



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Investigation on the Commission's Own Motion Into the Operations and Practices of Constellation NewEnergy, Inc.; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Impose Fines and Sanctions For Constellation NewEnergy, Inc. January 2009 Violation of System Resource Adequacy Requirements.

I.10-04-010
(Filed April 8, 2010)

**MOTION OF CONSTELLATION NEWENERGY, INC.
TO REDACT PORTIONS OF
CPSD CONFIDENTIAL REPORT PURSUANT TO
ORDERING PARAGRAPH NO. 2**

April 27, 2010

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Attorneys for Constellation NewEnergy, Inc.,

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Pursuant to Ordering Paragraph No. 2 of the above-captioned Order Instituting Investigation (“OII”), Constellation NewEnergy, Inc. (“CNE”) hereby moves for continued confidentiality for portions of the March 4, 2010 Consumer Protection & Safety Division (“CPSD”) Investigative Report (“CPSD Report”) served on CNE as an attachment to the OII.¹ The CPSD Report is made up of six (6) pages of text and five (5) separate attachments.

CNE requests confidentiality for portions of Section II of the CPSD Report at pages 4-5 that identify the specific counterparties and CNE’s contract identifiers, consistent with existing confidentiality rules. As described below, that information comes from CNE’s responses to CPSD data requests provided subject to the protections of General Order 66-C, as well as data subject to the confidentiality declarations made pursuant to D.08-04-023 for the 2009 year-ahead and month-ahead resource adequacy (“RA”) submissions.² The market for resource adequacy capacity is competitive, and

¹ The OII’s date of issuance was April 13, 2010, and Ordering Paragraph No. 2 calls for this response within fourteen days, accordingly this motion is timely filed.

² Per ESP Matrix Section II A and B, the forward load forecast and supply data is protected for a 3 year period. CNE’s November 21, 2008 confidentiality declaration filed with the year-ahead materials asserted protection through December 31,

there are a limited number of resources eligible to provide RA capacity. Because there is no standardized product or central clearing market for RA capacity in California, parties experience relatively high transaction costs for developing mutually agreeable forms of contract that will achieve compliance with both the CPUC's RA rules applicable to LSEs and similar California Independent System Operator ("CAISO") Tariff provisions applicable to suppliers. Once parties invest the time and effort to establish a viable commercial format to transact the RA product (including meeting any credit conditions or other internal thresholds), they are more likely to engage in future transactions on a similar basis with that same counterparty. Disclosure of non-public details regarding favored counterparties or RA qualified resources will result in loss of competitive advantage where, as in California, participants in a competitive market are not aware of the specific counterparties, quantities secured or commercial terms over periods of time across different suppliers. Disclosure of the information contained in those pages of the CPSD Report, as well as page 6 of the OII which effectively reproduces that section of the confidential CPSD Report, should not occur.

Each of the CPSD Report's 5 Attachments should remain confidential. Attachments 1 and 5 are copies of CNE's January 2009 RA compliance submissions provided to CPSD on October 30, 2009 in response to an October 17, 2009 data request and provided pursuant to the protections afforded under General Order ("GO") 66-C.³ Confidentiality for those materials was first asserted at the time of the month-ahead RA submissions to Energy Division on December 1, 2009 and December 15, 2009, respectively, pursuant to the ESP Confidentiality Matrix included in D.08-04-023.⁴ Protection of the

2011, and the transmittal for the January 2009 month-ahead submission references the D.08-04-023 provisions that allow reliance on previously filed confidentiality declarations.

³ See, GO 66-C §2.2, 2.8, coupled with Cal. Gov't Code §6254(k), Evid. Code § 1060, 1061 and Civ. Code § 3426.1(d) providing for the protection of trade secrets. Pub. Util. Code § 583 can also provide a basis for protection, assuming that the Commission will provide ESPs similar protection to data that would be protected if it were provided by a public utility.

⁴ The original January 09 Month-Ahead RA ("MARA") submission materials are dated November 26, 2008 and were submitted electronically to Energy Division via Secure FTP on December 1, 2008. The revised January 2009 MARA was dated and submitted on December 15, 2008. Both submissions are covered by the November 21, 2008 confidentiality

materials continues to be appropriate pursuant to the original filings to avoid disclosure of market-sensitive data to the public and other market-participations as provided for in D.08-04-023.

