



For Immediate Release

December 8, 2016

Contacts:

Maya K. van Rossum, the Delaware Riverkeeper, 215 801 3043

FERC Denies Public Access to Documents *Agency Protects Millennium Pipeline from Public Scrutiny*

Sullivan County, NY: The Federal Energy Regulatory Commission (FERC) denied the Delaware Riverkeeper Network access to documents essential for analyzing the need for the proposed Millennium Eastern System Upgrade (Millennium ESU) Project. FERC's rejection of the request is in contrast with the agency's previous practice and was provided without explanation.

"FERC is once again misusing its authority to blatantly obstruct meaningful participation by the public," said Maya van Rossum, the Delaware Riverkeeper and leader of the regional Delaware Riverkeeper Network. "This denial of fundamental information for expert review seems an obvious admission that this data would show that the Millennium ESU project is just a baby step towards a much larger contemplated project, which is a whole second pipeline cutting through Pennsylvania, New York, and the upper reaches of the Delaware River Watershed."

On August 1, 2016, the Delaware Riverkeeper Network requested access to information necessary to determine whether the Millennium ESU project would result in a hydraulic profile that would necessitate additional pipeline expansion. Such an expansion might be deemed necessary to maintain the public's safety, including protecting the public from a pipeline explosion.

FERC denied the Delaware Riverkeeper Network the requested information in a letter dated December 6, 2016. The letter sided with the Millennium Pipeline's request not to release the information:

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“Disclosure of the requested information would likely substantially competitively harm Millennium's competitive position. Although DRN is not a competitor, that does not undermine the risk of competitive harm in releasing this information.”

When the Delaware Riverkeeper Network has requested similar information for the Southeast Leidy Pipeline, the Tennessee Gas Northeast Upgrade Project, the Tennessee Gas 300 line, and the Columbia Eastside Expansion project, FERC has released the information, recognizing its legal obligation to do so. As recently as October 19th, 2016, FERC released identical information about the Tennessee Gas Orion Project, where FERC recognized that the Delaware Riverkeeper Network “demonstrated a legitimate need for the information requested.” The Delaware Riverkeeper Network used such information to win its precedent-setting case against FERC proving that the agency had engaged in illegal segmentation of a number of pipeline projects. (See *Delaware Riverkeeper Network, et. al. v. Federal Energy Regulatory Commission, Tennessee Gas Pipeline Company*, United States Court of Appeals for the District of Columbia, Decided June 6, 2014.)

On December 8, 2016 , The Delaware Riverkeeper Network filed a letter asking FERC to reconsider its decision and making clear that in the absence of a reversal the organization would take the agency, yet again, to federal court.

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November 8, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Millennium Pipeline Company, LLC Eastern System Upgrade Project,
CP16-486, CE16-159 Appeal**

Secretary Bose:

On December 6, 2016, the Federal Energy Regulatory Commission (FERC) reversed years of past precedent and denied the Delaware Riverkeeper Network's (DRN) request for the information contained in the Exhibit Gs of Millennium's application for the Eastern System Upgrade Project. DRN has requested and received on numerous occasions access to Exhibit G data for a wide variety of pipeline projects. FERC's action here is the first time it has denied DRN access to this information. Indeed, DRN is unaware of FERC denying access to Exhibit G information to any other party in the history of FERC's existence.

FERC here has broken with its past practice of consistently providing this type of information when requested, and it appears FERC has taken this action in an effort to insulate itself from both public and judicial scrutiny of the related

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Project. Additionally, FERC's stated rationale for non-disclosure is completely meritless in light of Millennium's admissions regarding the non-privileged nature of the data, DRN's status as a non-profit, DRN's prior use of Exhibit G data, and DRN's history of non-disclosure. Lastly, it is clear that this information is critical for determining FERC's compliance with federal laws with regard to this project, and that this information is not available by any other means.

DRN has submitted an appeal letter to FERC's general counsel as prescribed by 18 C.F.R. § 388.113, requesting that FERC to reconsider their flawed decision.

DRN's letter and relevant exhibits are attached below.

Sincerely,

/s/ Aaron Stemplewicz

Aaron Stemplewicz
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December 8, 2016

Nathaniel Higgins
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
Nathaniel.Higgins@ferc.gov

Re: Notice of Intent to Release (CE16-159) – Freedom of Information Act Appeal

Mr. Higgins:

Pursuant to 18 C.F.R. § 388.110 this appeal relates to the Notice of Intent to Release letter that was submitted to the Delaware Riverkeeper Network (DRN) dated December 6, 2016 (attached) by the Federal Energy Regulatory Commission (FERC). DRN contests the conclusions of the letter, which justifies FERC withholding certain information requested in a Critical Energy Infrastructure Information (CEII) request relating to Millennium Pipeline's Eastern System Upgrade (Project). FERC here has broken with its past practice of consistently providing this information when requested, it appears FERC has taken this action in an effort to insulate itself from both public and judicial scrutiny of the related Project. Additionally, FERC's rationale for non-disclosure is completely meritless

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in light of DRN's status as a non-profit, DRN's prior use of Exhibit G data, and DRN's history of non-disclosure. Lastly, it is clear that this information is critical for determining FERC's compliance with federal laws with regard to this project, and that this information is not available by any other means.

