

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Morgantown Power LLC

Docket No. EC26-58

Public Citizen Motion To Deny A Claim Of Privilege

We ask the Commission grant our motion, per 18 CFR § 385.212. Joint applicants maintain that the purchase price and structure of its payment for four 53-year old oil-fueled power plants cannot be disclosed to the public because “it constitutes information that is protected from public disclosure under FOIA Exemption 4, i.e., ‘trade secrets and commercial or financial information obtained from a person and privileged or confidential.’”¹ This contention is baseless, and the Commission should deny a claim of privilege per 18 CFR § 388.112(e) and grant the public access to Section 2.03 of the Purchase Agreement.

Morgantown is a public utility, which Congress deems “is affected with a public interest”.² Everything about Morgantown must operate in the public interest, which is why it must obtain the Commission’s approval to transfer ownership under the Federal Power Act. The information at issue here is a critical part of the Commission’s evaluation of the public interest in deciding whether to approve or deny the transfer application. The Commission should take that context into account in deciding whether to deny a claim of privilege under 18 CFR § 388.112(e).

1. Purchase Price of FERC-Jurisdictional Power Plants Are Routinely Available To The Public

Days ago, data center developer DigitalBridge announced it would pay \$1.1 billion for ArcLight’s fleet of power plants, many of which are in PJM.³ Weeks ago, a bitcoin miner seeking to pivot to data centers broadcast to the public that it would pay \$1.5 billion to buy a gas power plant and 1,600 acres to build a data center in PJM.⁴ Two months ago, LS Power announced it was buying five gas-fired power plants from Constellation for \$5

¹ At page 1, https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260427-5179

² 16 USC § 824(a).

³ www.utilitydive.com/news/digitalbridge-arclight-data-center-deal/821199/

⁴ www.reuters.com/business/energy/mara-buy-ohio-gas-plant-operator-long-ridge-15-billion-it-pivots-beyond-bitcoin-2026-04-30/

billion, or \$1.14 million/MW.⁵ Five months ago, Talen proclaimed it was buying three natural gas power plants from Energy Capital Partners for \$3.45 billion,⁶ and Vistra publicized it would purchase 10 natural gas power plants for \$4 billion.⁷ Data center owner Blackstone revealed it paid \$1 billion for an eight-year old gas plant in PJM.⁸ Joint applicants offer no explanation as to why their transaction involving 53-year old power plants must be privileged, while transactions involving newer power plants in the same PJM market freely publish their purchase price.

Moreover, Joint applicants ignore FOIA's 2016 amendments, 5 USC § 552(a)(8)(A)(i), which imposes on agencies that seek to prevent disclosure of information an "independent and meaningful burden" to show that the disclosure would result in foreseeable harm to an interest protected by Exemption 4. [*Leopold v. DOJ*, 94 F.4th 33, 37 (D.C. Cir. 2024) (citation omitted); *see id.* (stating that the 2016 amendments "further limited withholding pursuant to all exemptions, except Exemption 3"). "[A]pplication of the foreseeable-harm standard to Exemption 4 requires a showing of 'foreseeable commercial or financial harm to the submitter upon release of the contested information.'" *Shteynlyuger v. Centers for Medicare & Medicaid Servs.*, 698 F. Supp. 3d 82, 124 (D.D.C. 2023); *see Seife v. FDA*, 43 F.4th 231, 240 (2d Cir. 2022) (stating that the exemption's "protected interests are the submitter's commercial or financial interests, and the ... foreseeable harm requirement refers to harm to the submitter's commercial or financial interests").] Joint applicants offer no justification as to how harms to the interest to confidentiality arising from disclosure are reasonably foreseeable, given the fact that dozens of competing power plants in the same geographic market have freely publicized their purchase price in just the last few months.

⁵ www.utilitydive.com/news/ls-power-constellation-pjm-gas-power-plant/815168/

⁶ <https://ir.talenenergy.com/news-releases/news-release-details/talen-energy-continues-portfolio-expansion-acquisition>

⁷ <https://investor.vistracorp.com/2026-01-05-Vistra-Adds-to-its-Industry-Leading-Generation-Portfolio-with-Acquisition-of-Cogentrix>

⁸ www.citizen.org/article/may-blackstone-potomac-energy-center-data-center/

2. Morgantown’s Purchase Price Has Been Publicly Reported Since 2000

When Pepco sold Morgantown and its other power generation assets in 2000, the purchase price of \$2.75 billion was widely reported.⁹ NRG publicly shared that it purchased Morgantown and GenOn for \$1.7 billion in 2017.¹⁰ Morgantown has a quarter-century history of having its purchase price in the public record.

3. Section 2.03 of the Purchase Agreement [REDACTED]

Our March 4 filing noted that “TeraWulf is beset by operational and financial challenges that call into question its competence to operate Commission-jurisdictional power facilities and adhere to the public interest.”¹¹ [REDACTED]

[REDACTED] non-public communications between TeraWulf’s CEO and the Governor of Maryland reveal that TeraWulf is seeking \$100 million in taxpayer money to help cover costs associated with the Morgantown acquisition. Section 2.03 must be made public, [REDACTED]

[REDACTED] *Insider Inc. v. Gen. Servs. Admin.*, 92 F.4th 1131, 1133 (D.C. Cir. 2024) (“Congress enacted the Freedom of Information Act (FOIA) ‘to pierce the veil of administrative secrecy and open agency action to the light of public scrutiny,’ and thereby to ‘achieve greater transparency in support of open government.’” (citation

⁹ www.power-eng.com/operations-maintenance/pepco-completes-sale-of-power-plants-for-275-billion/

¹⁰ www.wsj.com/articles/fight-with-power-plant-owners-snarls-genons-restructuring-1505330723

¹¹ At page 3, https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260304-5086

omitted)); *see also CNA Financial Corp. v. Donovan*, 830 F.2d 1132 n.1 (D.C. Cir. 1987) (noting that agency has discretion whether to release information).

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. TeraWulf's plan to immediately convert the oil-fueled units into natural gas materially changes the facility, rendering any claim to privileged treatment of the purchase price moot

TeraWulf plans to immediately convert the oil-fueled Morgantown units into natural gas, utilizing 20 miles of needed natural gas pipeline running either through the existing CSX rail right of way through Charles County, MD to connect to Berkshire Hathaway's Eastern Gas transmission line; repurposing the long-dormant Piney Point Oil Pipeline system running east under the Wicomico River to potentially serve an unconstructed LNG import facility at Piney Point; or developing an LNG import facility onsite at Morgantown. TeraWulf's planned improvements will fundamentally transform the existing Morgantown units, rendering any claim of confidentiality moot.

Respectfully submitted,

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