

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**NARRATIVE REPORTING PORTION OF THE PRELIMINARY ANNUAL 33%
RENEWABLES PORTFOLIO STANDARD COMPLIANCE REPORT OF
CONSTELLATION NEWENERGY, INC.**

Andrew B. Brown
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: abb@eslawfirm.com

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Attorneys for Constellation NewEnergy, Inc.

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Pursuant to the Instructions tab of the Preliminary Annual 33% Renewables Portfolio Standard (“RPS”) Compliance Report template for electric service providers (“ESPs”) (“RPS Compliance Report”), Constellation NewEnergy, Inc. (“CNE”), submits the following narrative responses as part of its RPS Compliance Report.

I. Narrative Reporting Requirements.

A. Narrative Reporting Requirements for all Retail Sellers.

- 1. The status of any necessary siting and permitting approvals from federal, state, and local agencies for those eligible renewable energy resources procured by the retail seller that have not yet attained their commercial on-line dates.**

All of CNE’s procurement comes from facilities that have already attained their commercial on-line dates.

- 2. Identification of all procurement from eligible renewable energy resources located outside California and within the WECC during the period covered by the report.**

CNE’s procurement information can be found in the “Procurement Detail” tab of its RPS Compliance Report. CNE will procure renewable generation from eligible renewable energy resources (“ERRs”) located outside of California, including procurement from the following

facilities: White Creek 1, La Rosita 2, High Desert Power Plant, Leaning Juniper II, Elkhorn Valley Wind Farm, Arrowrock Hydro Electric, Tuana Springs Wind Farm, Canyon Wind Project – Nine Canyon Phase 3, Vansycle Wind Project, Power County Wind Park – North, Power County Wind Park – South, Juniper Canyon Wind Project, and Harvest Wind Project, Dokie Wind Energy Project, H.W. Hill Landfill Gas Landfill Gas Project, Wheat Field Wind Farm, San Gorgonio 1 through 5, White Creek Wind, Nine Canyon Wind, Coastal Energy Wind Project, Campbell Hill - Three Buttes, Dunlap I, Glenrock I, Glenrock III, Goodnoe Hills, High Plains, Leaning Juniper, Marengo, Marengo II, McFadden Ridge, Rolling Hills, Seven Mile Hill I, Seven Mile Hill II, Top of the World, Wolverine Creek.

3. Identification of all procurement of unbundled renewable energy credits (“RECs”) during the period covered by the report.

CNE’s procurement information can be found in the “Procurement Detail” tab of its RPS Compliance Report. CNE will procure unbundled RECs from the following facilities: Leaning Juniper II, Elkhorn Valley Wind Farm, Arrowrock Hydro Electric, Tuana Springs Wind Farm, Canyon Wind Project – Nine Canyon Phase 3, Vansycle Wind Project, Power County Wind Park – North, Power County Wind Park – South, and Juniper Canyon Wind Project, Nine Canyon Wind, Coastal Energy Wind Project, White Creek Wind 1.

4. Recommendations to remove impediments to making progress toward achieving the renewable energy resources procurement requirements established by statute and implemented by Commission decision.

CNE, a retail provider, typically contracts for resources from the regional markets to supply its loads and meet regulatory requirements. CNE directly seeks out arrangements with counterparties involved in project development and can negotiate contracts initiated in the brokered markets. RPS compliance could be delayed to the extent that there is scarcity of

eligible generation resources in the regional market, or limitations on the resources' ability to contemporaneously import or directly connect to a California Balancing Authority Area. To the extent that import limitations increase over time, portions of some Product 1 procurement may end up being converted to Product 2 or Product 3, depending on the ability to reschedule under the revised delivery rules, balancing authority area tariffs and system conditions. Such impacts may impede compliance with the content category mix requirement, but CNE does not expect at this time that such events will impede meeting the total RPS volume requirement.

CNE also recommends that the marketplace will benefit from a voluntary mechanism whereby retail sellers can get a staff-level review and concurrence that their contract structures should meet a particular Product Content Category (“PCC”) classification if deliveries occur as contemplated under the contract. Such a mechanism for retail sellers not subject to a mandatory pre-approval process would alleviate significant regulatory uncertainty and risk for the retail seller, their retail customers, as well as the renewable suppliers. This contract structure review would necessarily be done with the understanding that the ultimate determination of RPS eligibility and PCC category of the delivered volumes may occur after California Energy Commission (“CEC”) review of the product delivery details and PCC category claim. However, a voluntary mechanism that would validate the contract structure and the commercial intention between buyer and seller would avoid a potentially very undesirable event of procurement disqualification years after contract execution due to contract structure issues—as opposed to problems with the production and delivery from the resource. This review mechanism would be an optional approach for those cases where conferring with regulatory staff about the detailed contractual mechanics could help minimize risks that come from the contract structures alone. Recently, this sentiment was echoed by buyers and sellers during the November 30, 2012 Joint

CEC and California Public Utilities Commission Workshop regarding revisions to RPS verification reporting when a number of non-IOU parties supported the concept because it could reduce regulatory risks for the parties and help avoid later compliance and commercial problems that could result in protracted commercial disputes and loss of value to customers.

II. Conclusion.

CNE provides this response to the narrative reporting requirements outlined in the RPS Compliance Report. CNE takes its RPS energy procurement compliance obligations seriously and is actively engaged with the Commission's processes in developing the RPS implementation requirements.

Dated: December 27, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. B. Brown", is written over a light gray dotted rectangular background.

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Facsimile: (916) 447-3512
Email: abb@eslawfirm.com

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