

CALIFORNIA ENERGY COMMISSION

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March 17, 2009

DOCKET
09-IEP-1B**DATE** MAR 17 2009**RECD.** MAR 17 2009

Mr. Andrew B. Brown
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, California 95816-5905

RE: Docket 09-IEP-1B CNE Confidentiality Application and Resource Plan Submission

Dear Andy,

I have been asked to review the Application for Confidential Designation (Application) submitted February 13, 2009, for Constellation NewEnergy, Inc. (CNE). This Application was received in our Executive Director's office on February 17, and was docketed that same day.

While the form, substance, and organization of this Application appear to be complete, the resource supply plan forms are not complete in several areas. Missing data on the forms, as detailed below, is often included in specific requests for this data to remain confidential. To complete the processing of this Application, the missing data needs to be provided by CNE as described in the instructions adopted by the Energy Commission on December 17, 2008.

Form S-1 CRATs (Capacity Resource Accounting Tables)

The Application requests confidentiality for years 2007 through 2012 for these lines with missing data:

- Lines 1a, 1b, and 9 are missing peak load (MW) for 2007 and 2008. The peak load number for each year also will appear on lines 27 and 31, which would therefore be included in the confidentiality request.
- Line 22a is the sum of all bilateral contract capacity. The S-1 form only included data for 2009, and only requested (using yellow highlight) confidentiality for 2009. The S-5 table on bilateral contracts lists some capacity from contracts through the end of 2011, yet this capacity is not included on the S-1 form in years 2009 or 2010 in the listings below line 22a. Also missing is any data for 2007 or 2008. Informally, we agreed not to require "data mining" for capacity and energy amounts attributable to specific contracts for these historical years. However, we did communicate an expectation that the sums in particular categories (such as the sum on line 22a) would be provided as a reasonable estimate.
- Lines 24, 14, and 25 are properly highlighted in yellow in a manner that matches the Application. However, the data still needs to be provided in these six cells for 2007 and 2008.

Form S-1 Monthly (CRATs)

- The form and Application appear to be complete. The Application obviously covers data reported for all months of 2009.

Form S-2 Energy Balance

The Application requests confidentiality for years 2007 through 2012 for these lines with missing data:

- Line 18b Renewable DG Supply data was not provided for 2007 or 2008. For 2009 – 2011, the amounts on line 18a are identical to line 18b (Total Energy Supply from Renewable Contracts). Since data was provided on line 18b for years 2007 and 2008, along with yellow highlight, it would be appropriate to include this data on line 18b along with yellow highlight (to match the Application description). Also, does this contractual DG Renewable Energy Supply correspond to specific bilateral contracts listed on the S-5 Table? I could not find a single bilateral contract on that table that listed a renewable energy fuel type, but I do see several contracts beginning on Excel row 87 that may be intended to correspond to the S-2 listing of DG Renewable resources.
- Line 20 for Short Term and Spot Market Purchases are missing data for 2007 and 2008. This would appear to be a significant procurement category.
- Line 27 is missing data on Retail Sales for all years, 2007 through 2013. This data is distinctly different from (though perhaps not too much less than) the annual amounts of energy needed to meet ESP customer demand. Once this data is provided it will presumably be included with the Application for Confidential Designation.

S-2 Monthly for 2009

- Line 1a data is now included on the form being sent separately and electronically as an attachment. This line is the sum of lines 1b and 1c data that was provided by CNE. Energy Demand Calculations (lines 1a-1c) are all covered by the Application.
- Lines 9 and 11 are now included in the Application for Confidential Designation (and shown in yellow highlight) because of the manner in which data line 1a will screen-paint by formula calculations onto lines 9 and 11.
- Line 18b shows Renewable DG Supply as a contractual resource occurring in far fewer than all 12 months of 2009. This sheds additional light on a most unusual energy “supply.”

S-5 Bilateral Contracts (Table)

- The presentation of data in table format (instead of individual forms) is appropriate and appreciated. In the confidential attachment, I have rearranged columns C-N to match the order of these categories in our adopted forms and instructions. The request to keep confidential all the data in “Columns A-N” is still clear, pertinent, and unchanged in effect. In the normal course of business, confidentiality is not generally granted to the headers of columns that appear on our published forms and in our published instructions.

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- Beginning on Excel row 87, I see listings for several bilateral contracts that have the same Start Date and Expiration Date. These contracts obviously do not make capacity available even for a single month. And I have doubts about how much actual energy will be provided to the ESP from any specific contract during a single day. Clarifying and explanatory statements are now considered appropriate by staff, and CNE is asked to provide them in a column labeled "Notes" (like on the forms and instructions). Specifically, the nature of any "Swap" must be defined, detailed, and referenced. Also, please ask CNE to recheck the MW ratings for each contract in this group since they appear to be on the high side. (Row 87 is for 7,330.786389 MW; the total for this group sums to more than 300,000 MW. The possibility of all this Renewable DG Supply committed to one LSE is sincerely mind-boggling.)

A set of completed/corrected supply forms corresponding to this Application should be provided within 14 days. Please use the attached, edited versions of the submitted confidential supply forms. This submitted data that is covered by the Application will continue to be protected from disclosure while we await a complete set of supply forms now due March 30, 2009.

Please feel free to contact me at (916) 654-5180 or jwoodwar@energy.state.ca.us should you or CNE staff have any questions or require additional information related to this Application.

Thank you for coordinating a well-reasoned, well-organized Application, and for facilitating submission of the data requested by the Energy Commission.

Sincerely,

Jim Woodward
Electric Generation System Specialist 1
Electricity Analysis Office

JW:sdf

cc: Kerry Willis, Legal Office