

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)

**PUBLIC VERSION**

**RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLAN OF  
CONSTELLATION NEWENERGY, INC.**

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Pursuant to the March 26, 2014 Assigned Commissioner’s Ruling Identifying Issues and Schedule of Review for 2014 Renewables Portfolio Standard Procurement Plans (“Assigned Commissioner’s Ruling”), the May 21, 2014 Administrative Law Judge’s Ruling on Renewable Net Short (“RNS Ruling”), and the May 29, 2014 email ruling of Administrative Law Judge DeAngelis extending the deadline for Renewables Portfolio Standard (“RPS”) Procurement Plans until June 11, 2014, Constellation NewEnergy, Inc. (“CNE”) submits the following RPS Procurement Plan.

CNE is an electric service provider (“ESP”) registered with the California Public Utilities Commission (“Commission” or “CPUC”) to serve commercial and industrial customers in California participating in the direct access program. CNE is in full compliance with its procurement obligations under the RPS and resource adequacy (“RA”) programs, and all other terms and conditions required of a registered ESP. Unlike the investor owned utilities (“IOUs”), CNE’s load is fully contestable, such that all of CNE’s customers may, at the end of their contract term, decide to renew with CNE, take service from another ESP, or return to utility service. Therefore, all forecast load data is subject to change in light of customer migration and forecast procurement data is subject to change based on such load migration, as well as other decisions that CNE may make to revise the wholesale contracts used to serve such loads. The

uncertainty associated with CNE's forecasts increases after three years because beyond then, CNE has few customer commitments. Against this backdrop, CNE undertakes its procurement activities to meet regulatory and commercial obligations while managing market and regulatory risks.

## **I. CNE Responses to Assigned Commissioner's Ruling**

### **A. Assessment of RPS Portfolio Supplies and Demand - § 399.13(a)(5)(A) (Section 6.1 of the Assigned Commissioner's Ruling)**

Section 6.1 of the Assigned Commissioner's Ruling requests:

Provide a written description assessing annual and multi-year portfolio supplies and demand in relation to the RPS requirement, the RPS program, and the RPS program's overall goals to determine the retail seller's optimal mix of eligible renewable resources.

The assessment should consider, at a minimum, a 20-year time frame with a detailed 10-year planning horizon that takes into account both portfolio supplies and demand. This written description must include the retail seller's need for RPS resources with specific deliverability characteristics, such as, peaking, dispatchable, baseload, firm, and as-available capacity as well as any additional factors, such as ability and / or willingness to be curtailed, operational flexibility, etc.

This written description must also explain how the proposed renewable energy portfolio will align with expected load curves and durations, as well as how it optimizes cost, value and risk for the ratepayer. Where applicable, assessment should also identify and incorporate impacts of overall energy portfolio requirements (not just RPS portfolio requirements), recent legislation, other Commission proceedings (e.g. R-13-12-010, the long-term procurement plans proceeding), other agencies requirements, and other policies or issues that would impact RPS demand and procurement.

Additionally, the assessment should describe and incorporate RPS lessons learned over the past year, including RPS trends and potential future trends. Lastly, it must also explain how the

quantitative analysis provided in response to section 6.5 supports the assessment.

**1. Assessment of annual and multi-year portfolio supplies and demand in relation to RPS requirements, the RPS program, and the RPS program's overall goals.**

Because ESPs typically do not have retail customer contract commitments that exceed 36-months, 10-year and 20-year forecasts are difficult to make and subject to change. To help manage this forecasting uncertainty, CNE sources supplies from the competitive regional markets, and structures its purchases to hedge its retail commercial commitments with corresponding supply commitments. Based on its best estimate of customer demand, CNE develops risk management practices and undertakes RPS procurement consistent with the regulatory obligation compliance horizon, and its ability to manage the market risks associated with longer term purchases.

**2. CNE's need for RPS resources with specific deliverability characteristics, including peaking, dispatchable, baseload, firm, as-available, as well as willingness to be curtailed, operational flexibility, or other factors.**

The RPS procurement obligation is an *energy-based* obligation for the applicable percentage of megawatt hours ("MWhs") over the particular compliance period. Accordingly, CNE's primary objective in procuring renewable energy is to ensure that it is effective in achieving compliance with the RPS requirements and, as such CNE does not generally procure RPS eligible generation for capacity or ancillary service characteristics. With respect to CNE's need for resources that meet specific deliverability characteristics, much of the operational flexibility needed to balance load and supply, voltage support and regulation are purchased through the California Independent System Operator ("CAISO") ancillary service markets.

