

CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512
www.energy.ca.gov



June 22, 2011

DOCKET 00-SB-1305
DATE JUN 22 2011
RECD JUN 24 2011

Andrew Brown
Ellison, Schneider & Harris L.L.P.
2600 Capitol Ave, Suite 400
Sacramento, CA 95816

RE: **Application for Designation of Confidential Records relating to
Constellation NewEnergy, Inc. Power Source Disclosure Form
Docket Number 00-SB-1305**

Dear Mr. Brown:

On May 27, 2011, Constellation NewEnergy ("Applicant") filed an application for confidentiality in the above-captioned docket. The application requests confidential designation for specific power source disclosure data related to energy purchases and retail sales. Specifically, Applicant requests confidential designation for the purchase and sales information contained in the following Excel worksheet cells:

1. Schedule 1: cells M26, O26, O27
2. Schedule 2A: cells C30, I30, C32, I32
3. Schedule 2B: cells C27, D27, C29, D29

The application states that the energy purchase and retail sales information contained in the cells are confidential trade secrets and commercially sensitive data. Disclosure of such data would cause loss of competitive advantage. The application notes that as a net purchaser in the competitive wholesale markets, Constellation NewEnergy closely holds information on retail and wholesale market positions in confidence.

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." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.) The California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

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California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, the application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the above listed energy purchase and retail sales information confidential on the grounds that they contain trade secrets and/or proprietary information. The information has been developed exclusively by Applicant, contains information that is not public, and has the potential for economic advantage.

Applicant requests that the energy purchase and retail sales information be kept confidential until **December 31, 2011**. The Applicant notes that the confidential data can be disclosed to the public if aggregated with other energy service provider data to a state wide level.

For the above reasons, your request for confidential designation for the data listed above is granted. The data will remain confidential until **December 31, 2011**, but can be disclosed prior to that date if aggregated with other data to a state wide or higher level.

Be advised that persons may petition to inspect or copy 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. If you have any questions concerning this matter, please contact Jared Babula, Staff Counsel, at (916) 651-1462.

Sincerely,



ROBERT P. OGLESBY
Executive Director

cc: Docket Unit
Energy Commission Project Manager