Considering that the issuance of the Environmental Assessment for the Project, and its corresponding comment deadline, is imminent, DRN seeks to resolve this issue immediately in order to provide DRN the time to evaluate the data and meaningfully participate in the process mandated by the National Environmental Policy Act. As such, we request a response to this appeal on an **expedited basis**. To the extent FERC issues a denial of reconsideration, DRN will be left with no option but to initiate litigation in order to secure the information requested in a timely manner.

On August 1, 2016, DRN submitted the appropriate CEII Request Form to FERC relating to the Millennium Pipeline Company's proposed Eastern System Upgrade Project, FERC docket number CP16-486 (attached). As part of that request, DRN asked for, *inter alia*, "Exhibits G, G-I and G-II (Flow Diagrams and Flow Diagram Data)." Two months later on September 23, 2016, FERC sent a letter to the Millennium Pipeline Company asking for Millennium's comment on the request. FERC issued its Notice of Intent to Release on December 6, 2016. This letter stated that it would grant DRN's request to certain information in the CEII

Request Form, but would deny DRN's request for the Exhibit G data. The letter was signed by Leonard M. Tao, Director Office of External Affairs.

FERC's guidance on CEII disclosure states that "the Critical Energy Infrastructure Information (CEII) process is not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attack on the energy infrastructure." See FERC.gov, "Guidelines for Critical Energy Infrastructure Information (CEII)" (last visited December 7, 2016). However, it appears that is this is precisely what is happening in the instant matter. Here, FERC has expressly "verified that you, Ms. van Rossum, and Mr. Stemplewicz are employees with the Delaware Riverkeeper Network (DRN). . . DRN is a non-profit organization with an initiative focused on protecting the health of the Delaware River." As such, the Commission has acknowledged that the requesting parties do not pose a threat to any infrastructure, and have also signed nondisclosure forms. Therefore, at this point the inquiry should have stopped, and FERC should have turned over the requested for information.

However, as justification for withholding the Exhibit G information, the letter states that the Exhibit Gs "are exempt from mandatory disclosure pursuant to FOIA Exemption 4." The letter further states that to qualify for this exemption the "disclosure of the information must either impair the government's ability to obtain similar information in the future, or cause substantial harm to the competitive position of the submitter of the information. See *National Parks & Conservation*

Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).” It is no question that the first part of the exemption does not apply, and FERC does not assert so. To qualify for the second part of the exemption, the letter states that:

I find that the innovative designs in the Exhibits G, G-I, and G-II were a product of a substantial investment in terms of time and energy. Because of its high value and the extreme difficulty of privately acquiring the requested information, I find that disclosure of the requested information would likely substantially competitively harm Millennium's competitive position. Although DRN is not a competitor, that does not undermine the risk of competitive harm in releasing this information.¹

As explained below, these statements are entirely meritless.

First, FERC's guidance documents on CEII information makes abundantly clear that, it is crucial that the information submitted be filed in its proper designation and in separate, clearly labeled volumes. *See* 18 CFR § 388.112(b) (2006). Specifically, FERC's regulations state:

A person requesting that a document filed with the Commission be treated as privileged or CEII must designate the document as **privileged or CEII** in making an electronic filing or clearly indicate a request for such treatment on a paper filing.

¹ It is unclear what expertise Director Tao has in determining how the Exhibit Gs are “innovative.” The letter does not indicate Director Tao has any special expertise in interpreting hydraulic flow diagrams for pipelines. Nor does the letter indicate that any engineer at FERC reviewed the Exhibit Gs for uniqueness, in fact, Director Tao expressly states that he himself found them “innovative.” To the extent that no expert review of the flow diagrams took place, and there is no indication that any such review occurred, DRN objects to Director Tao's characterization of the data. In fact, Exhibit G information is by definition not particularly unique. For example, Texas Eastern voluntarily provided the Exhibit Gs upon request for the TEAM 2014 Project (CP13-84) to DRN, which was a larger scale and more complicated project than the Eastern System Upgrade.

Therefore, the information must be identified as Privileged or CEII, not both, and then filed appropriately. FERC has also made clear that where the information “contains proprietary or business confidential information . . . they should be filed as **privileged.**” See FERC.gov, “Guidelines for Critical Energy Infrastructure Information (CEII)” (last visited December 7, 2016). Here, it is indisputable that Millennium filed the Exhibit Gs as CEII information and not Privileged information. Indeed, under accession number 20160729-5232 on the FERC docket appears the entry, “Abbreviated Application of Millennium Pipeline Company, L.L.C. for a Certificate of Public Convenience and Necessity under CP16-486. **Availability: CEII.**” Within that docket entry is the file “VOLUME IV-B CEII_6C_9J_G_G-I_G-II_Final.” Millennium therefore clearly contemplated the Exhibit Gs to be appropriately submitted as CEII and **not** Privileged.

