

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DEB EVANS AND RON SCHAAF)
97876 Highway 66)
Ashland, OR 97520)

BILL AND SHARON GOW)
4993 Clark Branch Road)
Roseburg, OR 97470)

STACEY AND CRAIG MCLAUGHLIN)
799 Glory Lane)
Myrtle Creek, OR 97457)

TWYLA AND RICHARD BROWN)
2381 Upper Carnas Road)
Camas Valley, OR 97416)

CLARENCE AND STEPHANY ADAMS)
2039 Ireland Road)
Winston, OR 97496)

NISKANEN CENTER)
820 First Street, NE)
Suite 675)
Washington, DC 20002)

Plaintiffs,)

v.)

FEDERAL ENERGY)
REGULATORY COMMISSION)
888 First Street, NE)
Washington, DC 20426)

Defendant.)

Civil Action No.

COMPLAINT

This is an action to compel the Federal Energy Regulatory Commission to respond to a request under the Freedom of Information Act.

PARTIES

1. Plaintiffs Deb Evans, Ron Schaaf, Bill Gow, Sharon Gow, Stacey McLaughlin, Craig McLaughlin, Twyla Brown, Richard Brown, Clarence Adams, and Stephany Adams are all residents of Oregon; the proposed Pacific Coast Pipeline will affect their properties in Oregon.

2. Plaintiff Niskanen Center, Inc. (“Niskanen”) is a 501(c)(3) think tank and advocacy organization with a strong interest in securing Americans’ rights to their property, and has its principal office at 820 First Street, NE, Washington, DC.

3. Defendant Federal Energy Regulatory Commission (“FERC”) is an agency of the federal government, and has its headquarters at 888 First Street, NE, Washington, DC.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

5. Venue is proper in this District Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

FACTS

Landowner Lists Submitted to FERC used for Notice by Private Companies

6. The Natural Gas Act (“NGA”) grants FERC the authority to regulate the interstate transportation of natural gas. §§ 15 U.S.C. 717b, 717c.

7. The NGA authorizes FERC to review and decide natural gas pipeline companies’ applications to take landowners’ private property in order to build proposed pipelines.

8. When an applicant requests authority to take property for a proposed project, FERC delegates its constitutionally-mandated duty to the applicant of providing potentially affected landowners with notice of their rights. 18 C.F.R. 157.6(d).

9. The applicant submits a ‘landowner list’ to FERC of all potentially affected landowners to be given notice of their rights, which contains basic contact information for each landowner including their name and address.

10. FERC’s regulations require that the notice to each affected landowner must include: the docket number of the filing; an explanation of FERC’s certificate process, including a section addressing basic landowner concerns; a description of the applicant and proposed project; specific instructions on how the landowners may contact the applicant; description of landowner rights in FERC proceedings; description of landowner rights in eminent domain proceedings of the relevant state;

information on how landowners can obtain a copy of the application to FERC; and a copy of FERC's Notice of Application, specifically stating how and when a landowner should intervene in FERC proceedings. *See* 18 C.F.R. 157.6(d)(3).

11. In FERC Docket No. CP17-494, FERC delegated the duty of giving landowners constitutionally adequate notice to the applicant, the Pacific Connector Gas Pipeline, LP ("PCP").

12. PCP periodically submitted landowner lists in FERC Docket No. CP17-494 in an effort to obtain authorization to use eminent domain to take portions of the listed persons' lands.

13. PCP's submitted lists should include the Plaintiffs' information.

14. PCP filed the landowner lists with FERC as 'privileged,' and the information is not currently publicly available.

15. Prior to 2009, many landowner lists were publicly available in FERC's dockets.

16. FERC's oversight of applicants' efforts to provide notice to landowners, including the accuracy of landowner lists, remains unknown.

The Request Submitted

17. On January 15, 2019, the Plaintiffs submitted a FOIA request ("the Request") to FERC seeking "any and all records and information in FERC's possession or control in relation to private landowners identified by the Pacific Connector Gas Pipeline, LP in Docket No. CP17-494," and requested certain

landowner lists by submission number.

18. Timely disclosure of these records is critically important to the public and will shed light on FERC's performance of its duties.

19. The Request included a fee waiver request because the Niskanen Center is a 501c(3) nonprofit think tank that operates in the public interest.

20. The Request was submitted via e-mail to FERC's FOIA Public Liaison at the Office of External Affairs, Toyia Johnson ("Ms. Johnson"), and through FERC's electronic privacy act request form.¹

Agency Response and Administrative Appeal

21. On January 17, 2019 Ms. Johnson e-mailed Niskanen's counsel stating that the Request was accepted as of that date, and that: "This request has been assigned reference number FOIA-2019-32. Every effort will be made to respond to your FOIA request within twenty business days or by 2/15/2019."

22. FERC did not send a response by February 15, but rather sent a notice of intent to release documents ("NOI") to Pacific Pipeline's counsel and a copy of the NOI to undersigned counsel.

23. On February 22, 2019, Ms. Johnson sent 4 e-mails to Niskanen's counsel ("the Response"). In the Response, Ms. Johnson attached 11 heavily redacted landowner lists submitted by PCP to FERC.

¹ Available at: <https://www.ferc.gov/legal/ceii-foia/foia/foia-new-form/FOIARequest.aspx> (Last visited: January 15, 2019).

24. While the Response disclosed commercial and government entities' information, the Response noted that all private landowner information was redacted pursuant to "FOIA Exemption 6." Thus, all of the potentially responsive information was redacted in the Response.

25. The Response did not acknowledge Niskanen's request for a fee waiver. No fee was charged for the Response.

26. On March 4, 2019, Plaintiffs filed a timely administrative appeal with FERC, based on the *de facto* denial of the Plaintiffs' FOIA Request, pursuant to 5 U.S.C. § 552 and 18 CFR 388.108.

27. On April 1, 2019, FERC upheld the *de facto* denial of Plaintiffs' FOIA Request in a letter addressed to Niskanen's counsel.

28. Plaintiffs have received no further correspondence from FERC in response to the Request.

29. Plaintiffs have exhausted all administrative remedies

COUNT I
(Violation of the Freedom of Information Act)

30. Paragraphs 1-35 above are incorporated by reference as though fully set forth herein.

31. FERC wrongfully claimed and failed to meet the agency's burden to show that FOIA exemption 6 applied to the information requested in Niskanen's FOIA Request and appeal.

32. FERC has not provided sufficient evidence that information requested may be withheld under Exemption 6 of FOIA, which protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 522(b)(6).

33. FERC improperly asserted Exemption 6, 5 U.S.C. § 522(b)(6), and FERC’s failure to make promptly available all non-exempt documents responsive to Plaintiffs’ Request violates 5 U.S.C. 5 U.S.C. § 522(a)(3)(A).

34. Plaintiffs are entitled to injunctive relief compelling the disclosure of the requested information.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

- A. Order Defendant FERC to produce all of the requested documents within 10 days;
- B. Enjoin Defendant FERC from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
- C. Award Plaintiffs its attorney fees and litigation expenses; and
- D. Provide any such further relief as the Court deems just and proper.

DATED: May 13, 2019

Respectfully submitted,

/s/ Tonia L. Moro

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