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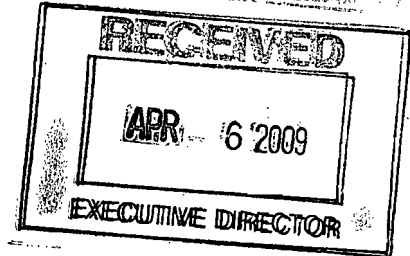
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March 31, 2009

Melissa Jones  
Executive Director  
California Energy Commission  
1516 Ninth Street, MS-39  
Sacramento, CA 95814-5504

DOCKET	
09-IEP-1B	
DATE	MAR 31 2009
RECD.	APR 06 2009



**RE: Application for Confidential Designation – Constellation NewEnergy, Inc.**  
**IEPR Resource Plan Submission, Docket No. 09-IEP-1B.**

Dear Ms. Jones:

Constellation NewEnergy, Inc., (“CNE”) by this Application for Confidential Designation respectfully requests protection of certain information provided to the Commission in the attached updated Resource Plan submission consistent with Title 20 California Code of Regulations (“CCR”) Sections 2501 *et seq.*

Please feel free to contact me at (916) 447-2166 should you or Staff have any questions or require additional information regarding this Application. Thank you for your consideration of our request.

Sincerely,

Andrew B. Brown  
Chase B. Kappel  
Ellison, Schneider & Harris, LLP  
Attorneys for Constellation NewEnergy, Inc.

Confidential Materials in Sealed Enclosure.

# APPLICATION FOR CONFIDENTIAL DESIGNATION

Constellation NewEnergy, Inc.

Electricity Resource Plan

March 31, 2009

Docket No. 09-IEP-1B

I. Specifically indicate those parts of the record which should be kept confidential.

CNE requests that the following information remain confidential, as also indicated by the yellow pattern cells on the Excel worksheet:

Form	Information to be held confidential
S-1 CRATS	<ul style="list-style-type: none"> <li>Peak LSE Load Calculations for years 2009 through 2012 except cells which are blank (lines 1a-1c, 9, 11, 12a, 14)</li> <li>Existing and Planned Resources for years 2009 through 2013 except cells which are blank <ul style="list-style-type: none"> <li>Renewable Energy Contractual Resources (line 21c for 2009 only, including contract identifier data)</li> <li>Other Bilateral Contractual Resources (lines 22a, 22c-22bl, including contract identifier data)</li> <li>Capacity Balance Summary (lines 24, 14 [except 2013 data], 25)</li> </ul> </li> <li>Historic Actual LSE Non – Coincident Peak Load for years 2007 and 2008 <ul style="list-style-type: none"> <li>Annual Peak Load – Actual Metered Deliveries and Adjusted Annual Peak Load (lines 27-29 and 31)</li> </ul> </li> </ul>
S-1 Monthly CRATS	<p>For months Jan-09 through Dec-09</p> <ul style="list-style-type: none"> <li>Peak LSE Load Calculations (lines 1a-1c, 9, 11, 12a, 14)</li> <li>Existing and Planned Resources <ul style="list-style-type: none"> <li>Renewable Energy Contractual Resources (lines 21a, 21c, including contract identifier data)</li> <li>Other Bilateral Contractual Resources (lines 22a, 22c-22bl, including contract identifier data)</li> <li>Capacity Balance Summary (lines 24, 14, 25)</li> </ul> </li> </ul>
S-2 Energy Balance Resource Accounting – Annually	<ul style="list-style-type: none"> <li>Energy Demand Calculations for years 2007 through 2012 except cells which are blank (lines 1a-1c, 9, 11)</li> <li>Existing and Planned Resources for years 2009 through 2013 except cells which are blank <ul style="list-style-type: none"> <li>Renewable Energy Contractual Resources (lines 18a,</li> </ul> </li> </ul>