This is further confirmed by the fact that on the same day that Millennium filed the CEII information, Millennium also filed under accession number 20160729-5233 a docket entry titled “Abbreviated Application of Millennium Pipeline Company, L.L.C. for a Certificate of Public Convenience and Necessity under CP16-486. **Availability: Privileged.**” Therefore, to the extent the Exhibit Gs contained any sort of proprietary or business confidential information that could harm the “competitive position” of Millennium – which such exhibits do not contain anyways – Millennium was required to have filed the relevant volumes as Privileged, not CEII. Because Millennium expressly chose to classify and file the

Exhibit Gs as CEII, this is a plain admission by Millennium that the Exhibit Gs do not contain any information covered by exemption 4. It is only after DRN requested the material did Millennium conjure this *ex-post facto* rationale that the Exhibit Gs contained business related information and as such that they should be exempted from FOIA. FERC must not honor such a disingenuous and belated rationale for nondisclosure.

FERC's nondisclosure is made even more troubling by the fact that, without reason or explanation it represents a complete *volte-face* as compared to FERC's past pattern of practice of weighing DRN's need for this information against any countervailing factors, and agreeing **in every instance** to disclose the Exhibit G information. Indeed, FERC has routinely released Exhibit G information to the Delaware Riverkeeper Network for numerous pipeline projects.

For example, DRN requested and was provided access to Exhibit Gs for Tennessee Gas Pipeline Company's Northeast Upgrade Project (Docket No. CP11-161),² Columbia Gas Pipeline Company's Eastside Expansion Project (Docket No. CP14-17),³ and Transcontinental Pipeline Company's Leidy Southeast Expansion Project (CP13-551).⁴ Each of these projects were significantly larger, involving higher volumes of gas, more pipe, and were far more complex than the Eastern System Upgrade Project. Additionally, on October 19th of **this year** FERC

² Attached

³ Attached

⁴ Attached

provided DRN with Exhibit Gs for Tennessee Gas Pipeline Company's Orion Project (Docket No. CP16-4).⁵ Similar to the Eastern System Upgrade, this project involved the addition of compression and about the same amount of pipe. However, this project was also more complex than the Eastern System Upgrade because it involved looping two existing lines as opposed to a single line for the Project. Therefore, not only did FERC grant these requests without exception, each of these projects, by the nature of their complexity, required more "innovative" Exhibit Gs than for the current proposed Project.

In every one of FERC's determination prior letters FERC has also explicitly found that DRN "demonstrated a legitimate need for the information requested." Each of those letters was also signed by Director Tao. FERC has provided no explanation as to why it has chosen to treat this request differently than the plethora of requests DRN has already made to the agency and which have been granted by the agency. Established case law has long held that federal agencies must provide adequate explanation before it treats similarly situated parties differently, let alone the same party differently. *See, e.g., New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987); *Public Media Ctr. v. FCC*, 587 F.2d 1322, 1331 (D.C. Cir. 1978); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965). FERC has also released Exhibit Gs to other third parties where the parties have signed non-disclosure agreements. For example, the Clean Air

⁵ Attached

Council was granted access to the Exhibit Gs for the Transcontinental Atlantic Sunrise Project. The Atlantic Sunrise, similar to the projects that DRN has obtained Exhibit Gs for, is a far more complex project involving multiple looping segments and compression in several different states. Additionally, aggrieved parties challenging a separate Millennium project **along the same exact pipeline**, were also granted access to the Exhibit G information.

FERC's stated rationale for withholding the data is circular and entirely without merit. FERC states that disclosure would "likely substantially harm Millennium's competitive position." However, in the **next sentence** FERC recognizes that DRN "is not a competitor." Notwithstanding FERC's vague and circular statement that this fact "does not undermine the risk of competitive harm in releasing this information," such statements when read together are simply irreconcilable. FERC is correct that DRN is not a competitor as FERC is well aware that DRN is non-profit organization, and as such has no commercial interest in the information in any capacity. In light of this reality, FERC provides no explanation whatsoever regarding how DRN could possibly "substantially" harm Millennium's "competitive position," nor does FERC explain how or why such harm is "likely." Indeed, the facts dictate quite the opposite. Not only did DRN sign a non-disclosure agreement here and thus explicitly commit to not disclosing this information to any other person or party, but DRN has also **never even been accused of – let alone found in a court of competent jurisdiction – to have**

violated any of the numerous non-disclosure agreements DRN has agreed to in the past for this type of information, or any other type of information. Indeed, when DRN received this information with regard to the Tennessee Gas Pipeline Company's Northeast Upgrade Project and used it to generate expert reports showing how FERC illegally segmented its review of the pipeline projects, DRN was so careful with the CEII Exhibit G information that DRN actually chose not to even submit the Exhibit Gs to the Court even under seal. DRN made this choice in an abundance of caution to honor its non-disclosure agreement.