Attachment 2 should be kept confidential. This data is an excerpt of validation data from the CAISO validation report for RA submissions from CNE and a number of other LSEs. Of the 26 lines of data in the CAISO material, only 3 lines apply to CNE, all of which are found only on page “CPSD8”. The CAISO keeps this type of data confidential pursuant to CAISO Tariff Section 20.2(e)(i) as it is derived from annual and monthly Resource Adequacy Plans and Supply Plans and identifies both LSEs as well as specific contracted resources by CAISO Resource ID (“ResID”).⁵ CNE is unaware of any prior public disclosure of this CAISO validation data.⁶ Accordingly, CNE asks that the ResIDs for resources associated with CNE’s data (found in the third and eighth columns) be protected, and that data concerning all other LSEs be fully redacted. These redactions will ensure that the Commission maintains the confidentiality protection provided by the CAISO Tariff. Moreover, CNE asks that CPSD redact CNE’s data should this or similar data be conveyed to any other LSE in the course of its enforcement efforts. Protecting data that identifies an LSE’s contracted RA capacity from disclosure to other market participants is necessary to prevent the potential loss of competitive advantage that can occur, particularly within a competitive marketplace with limited eligible suppliers and mandatory procurement obligations on LSEs.

Attachments 3 and 4 should be kept confidential. These attachments contain portions of CNE RA supply contracts with counterparties that were provided on December 11, 2008 in response to an Energy Division request, or on February 25, 2010 in response to the February 11, 2010 CPSD data

declaration made pursuant to D.08-04-023, Ordering Paragraph No. 9. That confidentiality declaration asserts protection pursuant to D.08-04-023 through December 31, 2011.

⁵ CAISO Tariff § 20.4(d)(ii) authorizes CAISO disclosure of RA data to the CPUC for purposes of determining compliance, but “[t]he information provided shall be limited to the particular dispute, discrepancy, or deficiency.”

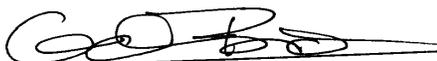
⁶ CNE contacted CAISO counsel on April 26, 2010 to verify that the monthly RA validation reports are not released publicly and that was verified by CAISO on April 27, 2010.

request.⁷ At the time the materials were provided, CNE asserted protection under GO 66-C. These contracts are not public, and each contract includes a commitment between the contracting parties (not included within the excerpt in Attachment 3) to keep the contract details confidential. Moreover, the contracts are protected under D.08-04-023.⁸ CNE maintains the confidentiality of these materials and considers these contracts to fall within the “trade secrets” eligible for protection under the California Public Records Act and GO 66-C.⁹ Disclosure of CNE’s form of RA contract would result in loss of competitive advantage that exists from these materials, which have independent economic value to CNE that comes from their contents not being generally known.

In conclusion, CNE asks that the identified portions of the CPSD Report continue to remain subject to confidentiality protections.

Dated: April 27, 2010

Respectfully submitted,



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On behalf of Constellation NewEnergy, Inc. Attorneys for Constellation NewEnergy, Inc.

⁷ Attachment 3 was provided to Energy Division on December 11, 2008 at Energy Division’s request. Attachment 4 was provided to CPSD in response to a data request on February 25, 2010.

⁸ See, D.08-04-023, page 16: “we have already protected the contracts themselves” See also, ESP Matrix Section IV (C).

⁹ GO 66-C, §2.2 (b) [information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage] and Cal. Gov’t Code §6254(k) in conjunction with Evid. Code § 1060, 1061 and Civ. Code § 3426.1(d) providing for the protection of trade secrets.

Certificate of Service

I hereby certify that I have this day served a copy of “Motion of Constellation NewEnergy, Inc. to Redact Portions of CPSD Confidential Report Pursuant to Ordering Paragraph No. 2” on all known parties to I.10-04-010 by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on April 27, 2010 at Sacramento, California

_____/s/_____

Eric Janssen

I.10-04-010
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April 27, 2010

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