



Discovering what's possible with calcium

Kimberly S. Lagomarsino, PhD - Director, Environmental Affairs
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December 26, 2012

Via Electronic Mail and U.S. Mail

Ms. Tejasvi Raghuveer
EIA-3 Survey Manager
U.S. Energy Information Administration, EI-24
1000 Independence Avenue, SW
Washington, DC 20585
tejasvi.raghuveer@eia.gov

RE: Comments Concerning EIA's Proposed Change to Data Protection
77 Fed. Reg. 70745 (November 27, 2012)

Dear Ms. Raghuveer:

Mississippi Lime Company considers much of the information requested on revised Form EIA-3 (issued in July 2011), *Quarterly Coal Consumption and Quality Report – Manufacturing and Transportation/Processing Coal Plants and Commercial and Institutional Coal Users*, to be Confidential Business Information (CBI).¹ As the Energy Information Administration (EIA) is aware, due to our numerous letters addressing CBI, we are deeply concerned that the public release of non-aggregated information about our coal and co-fired fuel purchases, information that we assertively protect as CBI – including coal consumption and stocks, co-fired fuel quantity and quality, coal supplier location, and coal quality – may have serious anticompetitive consequences in and out of the lime industry.²

As such, Mississippi Lime Company commends the EIA for revising its policy to protect coal consumption and quality data from being released in a non-aggregated form, and for retroactively applying this protection to include 2011 and 2012 Form EIA-3 submittals. Additionally, Mississippi Lime Company supports the December 20, 2012 comments from the National Lime Association (NLA) regarding proposed changes to the EIA data protection policy. We also agree with the NLA request for revisions to the Form EIA-3 Instructions and clarifications to the Frequently Asked Questions (FAQ) section of the EIA web site to reflect the revised CBI policy.

We understand, as mentioned in EIA's December 19th webinar that information collected on Form EIA-3 will be protected pursuant to exemption criterion number four in the Freedom of

¹ Concerns about the public disclosure of facility-specific information were set forth in comments submitted to EIA by the National Lime Association, of which Mississippi Lime Company is a member, on September 10, 2007.

² Mississippi Lime Company deems fuel cost data confidential business information as well. However, we recognize that the "Total Cost of Coal Received During quarter on a C.I.F. Basis (dollars)" in Section II, item F, and "Commodity Cost" in Section VI, item J of Form EIA-3 will be protected as CBI by EIA.

Information Act (FOIA), as well as protected as a trade secret in the Trade Secrets Act because the quantity and quality of coal (and co-fired fuel) is integral to the production of lime products. The public release of such information, if released in site-specific form, can provide competitors with information influencing production, marketing, and pricing decisions. The type and quantity of coal consumption and stocks, the quantity and quality of co-fired fuel, the supplier location for each type of coal, and the quantity and quality of each type of coal consumed provides competitors with knowledge – both directly and indirectly – of fuel sources, of fuel consumption, and of production capacities, activities, and costs. To further demonstrate how such information can be used for competitive harm, we have attached our July 27, 2011 comment letter.

We appreciate the EIA's collaboration with industry to revise its policy regarding CBI treatment for information that poses significant competitive harm. We remain available to discuss the specifics of this matter or respond to any follow up questions you may have. Thank you for your consideration of our suggestions.

Sincerely,



Kimberly S. Lagomarsino, PhD
Director of Environmental Affairs

cc: James M. Kendell, Director, Natural Gas Division, EIA
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July 27, 2011

Via Electronic Mail

Ms. Barbara Mariner-Volpe
Coal Statistics Team Leader
Office of Oil, Gas and Coal Supply Statistics
Energy Information Administration, EI-24
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Barbara.MarinerVolpe@eia.doe.gov

RE: Revised EIA Form EIA-3, Quarterly Coal Consumption Report

Dear Ms. Mariner-Volpe:

Earlier this month, Mississippi Lime Company received an electronic mail notification regarding the Energy Information Administration's (EIA) revised Form EIA-3, "Quarterly Coal Consumption and Quality Report – Manufacturing and Transportation/Processing Coal Plants and Commercial and Institutional Coal Users." Form EIA-3 solicits information from U.S. manufacturing plants on quarterly coal procurement costs, sources of supply, delivery methods, and tons and quality of coal consumed. In contrast to EIA's longstanding practice of publishing such data only on an aggregated basis, the revised 2011 form notes that the majority of this information will be made available to the public in a non-aggregated, facility-identifiable form.