The information contained in the Exhibit Gs is critical for making a determination as to whether FERC's review of the project complies with the precepts of the National Environmental Policy Act (NEPA). For example, this data can show whether or not the pipeline project has "independent utility," or whether or not the project can safely operate under the state pressures, or even whether the very "need" of the project itself is justified. For example, for natural gas transmission pipelines, such as the Project, actual gas velocities are a "critical variable" that often drive pipeline design decisions. FERC itself has recognized this principle in its review of numerous other pipeline projects. *See* Northeast Upgrade Project Environmental Assessment, at Exhibit D at 2 (CP11-161). This is true because gas velocities that exceed the design specifications of a given pipeline can result in internal particulate erosion that threatens the integrity of the pipeline. The Commission is well aware of the issue of gas velocity erosional limit ranges,

because the Commission has already rejected a possible pipeline alternative in an application where the Commission found that “transporting the current and proposed gas volumes through only the existing pipeline would result in gas velocity significantly above TGP’s recommended maximum design velocity of approximately 40 feet per second. This increased velocity could compromise the pipeline’s integrity and safety.” *See* Northeast Upgrade Project Environmental Review, at 20 (CP11-161). Indeed, gas flow velocity was recently questioned as a possible culprit for the explosion of a Texas Eastern natural gas transmission line in May of 2016, an issue DRN raised during the public comment process regarding the project well in advance of the catastrophic event. *See* <http://powersource.post-gazette.com/powersource/companies/2016/05/11/Could-faster-gas-flow-have-contributed-to-Texas-Eastern-pipeline-erosion/stories/201605110092>.

Additionally, accurate gas velocity measurements are necessary to determine the functional independence or dependence of a proposed pipeline project in relation to other pipeline projects. If a pipeline project functionally relies on past or future pipeline projects to operate, those projects must be accounted for in a NEPA review document. Indeed, DRN has used Exhibit G data to generate expert reports showing how pipeline projects can be interrelated and thus require combined environmental review pursuant to NEPA. *See e.g. Delaware Riverkeeper Network, et al v. Federal Energy Regulatory Commission*, 753 F.3d 1304 (D.C. Cir. 2014); *see also*, Rehearing Request of the Delaware Riverkeeper Network for the

Transcontinental Leidy Southeast Expansion Project (Docket No CP13-551). As such, not only has DRN shown a legitimate need for this information in our initial CEII Request Forms, but DRN has also **actually used** this information in meaningful way in a court of law to effectively demonstrate how FERC acted in violation of NEPA. One of DRN's concerns here is that FERC is actively attempting to prevent DRN from accessing information that DRN has successfully used in prior litigation to show that FERC violated the law, essentially attempting to insulate and immunize itself from such scrutiny.

Importantly, contrary to the nonsensical statement by Millennium that it is possible to “‘assess the need and true nature of the project’ from readily accessible public information,” it is indisputable that the **only** way to examine gas velocities, existing and proposed pressures, and flow rates is through the diagrams provided in the Exhibit Gs. To further demonstrate why disclosure of this information is critical to an engineering review of natural gas pipeline projects DRN has attached to this appeal a memorandum from Pipeline Engineering Expert Richard Kuprewicz further outlining the importance of the disclosure of this information.

Furthermore, NEPA itself demands that exactly this type of data is disclosed when requested. NEPA procedures emphasize clarity and transparency of process over particular substantive outcomes. *See Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756-57 (2004); *see also Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1121 n. 24 (9th Cir. 2010) (“Clarity is at a premium in

NEPA because the statute . . . is a democratic decisionmaking tool”). Specifically, NEPA “guarantees” that relevant information “will be made available to the larger [public] audience.” *Robertson*, 490 U.S. at 349. NEPA seeks to promote informed agency decision-making by “requiring full disclosure of the basis for agency action.” *Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1073 (1st Cir. 1980); *see also Inland Empire Pub. Lands v. United States Forest Serv.*, 88 F.3d 754, 758 (9th Cir. 1996) (finding that NEPA is concerned with the process of disclosure, not any particular result).

Accordingly, agencies violate NEPA when they fail to disclose that their analysis or the record contains incomplete information. *See N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 708 (10th Cir. 2009); *see also Motor Vehicles Mfrs.*, 463 U.S. at 43 (holding that an agency acts arbitrarily and capriciously when it fails to “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made”) (internal quotation marks omitted). Such required “up-front disclosures [include] relevant shortcomings in the data or models.” *Lands Council v. Powell*, 395 F.3d 1019, 1032 (9th Cir. 2005); *see also* 40 C.F.R. § 1502.22 (An agency “shall make clear” if there is “incomplete or unavailable information” in an NEPA environmental review document).

The very purpose of public issuance of an Environmental Assessment pursuant to NEPA is to “provid[e] a springboard for public comment.” *Public*

Citizen, 541 U.S. at 768. It is well established that “where comments from responsible experts [provide] **conflicting data** or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. There must be good faith, reasoned analysis in response.” *Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973) (emphasis added); *see also Friends of the Earth, Inc. v. Hall*, 693 F. Supp. 904, 934 (W.D. Wash. 1988) (A NEPA review that fails to disclose and respond to “the opinions held by well respected scientists concerning the hazards of the proposed action is fatally deficient”); *Pacific Coast Federation of Fisherman’s Ass’ns v. U.S. Dept. of the Interior*, 929 F.Supp.2d 1039, 1056 (E.D. Ca. 2013) (“The underlying environmental data relied upon to support the expert conclusions must be made available to the public”). As such, not only does this information fail to fall under exemption 4 pursuant to the Freedom of Information Act, but NEPA actually demands that this exact type of important information be provided for public review of the proposed agency action.

