

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Mark Brady

Docket No. CE04-63-001

ORDER GRANTING REQUEST FOR REHEARING

(Issued May 5, 2004)

1. This order grants the request for rehearing filed by Corpus Christi LNG, L.P. (CCLNG) of the March 16, 2004 Order issued by the Critical Energy Infrastructure Information (CEII) Coordinator under delegated authority in Docket No. CE04-63-000, which directed the release of CCLNG's Environmental Resource Reports 1, 5, 6, and 7 to the requester, Mark Brady. The March 16 Order directed that Appendix A-3 to Resource Report 1 be released subject to a non-disclosure agreement, and denied Mr. Brady's request for Resource Reports 4 and 13.¹

Background

2. On February 20, 2004, Mark Brady of ENSR International submitted a request under the Commission's CEII regulations at 18 C.F.R. § 388.113(d)(3) (2003). Specifically, Mr. Brady requested copies of Cheniere Corpus Christi's Environmental Resource Reports 1, 4, 5, 6, 7, 12, and 13 as well as all associated appendices filed in Docket No. CP04-37.

3. By letter dated February 24, 2004, Susan Court, Associate General Counsel for General and Administrative Law, notified CCLNG, the submitter of the requested information, of the request and provided CCLNG with five (5) calendar days in which to comment on the request. On March 2, 2004, CCLNG responded to the letter indicating specifically that it objected to the release of Resource Reports 4 and 13 to the requester.²

¹ The order specified that the documents be released no sooner than five days after the date of the order. The release of the documents was held in abeyance pending resolution of CCLNG's request for rehearing.

² The response did not specifically address Appendix A-3.

CCLNG claimed that the requester does not require access to the non-public portions of the application in order to accomplish its stated goals. Moreover, CCLNG asserted that Resource Report 13 contained CEII, and is exempt from disclosure pursuant to Exemption 4 of the Freedom of Information Act (FOIA), because release of the detailed data, schematics and specifications regarding CCLNG's proposed facility would cause substantial harm to CCLNG's competitive position. Finally, CCLNG pointed out that Resource Report 4 contained cultural resource information, which is exempt from disclosure pursuant to FOIA Exemption 3.

4. Mr. Brady's request was granted as it pertained to Resource Reports 1, 5, 6, and 7.³ Appendix A-3 to Resource Report 1 was determined to be CEII and was to be released subject to a non-disclosure agreement. Inasmuch as Resource Reports 5, 6, 7, and the remainder of Resource Report 1 did not contain CEII, they were ordered to be released, and were not subject to a non-disclosure agreement. Mr. Brady's request was denied with respect to Resource Reports 4 and 13.

Request for Rehearing

5. On March 30, 2004, CCLNG filed a request for rehearing of the March 16, 2004 Order. CCLNG contended that the drawings in Appendix A-3 are engineering and design drawings that were included in Resource Report 13.⁴ CCNLG asserted that the release of these design plans would cause competitive harm, and that therefore these documents should be withheld pursuant to FOIA Exemption 4.⁵ Furthermore, CCNLG argued that the drawings in Appendix A-3 originated in Resource Report 13, hence, they should be protected from disclosure in the same manner as the other information contained in Resource Report 13.

Discussion

6. The Commission agrees with CCLNG's argument that Appendix A-3 should not be disclosed to the requester. In the March 16, 2004 Order, the CEII Coordinator held

³ Resource Report 12 was not filed with the Commission.

⁴ Specifically, CCLNG stated that Appendix A-3 contains four drawings: (i) LNG Spill Containment Plan, (ii) Roads, Surfacing Drainage and Fence Plan, (iii) Plant Boundary Layout, and (iv) Plot Plan, all of which were included in Resource Report 13, which the Commission protected from disclosure in the March 16, 2004 Order.

⁵ FOIA Exemption 4 provides that an agency is not required to make public documents in its possession which are "[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4).

that Resource Report 13 should be withheld in its entirety, because “release of this engineering data, which includes site plans, dock layout, LNG storage tanks, LNG vaporization facilities, major process equipment, inspection and maintenance protocols, control systems and control systems philosophy would cause competitive harm to CCLNG.” In light of the fact that the exact drawings in Appendix A-3 are being protected in Resource Report 13, the analysis is the same and they deserve the same protection as the other sensitive engineering information contained in that report.⁶ Therefore, consistent with the CEII Coordinator’s decision with respect to Resource Report 13, Appendix A-3 shall be withheld pursuant to FOIA Exemption 4, because disclosure of this information is likely to result in competitive harm to CCLNG.

The Commission orders:

CCLNG’s request for rehearing is granted. Pursuant to the March 16, 2004 Order, Resource Reports 1 (excluding Appendix A-3), 5, 6, and 7 are hereby released to Mr. Brady. Mr. Brady’s request is denied with respect to Resource Reports 4 and 13 and Appendix A-3 to Resource Report 1.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁶ Prior to the filing of the request for rehearing CCLNG had not mentioned that Appendix A-3, which was located in Resource Report 1, duplicated information found in Resource Report 13.