

May 16, 2011

**VIA ELECTRONIC MAIL**

Leonard Tao  
Director  
Office of External Affairs  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Re: *Objection of TransCanada Energy Ltd. to  
Freedom of Information Act Request*

Dear Mr. Tao:

The Commission has informed TransCanada Energy Ltd. (“TransCanada”) by letter dated May 10, 2011 that the Commission has received a request pursuant to the Freedom of Information Act (“FOIA”) for copies of certain transactional data submitted to the Presiding Administrative Law Judge and Commission Trial Staff in Docket No. EL01-10. The request was made by Ms. Judith Cassel. The request seeks the identical transactional data previously requested by various entities, including CAG, in FOIA Request Nos. FY10-98 and FY11-25. As was the case with those previous FOIA requests, the transactional data sought by the instant FOIA request is exempt from disclosure pursuant to exemption 4 of FOIA. 5 U.S.C. § 552(b)(4); 18 C.F.R. § 388.107(d).

FOIA exemption 4 protects from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). The transactional data at issue was submitted to the Commission under a protective order limiting disclosure of the information only to the Commissioners, the Presiding Administrative Law Judge, and Commission Trial Staff. The transactional data at issue is commercially sensitive, the release of which would likely cause substantial harm to TransCanada and other submitters’ competitive positions. Moreover, the Commission has already determined that the relevant transactional data is exempt from FOIA disclosure.

In response to FOIA Request Nos. FY10-98 and FY11-25, the Commission determined that the same transactional data at issue in the instant FOIA request was exempt from disclosure pursuant to FOIA exemption 4. The Commission's letters in response to FOIA Request Nos. FY10-98 and FY11-25, dated October 18, 2010 and February 9, 2011, are attached as Attachments A and B, respectively. Specifically, the Commission noted:

As stated in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974), commercial or financial information may be protected from release if it is 'likely to have either of the following effects: (1) impair the Government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.'

. . . [R]elease of this material to the public would likely impair the Commission's ability to obtain similar information in the future. In addition, the data contain commercially sensitive information regarding, among other things, volume of transactions, price and terms of conditions of the sales contract, the release of which would likely cause harm to some of the submitters' competitive positions. Specifically, disclosure of the data templates could possibly place some of the submitters at a competitive disadvantage by revealing their business practices to competitors. Based on these facts, release of the requested information could cause the harms envisioned by the court in *National Parks* that FOIA Exemption 4 was intended to prevent. See 498 F.2d at 770.

October 18, 2010 Commission letter at 2; February 9, 2011 Commission letter at 2-3.

Nothing has changed to alter the Commission's previous determination that the transactional data at issue is exempt from FOIA disclosure. Release of the data could still cause substantial competitive harm to the submitters and is likely to impair the Commission's ability to obtain similar information in the future. Therefore, the requested data is exempt from disclosure under FOIA exemption 4 and should remain protected.

Very truly yours,

/s/ Kenneth L. Wiseman  
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