

CALIFORNIA ENERGY COMMISSION

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April 16, 2009

DOCKET

09-IEP-1B

DATE APR 16 2009

RECD. APR 21 2009

Mr. Andrew B. Brown and Mr. Chase B. Kappel
 Ellison, Schneider & Harris, L.L.P.
 Attorneys for Constellation NewEnergy, Inc.
 2600 Capitol Avenue, Suite 400
 Sacramento, California 95816-5905

**RE: Application for Confidentiality-- Constellation NewEnergy, Inc.
 Electricity Resource Plan Forms
Docket No. 09-IEP-1B**

Dear Mr. Brown and Mr. Kappel,

On March 31, 2009, Ellison, Schneider & Harris L.L.P. submitted a revised Application for Designation of Confidential Records on behalf of Constellation NewEnergy, Inc. (CNE). This application and a revised set of electricity resource plans in the above-captioned Docket were filed in connection with the *2009 Integrated Energy Policy Report*. The revised application and resource plans were docketed at the California Energy Commission on April 6, 2009, and they replace the original application and resource plan submitted by Constellation on February 13, 2009.

CNE is seeking to protect from public disclosure data and information on the following forms:

- Form S-1 Capacity Resource Accounting Table (CRATS)
- Form S-1 Monthly (CRATS)
- Form S-2 Energy Balance Resource Accounting —Annually
- Form S-2 Energy Balance Resource Accounting —Monthly
- Form S-5 Bilateral Contracts — submitted as an attached table

CNE has clearly identified on these forms (Excel worksheets) specific categories of information and specific time periods of data for which it is seeking confidentiality. These designations match what is requested in CNE's Application. For example, the first category indicated as confidential on the S-1 CRATS form is "Peak LSE Load Calculations for years 2009 through 2012 except cells which are blank (lines 1a-1c, 9, 11, 12a, 14)."

On the table submitted with 97 rows of data on bilateral contract electricity supplies, CNE has requested confidentiality for 15 categories of information, provided in columns A-N and column W. On row 1, these columns are labeled TradeDate, Dealid,

Supplier/Seller, Start Date, Expiration Date, Contract/Agreement Capacity, Scheduling Coordinator, Fuel Type, Delivery Point 1, Delivery Point 2, Contract/Agreement Product 1-4, and Notes: Trade Buckets (rows 2-62 only).

In support of its request for confidentiality, CNE's Application states, in part:

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. ... 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. (Application at p. 4.)

In addition, the CNE requests that the Energy Commission keep the information confidential for a specified length of time:

... 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, ... CNE requests that forecast data covering the 2008 through 2012 period, and all contract-related data be kept confidential until December 31, 2012. (Application at pp. 2-3.)

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 March 31, 2009, confidentiality application makes a reasonable claim to grant confidentiality for the above-described electricity supply forms, and on the table submitted in lieu of 97 bilateral contract S-5 forms. Information on these forms and the S-5 table that are specifically listed in CNE's Application as "information to be held confidential" are granted confidentiality based on trade secret.

The Energy Commission may use the information submitted by the CNE in publicly

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available reports and presentations, but without disclosing confidential information to market participants. To prevent disclosure, confidential data that may be used in reports and presentations will be aggregated with resource plan information from other load-serving entities in order to conceal the confidential specifics of CNE's load forecasts, resource portfolio, or individual supply contracts.

CNE notes correctly that "Data submissions for the 2007 IEPR were protected through December 31, 2009." (Application at p. 3.). Consistent with that prior determination, CNE's forecast and historical information submitted this year on the above named forms and table will be kept confidential until December 31, 2011.

The Energy Commission appreciates the efforts by CNE staff to answer technical questions related to its resource plan filing, and to provide Energy Commission staff with additional data deemed necessary to make this filing complete and adequate in accordance with the adopted forms and instructions.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Jones", written in a cursive style.

MELISSA JONES
Executive Director

JW:jp

cc: Jim Woodward, Electricity Analysis Office