lapsed. In addition, if any of CNE's data is publicly disclosed by CNE or otherwise becomes publicly available before the corresponding period of confidential designation lapses, that data may be publicly disclosed by the Energy Commission.

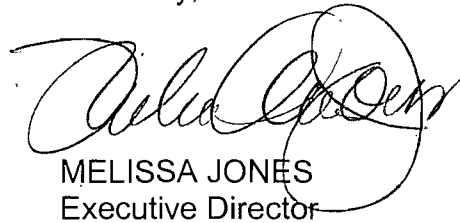
Please be aware that individuals may petition the Energy Commission to inspect or copy any records that have been designated confidential. The procedures and criteria

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for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning the revised determination of confidential designation, please call or email Gabriel Herrera of the Energy Commission Legal Office at (916) 654-5141 or gherrera@energy.state.ca.us.

Sincerely,



MELISSA JONES
Executive Director

Enclosures

cc: Docket Unit
Gina Barkalow, Efficiency and Renewables Division

Table 1

**Constellation NewEnergy, Inc.
Application for CEC Confidential Designation
Requested vs. Granted Confidential Designation**

CEC-RPS-Track Form (2007 Data)
Schedule 1

| <u>Form Data</u> | <u>Data Type</u> | <u>Confidential Designation Period of Nondisclosure</u> | |
|------------------|----------------------------------|---|----------------|
| | | <u>Requested</u> | <u>Granted</u> |
| Column A | Facility Name | 4 years (5/1/12) | 12/31/11 |
| Column B | Facility Unit # | 5/1/12 | 12/31/11 |
| Column C | Facility Fuel Type | 1 year (12/31/08) | 12/31/09 |
| Column D | Facility CEC RPS Certification # | 5/1/12 | 12/31/11 |
| Column N | Facility Annual Gen. Procured | 12/31/08 | 12/31/11* |

Schedule 2

| | | | |
|--------------|--|----------|-----------|
| Column A | Facility Name | 5/1/12 | 12/31/11 |
| Column B | Facility Unit # | 5/1/12 | 12/31/11 |
| Column C | Facility Fuel Type | 12/31/08 | 12/31/09 |
| Column D | Facility CEC RPS Certification # | 5/1/12 | 12/31/11 |
| Column E | Method for line losses | 5/1/12 | ** |
| Column F – Q | Monthly Procurement from Facility (January – December 2007) | 5/1/12 | 12/31/11 |
| Column R | Annual Procurement from Facility | 12/31/08 | 12/31/11* |
| Cell A 29 | Total Annual Retail Sales 2007 | 12/31/08 | Denied*** |
| Cell H 29 | Total Certified Renewables Procured | 12/31/08 | Denied*** |

* Granted on a facility-specific basis, but not for all facilities in the aggregate.

** Not addressed in CEC's 7/2/08 determination of confidential designation.

*** Denial of confidential designation appealed 7/16/08.

Table 2

Constellation NewEnergy, Inc. Application for CEC Confidential Designation Requested vs. Granted Confidential Designation

CEC-RPS-Track Form (2007 Data)
Schedule 1

| | | Confidential Designation Period of Nondisclosure | |
|-------------------------|----------------------------------|---|-----------------------|
| <u>Form Data</u> | <u>Data Type</u> | <u>Requested</u> | <u>Granted</u> |
| Column A | Facility Name | 4 years (5/1/12) | 12/31/11 |
| Column B | Facility Unit # | 5/1/12 | 12/31/11 |
| Column C | Facility Fuel Type | 1 year (12/31/08) | 12/31/08 |
| Column D | Facility CEC RPS Certification # | 5/1/12 | 12/31/11 |
| Column N | Facility Annual Gen. Procured | 12/31/08 | 12/31/08* |

Schedule 2

| | | | |
|--------------|--|----------|-----------|
| Column A | Facility Name | 5/1/12 | 12/31/11 |
| Column B | Facility Unit # | 5/1/12 | 12/31/11 |
| Column C | Facility Fuel Type | 12/31/08 | 12/31/08 |
| Column D | Facility CEC RPS Certification # | 5/1/12 | 12/31/11 |
| Column E | Method for line losses | 5/1/12 | 12/31/11 |
| Column F – Q | Monthly Procurement from Facility (January – December 2007) | 5/1/12 | 12/31/11 |
| Column R | Annual Procurement from Facility | 12/31/08 | 12/31/08* |
| Cell A 29 | Total Annual Retail Sales 2007 | 12/31/08 | 12/31/08 |
| Cell H 29 | Total Certified Renewables Procured | 12/31/08 | 12/31/08 |

* Granted on a facility-specific basis and for all facilities in the aggregate.