

State of Connecticut

ORIGINAL

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Hartford

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Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission
888 First St., N.E.
Washington, DC 20426

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Re: Secrecy at FERC regarding the Broadwater Proposal

Dear Chairman Kelliher:

I have been astonished and dismayed by the inconsistent, virtually incoherent policies that FERC apparently applies to certain FERC documents in the name of national security.

I have publicly stated my strong opposition to the Broadwater proposal and have intervened as a party, but a larger principle of public access and due process is raised by these policies. I am strongly opposed to the Broadwater proposal because it would create a monstrous, unprecedented permanent floating liquid natural gas storage and regassification industrial facility in the middle of Long Island Sound. Such a facility would endanger vital security and navigation interests, not to mention precious environmental resources and public safety. I have requested various documents from FERC about the design, structure and safety of Broadwater. My requests have been rebuffed, or FERC has said they will be rebuffed. These documents clearly should be public, but FERC has asserted that a broad range of information, including some that is obviously mundane and not at all sensitive, is classified as Critical Energy Infrastructure Information (CEII), and will not be disclosed – or disclosed only with significant restrictions.

Citizens and public officials cannot make informed evaluations and comments about safety, security and environmental protection without unfettered access to basic information about the design and construction of this project. FERC has indicated that the information will be made available, but only if recipients agree that they will not disclose or discuss it publicly.

Contrary to the assertions of various FERC officials, FERC's policies suppress public disclosure and stifle intelligent public debate, rather than protect us from terrorists.

The varying reported public explanations given by FERC regarding its procedures include:

- "There is no secrecy order," said Tamara Young-Allen, a spokeswoman for FERC. Any U.S. citizen can apply to review the design information, she said, but they must agree not to publicly disclose any of it. "We don't want to be responsible for giving anyone living in a cave in Iran or Afghanistan information they can use to harm the American public," Young-Allen said.

Hartford Courant, "Sound Gas Plan Targeted Again," David Funkhouser, January 12, 2006.

- All of the withheld information is available by going to FERC's website and requesting it and signing a non-disclosure form. The information is not subject to free press laws, but can be obtained by individuals or interested groups who pass a background check.

Shore Publishing, "Connecticut Officials Call for FERC to Disclose Broadwater Plans," Michael DiBiaso, Jan. 19, 2006.

[However, FERC CEI Coordinator Gladys Crenshaw-Davis reported to a member of my staff that there is in fact no background check requirement or procedure.]

- Those who get to view the information can discuss it among themselves and submit comments to FERC, she [Tamara Young-Allen of FERC] said. Those comments also would be shielded from public view.

Hartford Courant, "Sound Gas Plan Targeted Again," David Funkhouser, Jan. 12, 2006.

- The government says the information would be available to selected state officials under the condition that it's not disseminated to the general public.

WTNH Television, January 11, 2006.

FERC's regulations, policies and controlling statutes fail to clarify the situation or alleviate my concerns. Nothing in FERC's regulations, rules or published procedures appears to limit CEII disclosure to United States citizens, or even to United States residents. Nor do those rules or procedures appear to provide any method whatsoever for verifying the identity, occupation or address of anyone who applies to view CEII information. By FERC's own regulatory definition, CEII includes information that "[c]ould be useful to a person in planning an attack on critical infrastructure[.]" §388.113(c)(1)(ii).

FERC apparently does no screening of those who apply to view this information, although it is considering doing so. 70 F.R. 37031, par. 19 (June 28, 2005). In fact, the only requirement established by FERC's regulations for access to CEII is that the requester "[f]ile a signed, written request with the Commission's CEII Coordinator." 18 C.F.R. §388.113(d)(3)(i).

FERC's regulations also fail to establish any meaningful standards for granting requests for access. The only standard is that FERC's CEII Coordinator shall make determinations whether the requester's need to have the information is outweighed by the potential harm from the release of information; establish reasonable conditions for the release of CEII; and release CEII to requesters who satisfy the requirements and who agree to non-disclosure. 18 C.F.R. § 375.313. This supposed standard is in fact no standard at all; it is simply a statement the FERC Coordinator can do whatever she chooses.

While the FERC rules do nothing to protect us from terrorists, they do effectively bar robust public discussion and debate about proposals pending before FERC. According to FERC's website, there are six different forms to request access to CEII information – one each for state agencies, contractors, federal agencies, general public, media and consultants. Each form is somewhat different, although there is no apparent regulatory authority for those differences. Each form contains a statement to the effect that "violation of this agreement may result in criminal or civil sanctions against the recipient," but no legal basis is cited for those statements, and there is no apparent legal basis.

Equally disturbing, the non-disclosure agreement for state agencies and officials is the most restrictive. That form requires the state official to agree that the state's Freedom of Information laws do not apply to any material – an agreement no state

official is likely to have the authority to make. The practical result is that a state's Governor or Attorney General has less right of access than virtually anyone else.

Most importantly in terms of public access, the various FERC forms of agreement all limit disclosure and discussion of CEII information to others who have been authorized to obtain the same information. In other words, they explicitly bar effective informed comment on CEII information in public meetings or public written submissions. No terrorists will be greatly troubled by this restriction on public comment. The intended impact is on citizens and public officials, blocking the facts and truth from public discussion.

In sum, it appears that FERC has no discernible standards regarding the release of CEII, and that nothing in FERC's regulations provides any meaningful protection from security or terrorist threats. The only effect of the FERC procedures is to shield proposals from meaningful, informed public debate, particularly on critically important issues of safety and security.

In light of these facts, I request that you direct FERC staff to make all CEII information regarding Broadwater available promptly to the general public as well as to state and local government officials, so that citizens may exercise their right to review, understand and comment on this profoundly important proposal.

I look forward to your prompt response.

Very truly yours,



RICHARD BLUMENTHAL

RB/pas