So in conclusion, FERC here has chosen to withhold information that they know to be essential to informed decisionmaking by the agency and comment by the public which they have previously routinely provided to requesting parties without reasonable explanation. FERC’s rationale for not disclosing the information is that it is “likely” that such disclosure will cause “substantial harm” to Millennium’s “competitive position,” despite the fact that DRN is a non-profit

organization with no commercial interest in the data, has signed and committed to nondisclosure forms, and has no history of even being accused of violating nondisclosure forms for the same type of information by FERC, project applicants, or third parties. Additionally, DRN has shown here, and through the attachments, that the Exhibit Gs contain information critical to an understanding of whether FERC and the project applicant are complying with appropriate federal laws, and that DRN has meaningfully used this information in the past in both the FERC docket and federal courts. Lastly, DRN has also shown that the information contained in the Exhibit Gs are not otherwise publically available. In consideration of these facts DRN requests a reconsideration of FERC's Notice of Intent to Release, and be provided with the requested information at the soonest possible moment. DRN further requests that to the extent their review of the data is delayed that DRN be provided a proportional extension to file comments on the proposed Project.

Sincerely,

/s/ Aaron Stemplewicz

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Federal Energy Regulatory Commission
Washington, DC 20426

FEB 03 2014

Re: CEII No. CE14-33,
Letter of Release

VIA CERTIFIED MAIL

Mr. Aaron Stemplewicz
925 Canal Street
Suite 3701
Bristol, PA 19007

Dear Mr. Stemplewicz:

On November 25, 2013, you submitted a request for access to Critical Energy Infrastructure Information (CEII) under the Federal Energy Regulatory Commission's (Commission or FERC) CEII regulations at 18 C.F.R. § 388.113(d)(4) (2013). Specifically, you requested CEII flow diagram data included in Exhibits G and G-II of Columbia Gas Transmission LLC's (Columbia) Application for the East Side Expansion Project in Docket No. CP14-17-000. This document is identified on the Commission's eLibrary database as Accession No. 20131204-5106. Your request is granted, as explained below.

By letter dated December 3, 2013, Michelle A. Davis, Attorney-Advisor, notified Columbia of your request and provided five (5) business days in which to submit comments. The letter also notified the submitters that in accordance with 18 C.F.R. § 388.112(e), it served as notice of release if timely comments opposing release were not received. On December 9, 2013, Columbia submitted comments.

In its comments, Columbia argues that the flow diagrams in Exhibit G of its application in Docket No. CP14-17-000 should not be released. Columbia reasons that you would be required to disclose the contents of the document in order to complete your analysis of the East Side Expansion Project. Therefore, Columbia concludes that your intended use for the information is inconsistent with the non-disclosure agreement you executed in November 2013.

Although the information requested is CEII as defined by 18 C.F.R. § 388.113(c)(1) and is exempt from mandatory disclosure pursuant to FOIA Exemption 7(F), it may be released to a requester with a legitimate need for the information. The Commission must balance a requester's need for the information against the sensitivity of the information. While the Commission's regulation at 18 C.F.R. § 388.113(d)(4)(iii) requires that a requester assert the particular need for and intended use of the information, the primary purpose of the rule is to ensure that information deemed CEII stays out of the possession of terrorists. Accordingly, assessing

a requester's legitimacy and securing an executed non-disclosure agreement are paramount factors in determining whether to grant a request for CEII.

In this case, Commission staff has verified that you are a staff attorney for the Delaware Riverkeeper Network. You indicated that you require the requested information to research whether Columbia is appropriately segmenting its expansion projects. Moreover, you have agreed to adhere to the terms of the non-disclosure agreement executed in November 2013. On January 14, 2014, staff confirmed that only you will view the requested CEII, consistent with the terms of the non-disclosure agreement.

Notwithstanding the stated concerns of Columbia, as noted above, you have demonstrated a legitimate need for the information requested. Despite the fact that this information is CEII, granting you access, in accordance with the terms of the non-disclosure agreement, is appropriate. Pursuant to the non-disclosure agreement, you are prohibited from either disclosing or sharing the CEII with any person not otherwise covered by an agency non-disclosure agreement covering this same information. The enclosed compact disc represents a full release of the requested information.

As provided by 18 C.F.R. § 388.113(d)(4)(iv) (2013) of the Commission's regulations, you may appeal this determination pursuant to 18 C.F.R § 388.110. Any appeal from this determination must be filed within 45 days of the date of this letter. The appeal must be in writing, addressed to David L. Morenoff, Acting General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please send a courtesy copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard M. Tao", with a long horizontal flourish extending to the right.