In addition, the Commission recently issued a Proposed Decision in Rulemaking 11-10-023 that will impose flexible capacity requirements on CNE. These requirements will be part of

CNE's compliance obligations that are jurisdictional to both the CPUC and the CAISO. In instances where CNE procures energy and capacity from an RPS-eligible resource, the RA value is going to vary pursuant to CAISO and CPUC RA counting rules for the particular technology, and is a somewhat secondary consideration when compared to the delivery of RPS-eligible MWhs. As the RA program's policies and associated procurement obligations continue to evolve in the near term, CNE will continually seek to optimize its RPS purchases with any other resource or technology mandates, as well as with the direct assignment that CNE receives through the cost allocation methodology ("CAM").

### **3. Description of how procurement will meet CNE's load forecasts.**

As previously mentioned, CNE's loads are fully contestable, and the RPS obligation is based upon served loads, so CNE seeks to balance its regulatory obligations for duration and RPS product type over the compliance period. Under current RPS regulations, procurement of excess RPS eligible generation is restrictive with respect to the type of contracts from which purchases can be carried from one compliance period to the next, such that purchases from any contracts that are less than ten years in duration cannot be banked for future compliance periods and become stranded if not used in the compliance period in which they are procured. Moreover, current regulations prohibit delivered Portfolio Content Category ("PCC") 1 or 2 products from being bought or resold with their original compliance categorization intact. Because RPS product pricing can vary significantly by product type, this restriction on the ability to bank and/or re-market products that may be surplus due to load changes requires CNE (and presumably all other load serving entities) to analyze the most efficient manner to balance the higher cost PCC 1 product procurement requirement against a potential stranding of short term or PCC 3 product surpluses.

**4. Need for and plan for procuring portfolio content category requirement.**

CNE will undertake RPS procurement from the regional market in a manner that optimizes available supplies consistent with established RPS procurement requirements. CNE will optimize its procurement against variable customer demand and two dimensions of the RPS procurement obligation: namely, the “total volume requirement” and the “content category mix requirement” applicable for each compliance period. CNE will seek to secure during a compliance period the mix of resources that would minimize stranding of procurement due to restrictions on banking surplus procurement of certain product content categories and/or shorter duration commitments.

**B. Project Development Status Update - § 399.13(a)(5)(D) (Section 6.2 of the Assigned Commissioner’s Ruling)**

Section 6.2 of the Assigned Commissioner’s Ruling requests:

Provide a written status update on the development schedule of all eligible renewable energy resources currently under contract but not yet delivering generation. This written status update may rely upon the most recent filed Project Development Status Reports [footnote omitted] but it must elaborate upon these reports and should differentiate status updates based on whether projects are pre-construction, in construction, or post-construction. Providing a copy of the Project Development Status Report will not be a sufficient response. The status updates provided in the written description must be reflected in the quantitative analysis provided in response to section 6.5, below. Given this analysis, discuss how the status updates will impact the retail seller’s net short and its procurement decisions for a 10-year planning horizon.

- 1. Update on development schedule for resources not yet online.**
- 2. Impact of schedule on CNE’s net short and procurement decisions**

The electrical corporations file the Project Development Status Reports, and so an update of this report is not applicable to CNE. All resources identified in CNE’s last RPS Compliance Report, submitted to the CPUC in July, 2013, have achieved commercial operations.

Furthermore, CNE typically does not contract with facilities that are not yet online, though it may enter into contracts that will deliver from a pool of resources that may include specific resources that have not yet achieved commercial operations. In these instances, any setbacks in achieving commercial operation by a specific facility are contractually mitigated by other resources in the pool that are already online.

**C. Potential Compliance Delays - § 399.13(a)(5)(B) (Section 6.3 of the Assigned Commissioner’s Ruling)**

Section 6.3 of the Assigned Commissioner’s Ruling requests:

Describe in writing any potential issues that could delay RPS compliance, including, but not limited to inadequate transmission capacity, delayed substation construction, financing, permitting, and the relationship, if any, to deliveries and project development delays. Describe the steps taken to account for and minimize these potential compliance delays. The potential compliance delays included in the written description must be reflected in the quantitative analysis provided in response to section 6.5. Given this analysis, discuss how the potential compliance delays will impact the retail seller’s RPS net short and its procurement decisions.

**1. Description of potential issues that could delay RPS compliance.**

CNE 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. CNE looks for resources that have achieved, or are close to achieving, commercial operations. In those cases the developer has addressed its permitting, engineering, procurement and construction requirements, and interconnection requirements with the CAISO and Participating Transmission Owners.

