

ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER
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CHRISTOPHER T. ELLISON
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
GREGGORY L. WHEATLAND
CHRISTOPHER M. SANDERS
LYNN M. HAUG
PETER J. KIEL

ATTORNEYS AT LAW

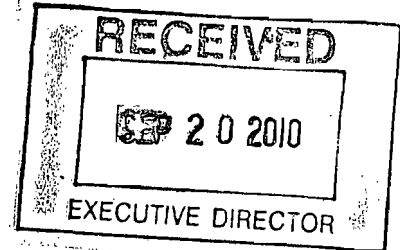
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE: (916) 447-2166
FACSIMILE: (916) 447-3512
http://www.eslawfirm.com

BRIAN S. BIERING
SHANE E. CONWAY
KATHRYN C. COTTER
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SAMANTHA G. POTTENGER

ELIZABETH P. EWENS
OF COUNSEL

September 20, 2010

DOCKET
03-RPS-1078
DATE SEP 20 2010
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Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, CA 95814-5504

CONFIDENTIAL
COMPLETED

RE: Application for Confidential Designation – Constellation NewEnergy, Inc.
2007 CEC RPS Verification Report, Docket No. 03-RPS-1078

Dear Ms. Jones:

Constellation NewEnergy, Inc., (“CNE”) by this Application for Confidential Designation respectfully requests protection of certain information provided to the Commission 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

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

Confidential Materials in Sealed Enclosure.

APPLICATION FOR CONFIDENTIAL DESIGNATION
Constellation NewEnergy, Inc.
September 20, 2010

Docket No. 03-RPS-1078

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

CNE requests that the enclosed contract excerpts provided to assist CEC staff with its 2007 RPS Verification report remain confidential.

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

Because (1) the contract provisions are not otherwise publicly available or readily discoverable in the form or detail provided, (2) the contract is market sensitive and constitutes trade secret details of a negotiated bilateral RPS contract, and (3) the release of this contract 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 of renewable energy at wholesale, CNE asks that the enclosed data be held in confidence for a period of at least five (5) years from the time of production to the Commission. This requested period of time is appropriate as the contract structure and terms are expected to retain validity and market value over that period insofar as it can be used with other data to discern CNE's bilateral contracting negotiation results. The public release of the contract provisions, particularly to competitors and potential customers, would result in a loss of competitive advantage for CNE, and may result in a loss in the ability to secure favorable future contracts.

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 contract provisions pursuant to a Staff request dated September 9, 2010 asking for documentation supporting certain 2007 RPS procurement claims.

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 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 enclosed contract submitted by CNE contains 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 holds closely information on its retail and wholesale contracts as well as its internal practices in confidence. The materials identified above should be subject to a five-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 RPS procurement and contract negotiation strategies to the detriment of CNE and its customers. Accordingly, CNE requests that the contract provisions provided to the Staff be designated as confidential.

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 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.*

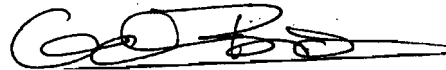
CNE has redacted some portions of the enclosed contract. Nonetheless, the remaining provisions and form of contract remain trade secret information for CNE. CNE's procurement contracts are not subject to disclosure (as opposed to the treatment of certain CPUC-jurisdiction utility contracts which may become public after a period of time), and CNE seeks to maintain the protection of its procurement contracts' terms and conditions.

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 CPUC 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 are required to 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.

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: September 20, 2010



Andrew B. Brown

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

Enclosure