	18c [including contract identifier data and GWh data for 2009 only]) <ul style="list-style-type: none"> <li>o Other Bilateral Contracts, including contract identifier data (lines 19a, 19c-19bl)</li> <li>o Energy Balance Summary, including data for years 2007 through 2013 (lines 21, 11 [except 2013 data], 22 [except cells which are blank])</li> <li>• Renewable Energy Accounting for years 2007 through 2012 (lines 26c, 26e, 26g, 26h, 27, 28)</li> </ul>
S-2 Energy Balance Resource Accounting – Monthly	For months Jan-09 through Dec-09 <ul style="list-style-type: none"> <li>• Energy Demand Calculations (lines 1a-1c, 9, 11)</li> <li>• Existing and Planned Resources <ul style="list-style-type: none"> <li>o Renewable Energy Contractual Resources (lines 18a, 18c, including contract identifier data)</li> <li>o Other Bilateral Contracts (lines 19a, 19c-19bl, including contract identifier data)</li> <li>o Energy Balance Summary (lines 21, 11, 22)</li> </ul> </li> </ul>
S-5 (Attachment)	Rows 2-98, Columns A-N; and Rows 2-62, Col W

Additionally, pursuant to the instructions provided in Appendix 1 to the *Forms and Instructions for Submitting Electricity Resource Plans Prepared in Support of the 2009 Integrated Energy Policy Report*, CNE has shaded all cells containing information it seeks to keep confidential yellow.

2. *State the length of time the record should be kept confidential, and provide justification for the length of time.*

Because (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, risk management and CNE's internal portfolio management practices, 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 asks that the identified data be held in confidence for a period of at least three (3) years from the time of production to the Commission. This requested period of time is appropriate as the detailed data is expected to retain validity and market value over that period insofar as it can be used with other data to discern CNE's internal operations, market strategies, including risk management efforts or expectations of future market activities, and because any lesser period would undermine existing protection of the same or substantially similar data by other entities, including the California Public Utilities Commission ("CPUC") and the California Independent System Operator ("CAISO"). This period of time is also consistent with the confidentiality

previously provided by the Commission for Constellation's 2007 submission of this information. (See Attachment A, hereto.) As such, CNE continues to assert confidentiality for prior years that remain within CNE's requested three year confidentiality window. Data submissions for the 2007 IEPR were protected through December 31, 2009, hence the request for continued protection of the 2007 data until December 31, 2009.<sup>1</sup> CNE requests that forecast data covering the 2008 through 2012 period, and all contract-related data be kept confidential until December 31, 2012. CNE has also fashioned this request to reflect the scope of protection provided to energy service provider ("ESP") data in CPUC Rulemaking 05-06-040, and, in particular, Decision ("D.") 06-06-066, Appendix B ("ESP Matrix") and related modifications made in 08-04-023, in an effort to have consistency across California energy Agencies.<sup>2</sup> The public release of the specified information, particularly to competitors and potential customers, would result in a loss of competitive advantage for CNE in the wholesale and retail markets, and may result in a loss in the ability to secure a favorable margin or return or result in disclosure of information about internal operating practices.

3. *Cite and discuss (i) the provisions of the Public Records Act or other law which allow the commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.*

CNE is submitting the information and data sets described above in accordance with the Forms and Instructions adopted by the Commission in December 2008 (*Forms and Instructions for Submitting Electricity Resource Plans Prepared in Support of the 2009 Integrated Energy Policy Report*, CEC-100-2008-010-CMF).

Under Public Resources Code Section 25322, the Commission is required to grant a request for confidential designation of information collected pursuant to Pub. Res. Codes Section 25301(a) if:

- (a) the information is exempt from disclosure under the California Public Records Act (Govt. Code §§ 6250 et seq.);
- (b) the information meets the confidentiality requirements set forth in the Commission's regulations; or
- (c) on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure.