Leonard M. Tao
Director
Office of External Affairs

Enclosure: (1)

cc:

Mr. Fedric J. George
Senior Counsel
Columbia Pipeline Group
P.O. Box 1273
Charleston, WV 25325
fgeorge@nisource.com

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

AUG 21 2013

Re: Notice of Intent to Release,
CEII No. CE13-57

VIA ELECTRONIC MAIL

Aaron Stemplewicz, Esq.
Delaware Riverkeeper Network
925 Canal Street
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aaron@delawareriverkeeper.org

Dear Mr. Stemplewicz:

On February 1, 2013, you submitted a request under the Federal Energy Regulatory Commission's (Commission or FERC) Critical Energy Infrastructure Information (CEII) regulations at 18 C.F.R. § 388.113(d)(4) (2012) for a copy of Exhibits G and G-II under Transcontinental Gas Pipe Line Company, LLC's (Transco) Application for a Certificate of Public Convenience and Necessity. The documents are designated in the Commission eLibrary database under Accession Nos. 20111214-5094 and 20120305-5212. As explained below, your request is granted.

By letter dated February 11, 2013, Michael Watson, Attorney-Advisor, notified Transco of the request and provided five (5) business days in which to submit comments. The letter also notified Transco that, in accordance with 18 C.F.R. § 388.112(e), it served as notice of release if timely comments opposing your request were not received.

On February 14, 2013, Transco filed a response objecting to the release of the documents to you. Specifically, Transco argues that you did not provide adequate justification for the release.

Although the information requested is CEII as defined by 18 C.F.R. § 388.113(c)(1), it may be released to a requester with a legitimate need for the information. The Commission must balance a requester's need for the information against the sensitivity of the information. While the Commission's regulation at 18 C.F.R. § 388.113(d)(4)(iii) requires that a requester assert the particular need for and intended use of the information, the primary purpose of the rule is to ensure that information deemed CEII stays out of the possession of terrorists. Accordingly, assessing a requester's legitimacy and securing an executed non-disclosure agreement are paramount factors in determining whether to grant a request for CEII.

Commission staff has verified that you are an attorney with Delaware Riverkeeper Network, DRN. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects and public education. You have stated that you need the requested CEII information to verify or disprove perspectives, assertions, claims or need statement by applicant (such as the possible "Independent utility" of the project), and that you require more detailed information related to flow, velocities, and design of installed or proposed pipeline equipment. In addition, you have agreed to adhere to the terms of a February 2013 non-disclosure agreement.

Notwithstanding the stated concerns of the commenting party as noted above, you have demonstrated a legitimate need for the information requested. Despite the fact that this information is CEII, granting you access, in accordance with the terms of the non-disclosure agreement, is appropriate. Pursuant to the non-disclosure agreement, you are prohibited from either disclosing or sharing the CEII with any person not otherwise covered by an agency non-disclosure agreement covering this same information.

This letter provides notice to the commenting submitters of the requested information that the requesters will be entitled to access the material no sooner than five (5) business days after the date this letter is issued.¹ Authority to act on this matter is delegated to the CEII Coordinator pursuant to 18 C.F.R. § 375.313.

Sincerely,



Leonard M. Tao
Director
Office of External Affairs

cc: Mr. William Hammons
Team Leader Rates & Regulatory
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Houston, TX 77251-1396
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¹ See 18 C.F.R. § 388.112(e).

Federal Energy Regulatory Commission
Washington, DC 20426

AUG 09 2012

Re: Letter of Release,
CEII No. CE12-128

VIA CERTIFIED MAIL

Mr. Aaron Stemplewicz
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007

Dear Mr. Stemplewicz:

On June 15, 2012, you submitted a request on behalf of yourself and Delaware Riverkeepers Network for access to Critical Energy Infrastructure Information (CEII) under the Federal Energy Regulatory Commission's (Commission or FERC) CEII regulations at 18 C.F.R. § 388.113(d)(4) (2012). You specifically requested detailed system information related to flow and design of installed or proposed pipeline by Tennessee Gas Pipeline Company, L.L.C. ("Tennessee"). This information is identified by FERC accession number 20110331-5162 in Docket No. CP11-161 and entitled Exhibits G, GI, GII (Flow Diagram and Plot Plan Drawings).

By letter dated July 11, 2012, Michael Watson, Attorney-Advisor, notified Tennessee of the request and provided five (5) business days in which to submit comments. The letter also notified Tennessee that in accordance with 18 C.F.R. § 388.112(e), it served as notice of release if timely comments opposing your request were not received.

Tennessee submits comments stating generally that Exhibits G, GI, and GII, qualify for protection as CEII material pursuant to 18 C.F.R. § 388.113 and are exempt from mandatory disclosure. Tennessee, however, does not offer a specific objection about your request.

In this case, Commission staff verified that you are staff attorney employed by the Delaware Riverkeeper Network, and organization dedicated to protecting the Delaware River Watershed. You indicated that you need the requested information in order intervene in the proceeding regarding Tennessee Pipeline's Northeast Upgrade Project. Moreover, you have agreed to adhere to the terms of the non-disclosure agreements executed on June 15, 2012.

Although the requested information is CEII as defined by 18 C.F.R. § 388.113(c)(1), in these circumstances and on balance, a discretionary release is being made to you in accordance with the above-referenced non-disclosure agreement. Accordingly, you are prohibited from either disclosing or sharing the CEII with any person not otherwise covered by an agency non-disclosure agreement covering this same information. The enclosed compact disc represents a full release of the requested information.