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 PCC 1 procurement may end up being converted to PCC 2 or PCC 3 products, 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 by carefully monitoring market conditions and changes in the RPS supply and demand balance, and changes to the RPS regulatory framework, CNE expects to fully comply with both the total RPS volume requirement as well as the content category mix requirement.

## **2. Description of steps taken to minimize compliance delays.**

CNE does not undertake any transmission development, so it is not in a position to address alleviation of interconnection timing or transmission availability issues. Moreover, as noted above, in contracting for RPS resources, CNE typically does so with projects that are on-line or where the on-line date is known with a high degree of certainty. In addition, CNE is actively engaged on an ongoing basis in the renewable energy markets, and enters into renewable transactions to meet its requirements when opportunities arise. CNE's ongoing and active monitoring of market conditions is a key element of its ability to avoid and/or minimize compliance delays.

## **3. Description of the impact of delays on CNE's net short and procurement decisions.**

If project developers in the regional market experience delays in reaching commercial operations, CNE would anticipate scarcity issues around meeting the content mix requirement and possibly in the total volume requirement as well.



**D. Risk Assessment - § 399.13(a)(5)(F) (Section 6.4 of the Assigned Commissioner's Ruling)**

Section 6.4 of the Assigned Commissioner's Ruling requests:

Provide a written assessment of the risk in the RPS portfolio in relation to RPS compliance requirements. Risk assessment should describe risk factors such as those described above regarding compliance delays, as well as, but not limited to, the following: lower than expected generation, variable generation, regulatory risk, resource availability (e.g., biofuel supply, water, etc.) and impacts to eligible renewable energy resource projects currently under contract. The risk assessment provided in the written description must be reflected in the quantitative analysis provided in response to section 6.5. Given this analysis, discuss how the risk assessment will impact the retail seller's net short and its procurement decisions. The written assessment must explain how quantitative analysis provided in response to section 6.5 supports this response.

At present, apart from the delay issues described above, the risks described in Section 6.4 are not applicable to CNE's portfolio as, for the most part, the supplying resources have achieved commercial operations. Furthermore, CNE typically only contracts with facilities that have not yet achieved commercial operation when CNE is procuring from a pool of resources so that it can mitigate any risks from a specific facility that is not yet online with other resources in the pool. In the event of lower than expected or variable generation, CNE's ongoing monitoring of counterparty performance, market conditions and active participation in the renewable energy markets will allow CNE to address procurement risks relative to changes in its retail load over time. Typically CNE will address some of these operational issues within CNE's negotiated RPS contracts by requiring minimum and maximum contract quantities within the expected deliveries from use-limited or intermittent resources.

**E. “Minimum Margin” of Procurement - § 399.13(a)(4)(D) (Section 6.6 of the Assigned Commissioner’s Ruling)**

CNE provides a description addressing a “minimum margin” of procurement in compliance with Section 6.6 of the Assigned Commissioner’s Ruling which for the first time applies to ESPs.<sup>1</sup> Section 6.6 of the Assigned Commissioner’s Ruling asks retail sellers to provide the following:

[A] methodology and inputs regarding the utility’s proposed minimum margin of over-procurement metric. The methodology should be representative of and consistent with the utility’s inputs and assumptions in section 6.5. Also, the metric should be used to calculate the utility’s procurement needs pursuant to section 6.5. Additionally, use of any sensitivities or scenarios should be described. If the utility’s assumed minimum margin of over-procurement is not used to calculate a utility’s net short provided in response to section 6.5, then the utility should clearly describe the reasons and any assumptions or other additional methodologies used to calculate the utility’s proposed over-procurement. Reasons and assumptions should be supported with quantitative information to the extent possible.

Although the Assigned Commissioner’s Ruling directs ESPs to address Section 6.6, this section is tailored to California’s largest IOUs. Indeed, Section 6.6 of the Assigned Commissioner’s Ruling only directs “PG&E, SCE, and SDG&E to identify in their proposed 2014 RPS Procurement Plans the assumed minimum margin of procurement above the minimum procurement level necessary to comply with the RPS program to mitigate the risk that renewable projects under contract are delayed or terminated.”<sup>2</sup> Additionally, Section 6.6 requests information based on information provided in response to Section 6.5 of the Assigned

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<sup>1</sup> See Assigned Commissioner’s Ruling, p. 9.

<sup>2</sup> Assigned Commissioner’s Ruling, p. 13.