Mississippi Lime Company considers much of the information requested on revised Form EIA-3 to be Confidential Business Information (CBI).¹ We are gravely concerned that the public release of non-aggregated information about our coal and co-fired fuel purchases, information that we assertively protect as CBI, – including coal consumption and stocks, co-fired fuel quantity and quality, coal supplier location, and coal quality – may have serious anticompetitive consequences in and out of the lime industry, as well as with our coal suppliers.² Our coal suppliers also consider this information confidential, and their approval is required before we can release this data to any third party.

¹ Concerns about the public disclosure of facility-specific information were set forth in comments submitted to EIA by the National Lime Association, of which Mississippi Lime Company is a member, on September 10, 2007.

² Mississippi Lime Company deems fuel cost data confidential business information as well. However, we recognize that the "Total Cost of Coal Received During quarter on a C.I.F. Basis (dollars)" in Section II, item F, and "Commodity Cost" in Section VI, item J of Form EIA-3 will be protected as CBI by EIA.

Mississippi Lime Company Background

Mississippi Lime Company, a domestic private company, is a leading producer of high calcium lime and related lime products and technical services. It maintains production facilities in Ste. Genevieve, Missouri, Vicksburg, Mississippi, Chester, S. Carolina, Verona, Kentucky, and Weirton, West Virginia. Mississippi Lime Company's production facilities involve operation of kilns of various types and ages, with variable fuels, operational characteristics, and end product grades of lime.

Lime manufacturing is a relatively small but concentrated and extremely competitive industry. Therefore, Mississippi Lime Company maintains competitively sensitive information/data as trade secret and proprietary business information which qualifies as Confidential Business Information. This CBI, if made public, could readily influence production, marketing, and pricing decisions, as well as access to coal of proper grade and in proper quantity, within the lime industry. Individually or in combination these factors would have a direct negative impact on our business interests. In recent years, there has been increasing consolidation in the domestic lime industry and large companies and foreign entrants have used sensitive market information to put smaller companies at a competitive disadvantage. This conduct directly harms and disadvantages consumers over the long-run as they will have fewer choices of suppliers.

In order to enable Mississippi Lime Company to compete for the long term, the company has made substantial capital investments in new technologies and construction projects. We understand the need to collect information that allows EIA to provide Congress with basic statistics concerning coal consumption, stocks, prices, and quality for forecasting and Energy Act policy-making purposes. However, the limited CBI protection afforded data requested on revised Form EIA-3 threatens to penalize compliant companies by exposing their confidential business information to domestic and foreign competitors.

Overview

The EIA-3 Instructions (July 2011) note "'Total Cost of Coal Received During quarter on a C.I.F. Basis (dollars)' in Section II, item F, and 'Commodity Cost' in Section VI, item J [of Form EIA-3] will be protected" as CBI by EIA. And that "all other information reported on Form EIA-3 is considered public information and may be publicly released in company identifiable form."

We are unclear as to why EIA's longstanding practice of publishing all Form EIA-3 data only on an aggregated basis has been abandoned, but Mississippi Lime Company respectfully suggests that any administrative convenience offered in this CBI proposal by removing CBI protection is far out-weighted by the significant harm to compliant companies if certain data is publicly available. Moreover, the harm to industry competition and to Mississippi Lime Company in the marketplace is unnecessary to achieve the aforementioned goals of EIA.

To be clear, Mississippi Lime Company is not objecting to production of the requested fuels information, rather, we object to forced public disclosure of critical, strategic information, in non-aggregate form – including coal consumption and stocks, co-fired fuel quantity and quality, coal supplier location, and coal quality – to direct competitors.

Specific Examples of Competitive Harm

Publicly available fuel-related information can provide competitors with information influencing production, marketing, and pricing decisions. The type and quantity of coal consumption and stocks, the quantity and quality of co-fired fuel, the supplier location for each type of coal, and the quantity and quality of each type of coal consumed provides competitors with knowledge – both directly and indirectly – of fuel sources, of fuel consumption, and of production capacities, activities, and costs, as outlined below.

- ❖ Type and quantity of coal consumption and stocks. This information can be used by competitors to: 1) estimate the cost of coal used by a company (which is a significant component of total production cost), based on public knowledge of market availability and price for each type of coal, and 2) estimating the production capacities and activities of a company by understanding the amount of each type of fuel consumed and stockpiled, as coal usage correlates directly to lime production rates.
- ❖ Quantity and quality of co-fired fuel. This data can be used by competitors to gain insight to a company's production activity and cost. As with coal, understanding the quantity of co-fired fuel used, competitors can estimate the production capacities and activities of a company, as fuel usage correlates directly to lime production rates. Also, knowing the quality of co-fired fuel enables competitors to estimate the cost of the fuel, based on publicly available information concerning market availability and price for the fuel. So too is quality an indicator of fuel source, and such information, in conjunction with company locations, can be used by competitors to determine commodity and transportation costs of fuel used by a company, which are a significant component of total production cost.
- ❖ Supplier location for each type of coal. As with co-fired fuels, knowing the location of coal suppliers, in conjunction with company locations, enables competitors to determine commodity and transportation costs of coal used by a company, which are a significant component of total production cost.
- ❖ Quantity and quality of each type of coal. Understanding the quantity of coal consumed directly enables competitors to know the production capacities and activities of a company, as coal usage correlates directly to lime production rates. And, knowing the quality of coal consumed enables competitors to estimate the commodity cost of the fuel, based on publicly available information concerning market availability and price for the coal. Quality is also an indicator of fuel source (when such information is not directly provided) and such information, in conjunction with company locations, can be used by competitors

