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September 30, 2013

Gina Barkalow  
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California Energy Commission  
Docket Unit, MS-4  
1516 Ninth Street  
Sacramento, CA 95814-5504

**VIA EMAIL**  
**RPSTrack@energy.ca.gov**

Re: CEC Docket 11-RPS-01: Comments of Constellation NewEnergy, Inc.,  
Regarding Staff Draft 2008-2010 Verification Report.

Dear Ms. Barkalow and Ms. Daniels:

On behalf of Constellation NewEnergy, Inc. ("CNE"), please find attached suggested edits to pages 52-53 of the Staff Draft 2008-2010 Verification Report discussing CNE's claims. Specifically, the edits make clear that CNE has provided the CEC requested data and that CNE has withdrawn claims related to the 2009 amendment to the 2008 Confirmation for bundled RPS eligible purchases. The edits also reflect clarifications with respect to CNE's and its counterparties' intention in the 2009 amendment of the 2008 confirmation to make good on the 2008 delivery of firmed and shaped bundled power deliveries that occurred within calendar year 2008 by expanding the production period used to satisfy the 2008 deliveries.

It is CNE's understanding that the CEC Staff has interpreted the amendment to the 2008 confirmation as not meeting the annual delivery rule because the amendment was executed in 2009. Accordingly, CNE has withdrawn the claim for 10,661 MWhs of bundled energy and RECs delivered in 2008 as they will not be verified.

Please contact me if there are any questions regarding the requested corrections to the discussion about CNE claims.

Sincerely,

Andrew B. Brown  
Ellison, Schneider & Harris, LLP  
*Attorneys for Constellation NewEnergy, Inc.*

Enclosure

## Staff Draft 2008-2010 RPS Procurement Verification Report

Sections addressing CNE

p. 52-53

### Constellation New Energy

CNE's 2008 – 2010 procurement eligible to count for the RPS is shown in **Error! Reference source not found.** CNE has pending procurement claims because the e-Tags associated with its out-of-state claims did not have the RPS ID number of the RPS-certified facility listed in the Miscellaneous field of the e-Tags, as required by the *RPS Eligibility Guidebooks, Third and Fourth Editions*. In two cases, the e-Tags provided did have the RPS ID number listed in the comment section of the e-Tag, which was the requirement in the Second Edition of the *RPS Eligibility Guidebook*.

As discussed in Chapter 3: Verification Issues, CNE agreed to submit a list of the e-Tags to show energy delivery into California, along with the CEC-RPS-Delivery form and the signed attestation. ~~If~~ Energy Commission staff received ~~s~~ this information from CNE. ~~and~~ ~~If~~ the Energy Commission votes to accept the recommendation to accept the pending claims as eligible, the final version of this *Energy Commission 2008-2010 Verification Report* will remove CNEs' pending claim amount and include it as part of the eligible RPS procurement claim amount.

As part of the energy delivery verification process, Energy Commission staff determined that only 68,665 MWh of CNE's 2008 procurement claim from White Creek Wind is RPS-eligible. ~~According to the CNE's 2008 Confirmation Agreement, dated June 22, 2009, CNE contracted for 30,381 MWhs in 2008, but procured/received~~ a portion of this amount, 20,290 MWh in 2008. The amount purchased consisted of 20,290 MWh of RECs from an RPS-certified facility matched with 30,381 MWh of electricity scheduled into California. ~~The 10,091 MWh quantity represents the difference between imported energy and the resource production during the initial contracted period resulted in energy deliveries that were "not associated with Green Attributes and, therefore, does not constitute Renewable Energy." By the 2009 amendment to the Confirmation Agreement CNE and its counterparty sought to amend the 2008 contracted production period to states cover for that the difference in electricity (10,091 MWh bundled product delivery shortfall with) firmed and shaped production held by the counterparty. sold to CNE and scheduled into California is "not associated with Green Attributes and, therefore, does not constitute Renewable Energy."~~

~~Staff's review of the language of the Confirmation Agreement dated June 22, 2009 also indicates that the change of the production period to capture the 10,091 MWh of undelivered RECs is effectively were purchased and then, later, by CNE in a separate and apparently unbundled REC transaction. CNE's position was that the 2009 amendment expanded the 2008 contracted production that was held by the counterparty to perfect the 2008 bundled volume of firmed and shaped deliveries.~~ Staff determined that this 2009 unbundled REC transaction is not eligible to be matched with energy purchased and delivered into California in 2008. CNE's

Confirmation Agreement for RECs in June 2009 is not consistent with the *RPS Eligibility Guidebook, Third Edition*, which permits firming and shaping but only within the same calendar year. In light of the disagreement and timing of the amendment, CNE has requested that Energy Commission staff withdraw the ineligible amount associated with this claim.

For some of CNE's claims requiring energy delivery, the delivery amount associated with the e-Tags did not match the total amount of the REC claims due to missing references to the RPS resource. Consequently, only the portion of the procurement claim supported by the e-Tag MWh amounts is RPS eligible. The difference between the RPS procurement claim and the total MWh amount reported in the list of e-Tags was determined ineligible for each claim in which the total MWh amount in the list of e-Tags did not equal or exceed the procurement claim amount, consistent with the *PRS Eligibility Guidebook, Third Edition*.<sup>1,2</sup> CNE requested that these ineligible amounts be withdrawn.

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1 *PRS Eligibility Guidebook, Third Edition* see: <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF> Pages 24. "The Energy Commission will compare the amount of RPS-eligible electricity generated by the RPS-eligible facility per calendar year with the amount of electricity delivered into California for the same calendar year and the lesser of the two amounts may be counted as RPS-eligible procurement."

2 See: *PRS Eligibility Guidebook, Third Edition* see: <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF> p. 26. "Additionally, the applicable parties (the Generation Providing Entity and Load Service Entities) must agree to make available upon request documentation of the NERC E-Tags to the Energy Commission."