Commissioner's Ruling, a section that the ESPs were exempted from providing.<sup>3</sup> Furthermore, Public Utilities Code Section 399.13(a)(4)(D), which requires the Commission to establish a "minimum margin of procurement" applies to electrical corporations, not ESPs. Nevertheless, CNE provides the following response to comply with Section 6.6.

As an initial response, see CNE's response in Section I.A.3, above, for a description of how it manages procurement in light of its contestable load.

Moreover, as noted in Sections I.C.1 and I.C.2 above, CNE's procurement is almost entirely from operational resources, so the certainty about these deliveries is fairly high, and CNE does not forecast a failure rate for operational projects, but instead addresses operational risks within the negotiated contracts.

Beyond CNE's portfolio management activities described herein that seeks to balance its procurement during the compliance period with potential load migration changes, energy demand forecast change or actual intermittent production levels to minimize potentially stranded procurement, CNE does not set a specific "minimum margin of over-procurement."

**F. Important Changes to RPS Procurement Plan (Section 6.12 of the Assigned Commissioner's Ruling)**

Section 6.12 of the Assigned Commissioner's Ruling provides:

A statement identifying and summarizing the important changes between the 2013 and 2014 RPS Procurement Plans must be included. This summary could be in a table or bullet point format, but it should not be a reprint of the two plans with strike-out and underlined inserts. In addition to identifying and summarizing the important changes, the plan should also include an explanation and justification of reasonableness for each important change from 2013 to 2014.

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<sup>3</sup> See Assigned Commissioner's Ruling, p. 9, exempting ESPs from the requirement to comply with Section 6.5.

The Assigned Commissioner’s Ruling modified the required elements for ESP RPS Procurement Plans, and CNE has modified its RPS Procurement Plan accordingly. The important differences between CNE’s 2013 RPS Procurement Plan and CNE’s 2014 RPS Procurement Plan are summarized in the bullet points below.

- In conformance with the Assigned Commissioner’s Ruling and the RNS Ruling, CNE now provides quantitative and other information related to its RNS using the standardized RNS reporting template and in section II, below. This information is now provided using the standardized RNS reporting template rather than utilizing CNE’s own methodology to determine its RNS.
- CNE now provides a description of its proposed minimum margin of over-procurement, as newly required by Section 6.6 of the Assigned Commissioner’s Ruling.
- CNE now includes a section addressing safety considerations rather than separately addressing safety in a supplemental filing.
- CNE now addresses questions posed in the RNS Ruling.

**G. Safety Considerations (Section 6.14 of the Assigned Commissioner’s Ruling)**

According to Section 6.14 of the Assigned Commissioner’s Ruling, “all entities filing RPS Procurement Plans must incorporate a section on safety considerations.” In compliance with the Assigned Commissioner’s Ruling and D.13-11-024, CNE includes this section addressing safety considerations.<sup>4</sup> While CNE may contract for some or all of the output from the RPS-eligible facilities, it does not physically or contractually own and/or operate any of the resources under contract. For PCC 1 and 2 products, the energy is delivered by the supplier pursuant to the rules applicable to the balancing authority, and for PCC 3 there is no delivery of energy to CNE. The owners and/or operators of the RPS-eligible resources and

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<sup>4</sup> By submitting this supplement pursuant to the Assigned Commissioner’s Ruling, CNE does not waive its right to assert that Public Utilities Code § 365.1(c)(1) does not extend Public Utilities Code § 451 to ESPs. Additionally, D.11-01-026 does not stand for the proposition that all Public Utilities Code provisions applicable to electrical corporations are applicable to non-utilities like ESPs.

transmission/distribution systems have the responsibility for the operation of, and all safety considerations associated with the operation of, their facilities under the applicable laws. CNE has no responsibility or liability for the operation of the facility or for any other safety considerations associated with the operation of those resources used to meet its wholesale contracts requirements. Therefore, to the best of its knowledge, there are no safety considerations for CNE to address in its 2014 RPS Procurement Plan.

## II. RPS Procurement Plan – Renewable Net Short

Although the Assigned Commissioner’s Ruling provides that ESPs are not required to provide the quantitative information described in section 6.5, including “quantitative data, methodologies, and calculations relied upon to assess the retail seller’s RPS portfolio needs and *RPS procurement net short*,”<sup>5</sup> the RNS Ruling requires that *all* retail sellers provide such a calculation, in addition to other information related to the RNS, although neither the RNS Ruling and the updated staff methodology for calculating the RNS (“Staff Methodology”) address any of the issues raised in the March 12, 2014 comments provided by the Alliance for Retail Energy Markets (“AReM”)<sup>6</sup>. In those comments, AReM explained how the RNS requirements and the standardized RNS reporting template fail to consider the unique differences between IOUs and ESPs, which serve to make many of the RNS requirements inapplicable to ESPs, and which serve to render the template unworkable for ESP reporting purposes. Nevertheless, based on instructions from Commission staff and ALJ DeAngelis, CNE provides an RNS calculation as required in the RNS Ruling.