As provided by 18 C.F.R. § 388.113(d)(4)(iv) of the Commission's regulations, you may appeal this determination pursuant to 18 C.F.R § 388.110. Any appeal from this determination must be filed within 45 days of the date of this letter. The appeal must be in writing, addressed to Michael Bardee, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please send a courtesy copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard M. Tao" with a stylized flourish at the end. Below the signature, the word "for" is written in a smaller, less distinct hand.

Leonard M. Tao
Director
Office of External Affairs

Enclosure

Cc: Jacquelyne Rocan
Assistant General Counsel
Tennessee Gas Pipeline Company, LLC.
1001 Louisiana Street
Houston, Texas 77002
Jacquelyne_Rocan@kindermorgan.com

Federal Energy Regulatory Commission
Washington, D.C. 20426

OCT 19 2016 Re: CEII No. CE16-144,
Notice of Intent to Release

VIA ELECTRONIC MAIL

Mr. Aaron Stemplewicz
925 Canal Street
Suite 3701
Bristol, PA 19007
aaron@delawareriverkeeper.org

Dear Mr. Stemplewicz:

On July 13, 2016, you submitted a request under the Federal Energy Regulatory Commission's (Commission or FERC) Critical Energy Infrastructure Information (CEII) regulations at 18 C.F.R. § 388.113(d)(4) (2016) seeking the a copy of all flow diagrams in docket CP16-4. The document you requested is identified in the Commission's eLibrary database under Accession No. 20151009-5109, pp. 5 - 10.

By letter dated August 2, 2016, Tiffany Haigler, Attorney-Advisor, notified Tennessee Gas Pipeline Company (Tennessee), the submitter of Accession No. 20151009-5109 of your request and provided five business days in which to submit comments. Tennessee filed comments opposing release of the document. Tennessee argues that the Commission should determine whether releasing the information may potentially have national security implications. Tennessee also states that it filed the information in response to a Commission data request as confidential.

Although the information requested is CEII as defined by 18 C.F.R. § 388.113(c)(1) and is exempt from mandatory disclosure pursuant to FOIA Exemption 7(F),¹ it may be released to a requester with a legitimate need for the information. The Commission must balance a requester's need for the information against the sensitivity of the information. The Commission's regulation at 18 C.F.R. § 388.113(d)(4)(iii) requires that a requester assert the particular need for and intended use of the information, and the primary purpose of the rule is to ensure that information deemed CEII stays out of the possession of those who lack a valid or legitimate need. Accordingly, assessing a requester's legitimacy and securing an executed non-disclosure agreement are paramount factors in determining whether to grant a request for CEII.

¹ Moreover, Congress recently enacted the Fixing America's Surface Transportation Act, which specifically exempts from disclosure under FOIA this type of material. See Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, § 61003 (2015) (establishing applicability of FOIA Exemption 3, 5 U.S.C. § 552(b)(3)).

Commission staff verified that you are an attorney for the Delaware Riverkeeper Network, a nonprofit organization located in Bristol, Pennsylvania that has staff and volunteers who work throughout the Delaware River Watershed. You state that you need the information to assess the legality of a proposed project. Moreover, you have agreed to adhere to the terms of the non-disclosure agreement executed on July 13, 2016.

Notwithstanding the stated concerns of the commenting party as noted above, you have demonstrated a legitimate need for the information requested. Despite the fact that this information is CEII, granting you access, in accordance with the terms of the non-disclosure agreement, is appropriate. Pursuant to the non-disclosure agreement, you are prohibited from either disclosing or sharing the CEII with any person not otherwise covered by an agency non-disclosure agreement covering this same information.

This letter provides notice to submitter of the requested information that you will be entitled to access the material no sooner than five (5) business days after the date this letter is issued.² Authority to act on this matter is delegated to the CEII Coordinator pursuant to 18 C.F.R. § 375.313.

Sincerely,

A handwritten signature in black ink that reads "Leonard M. Tao". The signature is written in a cursive style with a large, sweeping initial "L".

Leonard M. Tao
Director
Office of External Affairs

² See 18 C.F.R. § 388.112(e).

Accufacts Inc.

“Clear Knowledge in the Over Information Age”

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December 7, 2016

To: Aaron Stemplewicz
Staff Attorney
Delaware Riverkeeper Network
925 Canal St., Suite 3701
Bristol, PA 19007

Re: Failure of Millennium Pipeline Company to provide appropriate Exhibits G, G-I, and G-II information under CEII Nondisclosure Agreements for CEII No. CE16-159.

On December 6, 2016 Accufacts was made aware of a FERC decision not to release certain flow diagrams and flow diagram data included in requested information as Exhibit G, G-I, and G-II (“Exhibit Gs”) to four individuals (“Parties”) who have signed CEII nondisclosure agreements in the above identified FERC application.

Millennium Pipeline Company (“Millennium”) claims that release of the requested flow information/data and the flow diagrams are protected from disclosure because they represent “confidential commercial information” and release of this information would “lead to substantial competitive harm.” Millennium also asserts that the requesters of the CEII information could “assess the need and true nature of the project” from readily accessible public information and the portion of the application to be released.