The Public Records Act exempts "trade secrets" from public disclosure, including "any formula, plan, ... production data, or compilation of information ..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an

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<sup>1</sup> See March 7, 2007, Letter from Executive Director Blevins re Application for Confidentiality, Electric Resource Planning Forms S-1, S-2 and S-5, Constellation NewEnergy, Inc. Docket No. 06-IEP-1J. For administrative convenience, CNE is requesting the duration run through the end of the third year.

<sup>2</sup> While CNE understands and acknowledges that the confidentiality rules granted by the California Public Utilities Commission and the California Energy Commission are different in some respects, CNE seeks to maintain consistency in the data it makes publically available. Consistency also prevents CNE from inadvertent disclosures of confidential information.

article of trade or a service...and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Govt. Code § 6254.7(d).)

The Commission’s regulations provide for information to be designated as confidential if it “contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage.” (20 CCR § 2505(a)(1)(D).)

The information identified above, and any supporting data submitted by CNE, contain trade secrets or otherwise commercially sensitive data the disclosure of which would cause loss of a competitive advantage. As an entity operating in the competitive and dynamic retail energy markets, as well as a net purchaser in the competitive wholesale markets, CNE closely holds information on its retail and wholesale market positions as well as its internal practices in confidence. The materials identified above should be subject to a three-year confidentiality protection because the information is commercially sensitive and not publicly available and/or constitutes trade secrets the public disclosure of which would harm CNE. Moreover, this information can be used to directly or indirectly determine CNE’s market position or business plans or procurement strategies to the detriment of CNE and its customers. Accordingly, CNE requests that all of the information and data sets contained in those documents more specifically described in section 1 above, and any related, supporting data that may be provided pursuant to a subsequent Staff request, be designated as confidential.

CNE believes that the public interest in having an open, public debate on key energy issues facing the state can be satisfied by disclosure of information submitted by CNE and the other ESPs collectively aggregated on a state-wide basis. Any greater granularity in the data released, including disclosure of any CNE-specific data that is not aggregated with other ESPs, could expose CNE’s market position to its competitors, including other ESPs and the investor-owned utilities (“IOUs”). In addition, CNE’s information for a customer class should be aggregated with the information of one or more other classes where only a small number of customers in the class are served by ESPs.

CNE requests that the identified information also be deemed confidential for the following additional reasons: The information is commercially sensitive and constitutes a trade secret and is therefore exempt from disclosure. Evidence Code §1060, Civil Code §3426.1(d). Moreover, the public interest in nondisclosure clearly outweighs the public interest in disclosure insofar as release of this economic information may directly harm CNE’s existing and future commercial opportunities and its ability to secure a return in the marketplace, and disclosure may also harm CNE’s electric customers by foreclosing favorable commercial opportunities. Gov’t Code § 6255.

4. *State whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required.*

CNE has considered whether it would be possible to aggregate or mask the identified information. CNE can support the aggregation of CNE-specific information with similar information from all other ESPs and solely disclosed on a *statewide aggregated basis*. CNE believes that disclosure of CNE-specific data of the types collected here, even if aggregated on a statewide basis but specific

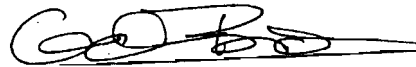
to CNE, could lead to the disclosure of CNE's wholesale and retail market positions and thereby result in harm to CNE. Given the degree of competition between ESPs, and between ESPs and the IOUs, CNE asserts that any ESP-specific listing of data by utility territory would result in disclosure of confidential data.

5. *State whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances.*

CNE has not disclosed any of the subject information to anyone other than their employees, attorneys and consultants working with the Company, or government agency employees or employees of the CAISO subject to confidentiality protection. CNE routinely keeps information of commercial value, like the subject information identified herein, confidential. In fact, all CNE "employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, suppliers, business partners or others in the course of conducting business with the company, except when disclosure is authorized or legally mandated."<sup>3</sup>

*I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to make the application and certification on behalf of Constellation NewEnergy, Inc.*

Dated: March 30, 2009



Andrew B. Brown  
Chase B. Kappel

Ellison, Schneider and Harris LLP  
Attorneys for Constellation NewEnergy, Inc.