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<sup>5</sup> Assigned Commissioner’s Ruling, pp. 9 and 12, emphasis added.

<sup>6</sup> AReM’s March 12, 2014 comments are available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M089/K006/89006453.PDF>.

### **A. Confidentiality**

The RNS calculation is redacted to protect confidential information in the public version of CNE's RPS Procurement Plan. On June 28, 2013, CNE filed a motion to file its 2013 RPS Procurement Plan under seal and requested confidential treatment for portions of its 2013 RPS Procurement Plan.<sup>7</sup> CNE's 2013 RPS Procurement Plan was approved by the Commission in D.13-11-024.<sup>8</sup> D.08-04-023 concluded that:

An ESP or IOU need not seek confidentiality of regular compliance filings every time it files, but only the first time. The ESP or IOU may simply cite a prior ruling or motion when making subsequent compliance filings. Where the ESP or IOU makes a compliance filing that is not initially accompanied by a motion – e.g., where the filing is made with the Energy Division – the ESP/IOU need only refer back to the initial showing it made to Energy Division in seeking confidentiality for subsequent filings of the same information.<sup>9</sup>

In accordance with D.08-04-023, CNE references its June 28, 2013 motion and RPS Procurement Plan to support its request to protect and redact confidential information in Appendix A and assumptions in its RPS Procurement Plan that could disclose confidential information in Appendix A of the public version of its RPS Procurement Plan. Additionally, CNE has redacted information provided in grey fields of the RNS template in accordance with instructions from Energy Division that such fields are confidential.

### **B. Any RNS Forecast Provided by an ESP is Uncertain and Subject to Change**

While CNE provides its RNS calculation utilizing the standardized RNS reporting template as required by the RNS Ruling, it is important to note that CNE's RNS calculation is

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<sup>7</sup> CNE's June 28, 2013 motion is available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M071/K162/71162834.PDF>.

<sup>8</sup> See D.13-11-024, p. 62 and Ordering Paragraph 27.

uncertain, as the load forecasts upon which the forecast is based are uncertain, and are subject to increasing uncertainty the further out the forecast extends, as explained elsewhere herein. CNE generally matches its procurement to the load it has under contract, which typically is no longer than three years. Accordingly, while CNE has found its load to be fairly stable on a year to year basis, its procurement and risk management strategy reflects the fact of relatively short term retail customer contract duration and the fully contestable nature of its loads. [REDACTED]

[REDACTED] CNE addresses regulatory risks through its involvement in regulatory proceedings at the CPUC and the California Energy Commission (“CEC”) and its monitoring and engagement in legislative activities impacting the renewable energy requirements and markets, and incorporates developments in ongoing analysis of potential wholesale supply transactions including RPS.

**C. The Standardized RNS Reporting Template Includes Inputs and Assumptions that are Inapplicable to ESPs**

As required by the RNS Ruling, CNE provides its RNS calculation utilizing the standardized RNS reporting template attached hereto as Appendix A. However, this is one of the key areas where the Commission’s failure to recognize the distinctions between IOUs and ESPs is particularly problematic. While CNE does not fully reiterate the points raised in AReM’s March 12, 2014 comments here, those comments do help explain why CNE cannot complete or populated all inputs of the standardized RNS reporting template in its entirety. As explained in greater detail below, and based upon instructions from CPUC staff, CNE will leave the inapplicable sections of the standardized template blank or populate the template to the best of its

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<sup>9</sup> D.08-04-023, Ordering Paragraph 9.

ability based on CNE’s own internal estimates and forecasts. A summary of the specific issues is as follows:

