



VIA EMAIL

July 6, 2015

Department of Energy
Attention: Chad Whiteman
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 10102
735 17th Street NW, Washington DC 20503

RE: Comments to EIA-63C Survey

Dear Mr. Whiteman:

I am writing this on behalf of my client Indeck Ladysmith, LLC ("Ladysmith") in response to EIA's request for public comment regarding the EIA-63C Survey. Ladysmith is a 90,000 TPY biomass pellet facility and has been recognized as one of the entities that will be required to file the proposed monthly surveys.

Ladysmith has three concerns with the proposed survey; first in Part 4 Product Sales and Revenue Information Sections 4.1 and 4.2 the biomass facilities will be required to publish their exact amount of revenue sales ("Issue 1"); the second in Part 3 Densified Biomass Production and Inventory Information in Section 3.1 where the biomass facilities will be required to publish their exact total cost of feedstock ("Issue 2") and finally the third, in Section 3.4 where product stored as inventory is required at the end of the reporting period ("Issue 3"). The data for both Issues 1 and 2 are considered highly confidential and proprietary. If this information were to be published it could be detrimental to the economics of Ladysmith. Issue 3, when reported monthly, provides proprietary perspective on the facilities product, sales and marketing strategy in what can be a seasonal densified biomass pellet market, and thus could also be detrimental to the economics of Ladysmith.

It is clear that Ladysmith is not the only biomass facility that has a concern with Issue 1. In the Supporting Statement for Survey Clearance: Densified Biomass Fuel Report Part A: Justification, Appendix A-1, Comments Received in Response to the Open Federal Register Notice, Comment #6 addresses one of Ladysmith's concerns that "Revenue from sales is sensitive and must not be disclosed." Ladysmith further comments that sales revenue as well as the cost of feedstock are more than just sensitive, but rather confidential and proprietary.

The EIA's response to Comment #6 simply states that the EIA has an excellent track record in protecting sensitive data. This may be true, however the information supplied in Part A.10 of the Justification Report indicates to the contrary; it states: "...some statistics may be based on data from fewer than three respondents, or may be dominated by data from one or two large respondents. In

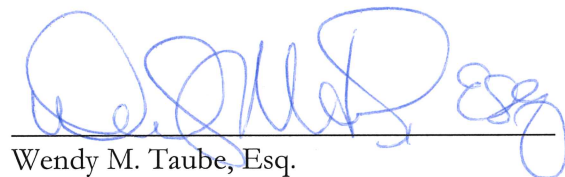
these cases, it may be possible for a knowledgeable person to estimate the information reported by a respondent.” This statement clearly indicates that at times it may not be possible to protect sensitive information. Furthermore, the EIA is required under the Federal Energy Administration Act to provide company-specific data to other Federal agencies when requested for official use. Additionally, the information in the reports may also be made available to other governmental agencies, any Committee of Congress, the Government Accountability Office, other federal agencies, or a court of competent jurisdiction. The concern, in light of the above statements, is how will the proprietary information be adequately protected especially information that is disseminated outside the EIA?

Another issue that needs to be addressed is the potential for violating anti-trust laws. If the confidential and proprietary pricing information in Issue 1 and Issue 2 are required to be reported and thus published; it appears to establish an environment conducive of price fixing, which would be a violation of the antitrust laws. Generally, antitrust laws require companies to establish prices and other terms on its own, without agreeing (either verbally, in writing or inferred from conduct) with a competitor. With the publication of Issue 1 and Issue 2 all the biomass facilities confidential and proprietary pricing information would be published, thus opening the door to potential price fixing.

For the above state reasons, Ladysmith respectfully requests that Issue 1 and Issue 2 not be included in the survey and that Issue 3 be reported annually. However, in the event the EIA determines it will require Issue 1 and Issue 2, Ladysmith subsequently requests that the EIA allow for two submittals of the EIA-63C, one that is unredacted for the EIA’s eyes only, and one that redacts the confidential and proprietary information in Issue 1 and Issue 2. Furthermore, since the EIA is required to provide company-specific data to certain Federal agencies, that any requests for the unredacted version must be required to submit a FOIA request so that the biomass facilities have the opportunity to protect their confidential and proprietary information. This format is similar to what the New York Public Service Commission allows with their Annual Reports for Lightly Regulated Generation Facilities.

Respectfully submitted,

The Law Offices of Wendy M. Taube, LLC
Attorney for Indeck Ladysmith, LLC



Wendy M. Taube, Esq.

cc: EIA at EIA-63C@eia.gov