Enclosure.

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<sup>3</sup> This statement appears in the *Constellation NewEnergy Employee Handbook*. All CNE employees must provide written acknowledgement that they have received the most recent version of the *Constellation NewEnergy Employee Handbook*.

**ATTACHMENT A**

**CALIFORNIA ENERGY COMMISSION LETTER GRANTING CONSTELLATION NEWENERGY,  
INC.'S APPLICATION FOR CONFIDENTIALITY OF SPECIFIED DATA REPORTED IN 2007  
ELECTRICITY RESOURCE PLANNING FORMS S-1, S-2, AND S-5 (DOC.NO. 06-IEP-1J)**

MAR 08 2007

STATE OF CALIFORNIA  
ARNOLD SCHWARZENEGGER Governor

**CALIFORNIA ENERGY COMMISSION**

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512



March 7, 2007

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

**RE: Application for Confidentiality,  
Electricity Resource Planning Forms S-1, S-2, and S-5  
Constellation NewEnergy, Inc.  
Docket No. 06-IEP-1J**

Dear Mr. Brown:

On February 9, 2007, Constellation NewEnergy, Inc., (CNE) filed an application for confidentiality in the above-captioned Docket. The application seeks confidentiality for information contained on the Electricity Resources Data Submittal forms S-1, S-2, and S-5. Specifically, CNE requests confidentiality as follows:

- S-1: Peak LSE Load Calculations (lines 1-3, 8-10, 12);  
Existing and Planned Resources (lines 38-52)  
Demand Side Dispatch Resources (line 55)  
Future Generic Resource Needs (lines 56-62)  
Capacity Balance Check (lines 63-64)  
UDC Loads & System Reliability (lines 65, 68)
- S-2 Energy Demand Calculations (lines 1-3, 7, 9)  
Existing and Planned Resources (lines 36-38, 40-41, 45-46, 49-50)  
Energy Balance Check (58-59)  
Renewable Energy Accounting (lines 62, 64, 66-67)
- S-5 Information contained in the following columns: Delivery Location,  
Buys, Delivery Month and Period

CNE bases its request for confidentiality on the basis that:

[t]he 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, [sic] CNE asks that the identified data be held in confidence for a period of at least three (3) years from the time of production to the Commission.

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."

CNE's February 9, 2007, confidentiality application makes a reasonable claim to grant confidentiality for form S-1 and S-5 in their entirety. The information contained on these forms constitutes a trade secret, and would place CNE at a competitive disadvantage if disclosed. Information contained on form S-2 is also granted confidentiality based on trade secret, except for information contained on Line 67. If made public, information contained on form S-2, Line 67 would not disclose any confidential load, open position or contract information. Consequently, information contained on Line 67 does not rise to the level of a trade secret and is not granted confidentiality.

The Energy Commission will aggregate the information submitted by CNE as follows:

1. Geographic-level data in form S-1 and form S-2 will be aggregated with the geographic-level data of all other Load Serving Entities (LSEs) in the applicable utility service territory.
2. Statewide-level data and information about existing and planned resources in form S-1 and form S-2 will be aggregated with the statewide-level data and resource information of all electric service providers (ESPs).
3. Bilateral contract information in form S-5 will be aggregated with the bilateral contract information of all other ESPs.

Information contained on forms S-1 and S-2 will be kept confidential until December 31, 2009. Information contained on form S-5 will be kept confidential until December 31, 2009, or to the end of the contract term if that term is stated on form S-5, whichever is later.

Finally, 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. Be

Andrew B. Brown  
March 7, 2007  
Page 3

advised that an appeal of this decision must be filed within fourteen days from the date of my 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,

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

B. B. BLEVINS  
Executive Director

cc: Docket Unit  
Energy Commission Project Manager