- As the LTPP process and implementation of Public Utilities Code § 454.5 does not apply to ESPs, CNE is using its internal “Bundled Retail Sales Forecast” and not a forecast from the LTPP.
- CNE does not undertake speculative forward contracting beyond what is required under the RPS program in light of known load obligations, and hence does not have a specific “Voluntary Margin of Over-procurement.” Accordingly, Row 9, “Variable D” of the “RNS\_report” tab of the RNS template is blank.
- CNE does not forecast a failure rate for operational projects, but instead addresses operational risks within the negotiated contracts. Accordingly, Row 13, “Variable Faa” of the “RNS\_report” tab of the RNS template, is blank.
- As previously noted, CNE’s current contracts are with operational facilities, so there is no development failure rate or delay assumption in the forecast. Accordingly, Row 15, “Variable Fbb” of the “RNS\_report” tab of the RNS template, is blank.
- Section 6.10 of the Assigned Commissioner’s Ruling only requires California’s largest IOUs, not ESPs, to provide information related to expiring contracts in their 2014 RPS Procurement Plans. Furthermore, CNE has already provided and will continue to provide the CPUC with information about its expiring contracts in its annual RPS compliance report submissions. Additionally, the standardized RNS reporting template did not include sufficient instructions on how to properly list information from expiring contracts in the template. Accordingly, Row 38, “Variable K” of the “RNS\_report” tab and the “Expiring\_Contracts” tab of the RNS template is blank.
- Because the Commission does not review or approve procurement activities of ESPs, including wholesale energy purchases, other than verifying compliance with RPS and RA procurement obligations, the Commission lacks jurisdiction over ESP internal business policy judgments. Accordingly, Rows 31, 32, 40 and 41, and corresponding Variables “Ia”, “Ib”, “La”, and “Lb”, of the “RNS\_report” tab of the RNS template which relate to internal business policy judgments about how to optimize procurement, are blank.

**D. CNE Response to Questions on the RNS**

In accordance with the RNS Ruling, CNE provides the following responses to questions posed in Appendix D of the RNS Ruling.



**1. RPS Compliance Risk – How do current and historical performance of online resources in your RPS portfolio impact future projections of RPS deliveries and your subsequent RNS?**

As described above, CNE sources supplies from the competitive regional markets, and structures its purchases to hedge its retail commercial commitments with corresponding supply commitments. Historically, this procurement strategy has been successful for CNE, and CNE has had very few instances of supplier performance problems. Should performance problems occur, CNE will carefully evaluate whether or not to execute further purchases from the supplier, and if so, will consider whether modifications to its contract terms and condition are necessary to ensure better performance.

**2. RPS Compliance Risk – Do you anticipate any future changes to the current bundled retail sales forecast? If so, describe how the anticipated changes impact the RNS.**

As noted elsewhere, CNE's loads are fully contestable and CNE typically does not have retail customer contract commitments that exceed 36-months. So indeed, CNE customers will change over time. [REDACTED]

**3. RPS Compliance Risk – Do you expect curtailment of RPS projects to impact your projected RPS deliveries and subsequent RNS?**

No, CNE does not expect curtailments to impact its RNS. Typically CNE addresses potential operational issues within its negotiated RPS contracts by requiring minimum and maximum contract quantities within the expected deliveries from use-limited or intermittent resources. Furthermore, some contracting is done for blocks of bundled renewable product deliveries over a timeframe, which requires the supplier to manage any intermittent production risks. Additionally, as described above, CNE is actively engaged on an ongoing basis in the

renewable energy markets, and enters into renewable transactions to meet its requirements when opportunities arise. CNE’s ongoing and active monitoring of market conditions is a key element of its ability to avoid and/or minimize potential impacts to its RNS based on curtailment of renewable resources.

**4. RPS Compliance Risk – Are there any significant changes to the success rate of individual RPS projects that impact the RNS?**

No. In contracting for RPS resources, CNE typically does so with projects that are on-line or where the on-line date is known with a high degree of certainty. Accordingly, success rates of renewable projects do not impact CNE’s RNS.

**5. RPS Compliance Risk – As projects in development move towards their COD, are there any changes to the expected RPS deliveries? If so, how do these changes impact the RNS?**

No. As described in response to question 4 above, CNE typically contracts with facilities that have already achieved commercial operation, so pre-COD changes will not impact CNE’s RNS.