In the same 12/6/16 decision letter, FERC staff indicated they have reviewed the flow diagrams in Exhibits G, G-I, and G-II and determined that they are CEII as defined by 18 C.F.R. § 388.113(c)(1) and are exempt from mandatory disclosure pursuant to FOIA Exemption 4. I take serious issue with Millennium’s position and FERC’s Notice of Intent to Release stamped 12/6/16 withholding important Exhibit Gs schematics and data on this important matter. My key reasons are as follows:

I. Exhibit Gs are critical to a legitimate evaluation and true determination of the need and public convenience for a specific pipeline application.

Depending on the complexity of the system, Exhibit Gs usually on a single page for each case, contain two flow diagram cases, a base flow case without the proposed project, and a peak flow case with the proposed project with each flow diagram incorporating:

1. simple flow diagrams, conveying the process scheme and associated interconnects of the affected gas system,
2. mainline pipe characteristics such as
 - a. pipe diameter,
 - b. pipe thickness,
 - c. maximum allowable operating pressure, or MAOP,
 - d. mainline pipe specification changes, or breaks,
 - e. approximate milepost of the system segments (including compressor station locations),
 - f. highlights of the mainline pipe proposed modification/additions, including milepost, and
 - g. horsepower, fuel consumption, and compression ratio at each compressor station,
3. flow data information, both flow in and flow out, along the affected system in MMSCD with respective pressures at each in/out point along the system.

The basic information identified above is key to a simple understanding of the project, and only the pipeline operator has the above specific information in detail and in a flow format that allows a quick and simple understanding of the proposal. For example, such a critical understanding and analysis is needed to evaluate whether a proposed project is even needed, or part of a segmented effort to subvert environmental regulations, that has been found in past pipeline applications to FERC.¹

II. Millennium's assertion that the Parties can "assess the need and true nature of the project from readily accessible public information and the portion of the application to be released" is false.

From the above Exhibit Gs needed information list it should become obvious that important key information cannot be reliably gathered from so-called information already in the public domain as claimed by Millennium. Vital details are known only by Millennium and should be disclosed by them in the above stated Exhibit Gs simple flow diagram format to avoid inaccurate assumptions that can lead to false conclusions. For example, simple hydraulic profiles that can be easily developed from the above Exhibit Gs data and format can be characteristic and unique to a specific pipeline system. The Exhibit Gs and their simplified flow format are critical and basic to any transmission pipeline project proposal.

I find that FERC's argument to not release the Exhibit Gs in the 12/6/16 Notice of Intent to Release "that the innovative designs in the Exhibits G, G-I, and G-II were a product of a substantial investment in terms of time and energy" is also without merit and FERC's claim appears disingenuous, and will be most likely very difficult to defend in a court of law. To be frank, we are talking about simple transmission pipelines in a transmission pipeline system designed to move large volumes of gas in steel tubes, driven by incredible amounts of

¹ See *Delaware Riverkeeper Network, et al v. Federal Energy Regulatory Commission*, 753 F.3d 1304 (D.C. Cir. 2014).

compression energy. It is incumbent on the pipeline operator to supply the specific affected system schematics and flow data information they should already have, to permit a complete analysis to independently verify Millennium's claims for the project.

III. Exhibit G information is CEII and protected by associated and previously signed nondisclosure agreements by the Parties

Nondisclosure agreements (aka Confidentiality Agreements, or CAs) signed by the Parties specific to Millennium's application, CE16-159, place an obligation on the Parties to protect the secrecy of the critical energy infrastructure information ("CEII") provided by Millennium that should be contained in complete Exhibit Gs. Millennium's various claims to try and prevent essential disclosure of basic flow diagrams and flow data including "information regarding pressures, flow conditions, interconnection, design capacity, compression, and flow efficiency" that should be included in Exhibit Gs stating the provision of such information would cause "substantial competitive harm" are without merit. The Exhibit Gs are clearly CEII, and the Parties have already signed associated nondisclosure agreements prohibiting release of such details to the public for this project proposal. Accufacts has a long track record of CEII information analysis on FERC projects and takes associated CEII nondisclosure agreements most seriously, instituting additional precautions to protect such sensitive information from public disclosure. I also have over forty years experience in many investigations where I have had to sign CAs before highly sensitive information could be provided to me to permit a complete and factually neutral investigation. I have never violated such sensitive agreements.

In conclusion, the claims made by Millennium in this matter are without merit, and FERC needs to stop the clock on this pipeline application until this issue is resolved by providing the above identified information protected under CEII. If this matter cannot be quickly and appropriately resolved by providing the Exhibit Gs the response clock needs to be reset, as the Parties are placed in the inappropriate position of rushing a legitimate analysis while the operator maneuvers to avoid providing the needed system information that should be in the Exhibit Gs.

A final question bears asking - without the disclosure of the above Exhibit G information and subsequent associated legitimate/complete analysis how can the public meaningfully participate in the National Environmental Policy Act's mandated process? And furthermore, how can FERC, without the meaningful participation of the public, determine the real need of public convenience and necessity of a specific project, and compliance with various regulations?

Richard B. Kuprewicz
President,
Accufacts Inc