

Federal Energy Regulatory Commission  
Washington, DC 20426

AUG 25 2011

Re: FOIA No. FY11-74  
Response Letter

**VIA EMAIL AND REGULAR MAIL**

Mr. Robert Godfrey  
Save the Passamaquoddy Bay  
PO Box 222  
Eastport, Maine 04631  
[info@savepassamaquoddybay.org](mailto:info@savepassamaquoddybay.org)

Dear Mr. Godfrey:

On July 25, 2011 you filed a request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2006), *amended by* OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, and the Federal Energy Regulatory Commission's (FERC or Commission) FOIA regulations, 18 C.F.R. § 388.108 (2011). Specifically, you requested the following regarding the Downeast LNG project:

- 1) The name(s) and job title(s) of the person(s) responsible for maintaining FERC LNG terminal application permitting checklists indicating exactly what permitting requirements have and have not been completed by the applicant,
- 2) A copy of the current checklist status for the Downeast LNG import terminal application, and
- 3) The text of any existing regulation, law, or policy giving FERC the authority to refuse providing the public or interveners with the checklist status of an LNG formal application. Failing existence of such regulation, law, or policy, we request a statement indicating same.

On July 29, 2011, following correspondence with Commission staff, you amended your request to include Accession No. 20110302-5126, *Downeast LNG, Inc. submits Data Responses under CP07-52*.

A search of the Commission's non-public files did not identify any documents responsive to items 1-3 listed above. The search, however, did identify Accession No. 20110302-5126. On August 9, 2011, in response to notice sent by the Commission pursuant to 18 C.F.R. § 388.112(d), Downeast LNG, Inc. objected to release of that document under FOIA Exemption 4, 5 U.S.C. § 552(b)(4), which protects "trade secrets

and commercial or financial information obtained from a person [that is] privileged or confidential.”

After careful review, the Commission has determined that Accession No. 20110302-5126 is exempt from disclosure under FOIA Exemption 4. As stated in *National Parks & Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974), commercial or financial information is confidential where 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.” Accession No. 20110302-5126 contains a contract for the option to purchase real property, which is the type of information not customarily released to the public. Moreover, the contract includes sensitive information including the sale price of the land. See, e.g., *Utah v. Dep’t of Interior*, 256 F.3d 967, 970 (10th Cir. 2001) (protecting from release a lease because disclosure could lead to substantial competitive harm). Therefore, the Commission will withhold Accession No. 20110302-5126 in its entirety. As a courtesy, please find enclosed a copy of Accession No. 20110315-5168, which is a public version of the same filing, without the proprietary information.

Additionally in an effort to provide you with as much information as possible, Commission staff in previous correspondence has directed you to the publically available information regarding items 1-3 listed above.<sup>1</sup> To the extent that you seek a new document or statement, the FOIA does not require agencies to create new documents in response to a FOIA request. See *Poll v. U.S. Office of Special Counsel*, No. 99-4021, 1999 U.S. App. Lexis 25653, at \*12, n.2 (10th Cir. October 14, 1999) (stating that FOIA does not require agency “to answer questions disguised as a FOIA request, [nor] to create documents or opinions in response to an individual's request for information” (quoting *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985)); *West v. Spellings*, 539 F. Supp. 2d 55, 61 (D.D.C. 2008) (recognizing that Department of Education had no duty to create a list of uninvestigated complaints to satisfy a request).

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<sup>1</sup> Specifically, Commission staff directed you to the Commission’s eLibrary database which maintains a chronological list of the documents submitted to and issued by FERC in this particular proceeding. In correspondence dated July 27, 2011, Commission staff provided you with a “list of preparers” working on the project at issue from Appendix V of Accession No. 20090514-4000 and a FERC directory listing staff position titles. Also, on July 27, 2011, Commission staff provided you with lists from eLibrary of FERC’s data requests, Downeast’s responses to those data requests, and certain FERC issuances. Further, in an email dated July 29, 2011, Commission staff provided you with Accession No. 20110728-4007, *Project Update for the Downeast LNG Project*. Commission staff also informed you of FERC’s e-subscription service that would provide you with email notification of events in the proceeding.

As provided by FOIA and 18 C.F.R. § 388.110 of the Commission's regulations, 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, and clearly marked "Freedom of Information Act Appeal." Please also send a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

Sincerely,



for

Leonard M. Tao  
Director  
Office of External Affairs

Enclosure