**6. RECs above the PQR – What is the appropriate amount of RECs above the PQR to maintain? Please provide a quantitative justification and elaborate on the need for maintaining banked RECs above the PQR.**

CNE believes that there is no one right answer to this question for ESPs, and that this is an internal business decision that should be left to individual ESPs for the reasons enumerated in AReM’s March 12, 2014 comments, which can be summarized as follows:

- The CPUC has a more limited scope of oversight over ESPs and ESPs are not regulated as “public utilities”.<sup>10</sup>

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<sup>10</sup> See D.05-11-025, p. 12: “Although [ESPs] are each subject to certain requirements of this Commission as assigned by the Legislature, neither is regulated as a ‘public utility’ as defined by the Public Utilities Code, nor are they subject to Commission regulatory authority as a matter of course. Instead, the

- The CPUC does not regulate retail transactions by ESPs or establish rates for ESP services.
- Similarly, the CPUC does not oversee the procurement activities of ESPs undertaken to serve the ESPs' retail transactions.
- The different regulatory framework for ESPs compared to IOUs is appropriate as ESPs' customers can request and insist upon as much transparency as they desire from an ESP with respect to any prices charged.
- Accordingly, any effort by the Commission to require an ESP to maintain a specific amount of RECs above its PQR would exceed the Commission's jurisdiction over that ESP.

**7. RECs above the PQR –What are your strategies for short-term management (10 years forward) and long-term management (10-20 years forward) of RECs above the PQR? Please discuss any plans to use RECs above the PQR for future RPS compliance and/or to sell RECs above the PQR.**

For the reasons described in response to question 6, above, CNE's strategy for managing RECs above its PQR is a confidential internal business decision that is not subject to CPUC jurisdiction.

**8. VMOP – Provide VMOP on both a short-term (10 years forward) and long-term (10-20 years forward) basis. This should include a discussion of all risk factors and a quantitative justification for the amount of VMOP.**

As described above, CNE does not undertake speculative forward contracting beyond what is required under the RPS program in light of known load obligations, and hence does not have a specific "Voluntary Margin of Over-procurement" or "VMOP." Additionally, for the reasons described in response to question 6, above, CNE's future plans for any possible over-procurement is a confidential internal business decision that is not subject to CPUC jurisdiction.

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Commission is granted specific regulatory authority over these entities for particular issues, in this case,

**9. VMOP – Please address the cost-effectiveness of different methods for meeting any projected VMOP procurement need, including application of forecast RECs above the PQR.**

For the reasons described in response to question 6, above, CNE’s strategies for cost-effectively procuring RPS products and applying RECs above its PQR are confidential internal business decisions that are not subject to CPUC jurisdiction.

**10. Cost-effectiveness – Are there cost-effective opportunities to use banked RECs above the PQR for future RPS compliance in lieu of additional RPS procurement to meet the RNS?**

For the reasons described in response to question 6, above, CNE’s strategy for using banked RECs above its PQR for future RPS compliance is a confidential internal business decision that is not subject to CPUC jurisdiction.

**11. Cost-effectiveness – How does your current RNS fit within the regulatory limitations for PCCs? Are there opportunities to optimize your portfolio by procuring RECs across different PCCs?**

For the reasons described in response to question 6, above, CNE’s strategy to optimize its portfolio is a confidential internal business decision that is not subject to CPUC jurisdiction. CNE plans to continue to satisfy all of its RPS procurement obligations, including the PCC procurement requirements.

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RPS.”

### III. Conclusion

CNE provides this submission in compliance with the March 26, 2014 Assigned Commissioner's Ruling and the May 21, 2014 RNS Ruling. As described herein, 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: June 11, 2014

Respectfully submitted,

/s/

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**APPENDIX A**

**CONSTELLATION NEWENERGY, INC.  
RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLAN  
RNS STANDARDIZED REPORTING WORKBOOK**