to determine commodity and transportation costs of fuel used by a company, which are a significant component of total production cost.

As demonstrated above, fuel-related information can be used by competitors to understand a significant portion of a company's production costs, and thereby modulate production, marketing, and pricing decisions outside of the free-market. In understanding facility-specific fuel costs, competitors can correlate such data to production capacities for estimating operating efficiencies of a particular facility or company as a whole. Placing such fuel-related data openly and specifically in the public realm provides competitors with access to information that they could not legally obtain by any other means, which could be used to disadvantage Mississippi Lime Company in the marketplace. It is also possible that larger firms could use this information to secure stocks of certain coal supplies in volume and at pricing that could impact its availability to Mississippi Lime Company.

Notably, it would be illegal per se under the antitrust laws for lime producers to share this type of data and adjust their pricing or output. 15 U.S.C. §1. Mississippi Lime Company maintains an effective antitrust compliance program which, in part, is designed to prevent release of competitively sensitive information. Public release of the extensive data envisioned by the revised Form EIA-3 would undermine these efforts. Further, while Mississippi Lime Company would not participate in any effort to inhibit free enterprise, release of the data heightens the risk in a concentrated market that others might engage in collusion. Absent the EIA compelled release of this information, such an effort would be much more difficult to arrange and police. Accordingly, we believe firmly that there are strong reasons to avoid release of confidential business information related to antitrust compliance and the risk of anticompetitive effects.

Summary

Mississippi Lime Company can envision no events or circumstances in which the identified confidential business information would lose its degree of sensitivity, either over the life of the company or with respect to the competitive nature of the lime industry. In fact, with the greater influx of foreign competition, the urgency to protect CBI and maintain a secure position within the industry has only increased in importance. In essence, Mississippi Lime Company protects basic operating data, including fuel-related data, intrinsic to lime manufacturing and fundamental to the operation of our facilities, as well as necessary for true, honest market competition and consumer pricing.

The potential misuse of Mississippi Lime Company's CBI, as outlined above, is not hypothesized. Many competitors in the industry are larger than us and are sophisticated. The "back calculations" described above could be readily performed by them to our detriment. For the reasons stated above, Mississippi Lime Company strongly encourages the EIA to consider our comments and maintain information requested on revised Form EIA-3 as confidential.

Ms. Barbara Mariner-Volpe
July 27, 2011
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It is our understanding that EIA and others, including the National Lime Association, are in the process of developing a formal mechanism to aggregate our industry's responses. This is not likely to be accomplished by the July 29, 2011 submittal deadline, however. Therefore, in light of the potential anticompetitive effects of the public disclosure of non-aggregated, facility-specific fuel information, Mississippi Lime Company is maintaining but withholding several elements of the information requested on revised Form EIA-3 (see attached form). We plan to provide the requested information to EIA when the formal mechanism which protects this data is in place.

We appreciate the challenges that DOE and EIA confront in working on our country's energy policies and many challenges. Coal is an important resource among our energy options, but we do not see, however, how revealing CBI can advance good decision-making. "Transparency," while laudable in the abstract, cannot be implemented without due regard for the commercial realities of affected industries and the potential anticompetitive consequences.

Your sister agency, the USEPA, went through a similar process earlier this year in connection with its Greenhouse Gas Reporting Program. The proposed elimination of CBI treatment for similar information items drew widespread negative reaction, not only from American industry but also the Federal Trade Commission and a number of influential members of Congress from both sides of the aisle. The USEPA, in collaboration with industry is working to revise its policy regarding CBI treatment for information that poses significant competitive harm. Mississippi Lime Company believes the USEPA reached the right conclusion, and respectfully urges DOE and EIA to do likewise.

We remain available to discuss the specifics of these concerns or respond to any follow up questions you may have. Thank you for your consideration of our suggestions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kimberly S. Lagomarsino", with a long horizontal flourish extending to the right.

Kimberly S. Lagomarsino, PhD
Director of Environmental Affairs

cc: Tejasvi Raghuveer, EIA
tejasvi.raghuveer@eia.gov