

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

June 24, 2011

Mr. Andrew B. Brown
Ellison, Schneider & Harris LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905

DOCKET	
11-IEP-1B	
DATE	JUN 24 2011
RECD.	JUN 24 2011

RE: **Application for Confidentiality, Constellation NewEnergy, Inc.
IEPR Electricity Resource Plan Submission
Docket No. 11-IEP-1B**

Dear Mr. Brown:

On May 27, 2011, the California Energy Commission (Energy Commission) received from Ellison, Schneider & Harris L.L.P. a revised application for confidentiality and an updated set of electricity resource plans on behalf of Constellation NewEnergy, Inc. (CNE). This revised filing made obsolete a previous application and resource plans dated April 29, 2011, all filed in the above-captioned Docket in connection with the 2011 *Integrated Energy Policy Report*.

CNE seeks to protect from public disclosure certain data and information on the following electricity supply forms or tables:

- Form S-1 Capacity Resource Accounting Table
- Form S-2 Energy Balance Accounting Table
- Form S-4 Wind Resource Nameplate Capacity
- Table S-5 Bilateral Contracts and Power Purchase Agreements

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

(1) the information is not otherwise publicly available or readily discoverable in the form or extensive 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, . . . (Application at p. 2)

CNE has clearly identified on these forms (Excel worksheets) specific categories and specific time periods of data for which it is seeking confidentiality. These designations match what is requested in CNE's Application.

Mr. Andrew B. Brown
June 24, 2011
Page 2

In early 2007 on the above-named forms, the same data categories for calendar years 2007-2011 were granted confidentiality through December 31, 2009. In early 2009 on the above-named forms, the same data categories for calendar years 2007-2013 were granted confidentiality through December 31, 2011. In 2011 on the above-named forms, CNE is asking that the data categories for calendar years 2009-2015 be granted confidentiality through December 31, 2014.

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 confidentiality application makes a reasonable claim to grant confidentiality for the data identified in its application. The data and information that are specifically listed in CNE's Application as "information to be held confidential" could place CNE at a competitive disadvantage if disclosed, and are granted confidentiality based on trade secret. Consistent with previous grants of confidentiality, the identified confidential information contained on CNE's supply resource forms and tables will be kept confidential until December 31, 2014.

To prevent disclosure, confidential data that may be used in publicly available 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.

The Energy Commission appreciates the efforts by CNE staff to answer technical questions related to its resource plan filing.

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. Be advised that an appeal of this decision must be filed within fourteen days from the date of this 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 Kerry Willis, Senior Staff Counsel, at (916) 654-3967.

Sincerely,



ROBERT P. OGLESBY
Executive Director

cc: Docket Unit