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S		
1																					
2																					
3				Variable	Calculation	Item	Deficit from RPS prior to Reporting Year	2011 Actuals	2012 Actuals	2013 Actuals	2011-2013 CIP1	2014 Forecast	2015 Forecast	2016 Forecast	2014-2016 CIP2	2017 Forecast	2018 Forecast	2019 Forecast	2020 Forecast	2017-2020 CIP3	
4						Forecast Year															
5						Annual RPS Requirement															
6				A		Bundled Retail Sales Forecast (LTPP)	0	4,717	5,168	5,773	15,658						5,100	5,100	5,100	20,400	
7				B		RPS Procurement Quantity Requirement (%)	0	20.0%	20.0%												
8				C	A*B	Gross RPS Procurement Quantity Requirement (GWh)	0	943	1,034	1,155	3,132							1,479	1,581	1,683	6,732
9				D		Voluntary Margin of Over-procurement															
10				E	C+D	Net RPS Procurement Need (GWh)	0	943	1,034	1,155	3,132							1,479	1,581	1,683	6,732
11						RPS-Eligible Procurement															
12				Fa		Risk-Adjusted RECs from Online Generation	0	437	1,070	1,655	3,162	1,131	1,131	702	2,963						
13				Faa		Forecast Failure Rate for Online Generation (%)															
14				Fb		Risk-Adjusted RECs from RPS Facilities in Development															
15				Fbb		Forecast Failure Rate for RPS Facilities in Development (%)															
16				Fc		Pre-Approved Generic RECs															
17				Fd		Executed REC Sales															
18				F	Fa + Fb + Fc - Fd	Total RPS Eligible Procurement (GWh)	0	437	1,070	1,655	3,162	1,131	1,131	702	2,963						
19				F0		Category 0 RECs	0	34	-	-	34	-	-	-	-	-	-	-	-	-	-
20				F1		Category 1 RECs	0	228	462	932	1,622	922	922	511	2,355						
21				F2		Category 2 RECs	0	-	246	494	739	66	66	48	180						
22				F3		Category 3 RECs	0	174	363	229	766	143	143	143	428						
23						Gross RPS Position (Physical Net Short)															
24				Ga	F-E	Annual Gross RPS Position (GWh)	0	(507)	37	500	30						(1,479)	(1,581)	(1,683)	(6,732)	
25				Gb	F/A	Annual Gross RPS Position (%)	0	9%	21%	29%	20%						0%	0%	0%	0%	
26						Application of Bank															
27				Ha	H - Hc (from previous year)	Existing Banked RECs above the PQR	608	608	608	608	608	608	608	608	608	608	608	608	608	608	608
28				Hb		RECs above the PQR added to Bank					236	236	236	236	236	236	236	236	236	236	236
29				Hc		Non-bankable RECs above the PQR															
30				H	Ha+Hb	Gross Balance of RECs above the PQR		608	608	608	844	844	844	844	844	844	844	844	844	844	844
31				Ia		Planned Application of RECs above the PQR towards RPS Compliance															
32				Ib		Planned Sales of RECs above the PQR															
33				J	H-Ia-Ib	Net Balance of RECs above the PQR		608	608	608	844	844	844	844	844	844	844	844	844	844	844
34				J0		Category 0 RECs		608	608	608	608	608	608	608	608	608	608	608	608	608	608
35				J1		Category 1 RECs					236	236	236	236	236	236	236	236	236	236	236
36				J2		Category 2 RECs															
37						Expiring Contracts															
38				K		RECs from Expiring RPS Contracts															
39						Net RPS Position (Optimized Net Short)															
40				La	Ga + Ia - Ib - Hc	Annual Net RPS Position after Bank Optimization (GWh)															
41				Lb	(F + Ia - Ib - Hc)/A	Annual Net RPS Position after Bank Optimization (%)															
42						Note: Fields in grey are protected as Confidential under CPUC Confidentiality Rules															
43						Note: Values are shown in GWhs															
44																					
45																					

	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF
1													
2													
3	2021 Forecast	2022 Forecast	2023 Forecast	2024 Forecast	2025 Forecast	2026 Forecast	2027 Forecast	2028 Forecast	2029 Forecast	2030 Forecast	2031 Forecast	2032 Forecast	2033 Forecast
4													
5													
6	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100	5,100
7													
8	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683
9													
10	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683	1,683
11													
12	-	-	-	-	-	-	-	-	-	-	-	-	-
13													
14													
15													
16													
17	-	-	-	-	-	-	-	-	-	-	-	-	-
18	-	-	-	-	-	-	-	-	-	-	-	-	-
19	-	-	-	-	-	-	-	-	-	-	-	-	-
20	-	-	-	-	-	-	-	-	-	-	-	-	-
21	-	-	-	-	-	-	-	-	-	-	-	-	-
22	-	-	-	-	-	-	-	-	-	-	-	-	-
23													
24	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)	(1,683)
25	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
26													
27	608	608	608	608	608	608	608	608	608	608	608	608	608
28	236	236	236	236	236	236	236	236	236	236	236	236	236
29													
30	844	844	844	844	844	844	844	844	844	844	844	844	844
31													
32													
33	844	844	844	844	844	844	844	844	844	844	844	844	844
34	608	608	608	608	608	608	608	608	608	608	608	608	608
35	236	236	236	236	236	236	236	236	236	236	236	236	236
36													
37													
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46													



Facility Name	Technology	Contract Expiration Date	MW	Expected Annual Generation (GWh)	Location	PCC Classification
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## VERIFICATION

I am the attorney for Constellation NewEnergy, Inc. (“Constellation”) and am authorized to make this verification on its behalf. Constellation is absent from the County of Sacramento, California, where I have my office, and I make this verification for that reason. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 11, 2014 at Sacramento, California.

/s/

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