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March 3, 2016

Julie E. Adams
Secretary of the Senate
232 Hart Senate Office Building
Washington, D.C. 20510-7116
lobby@sec.senate.gov

Karen L. Haas
Clerk of the House of Representatives
U.S. Capitol, Room H154
Washington, DC 20515-6601
info.clerkweb@mail.house.gov

Re: Potential violation of the Honest Leadership and Open Government Act by the Commercial Energy Working Group

Dear Ms. Adams and Ms. Haas,

The Lobbying Disclosure Act of 1995 (2 USC § 1603) requires organizations to register their lobbying activities with the U.S. Congress. Amendments in 2007 through the Honest Leadership and Open Government Act (HLOGA) (2 USC § 1603(b)(3)(A) and (B)) stipulate that registrants list “the name, address, and principal place of business of any organization, other than the client, that contributes more than \$5,000 to the registrant or the client in the quarterly period to fund the lobbying activities of the registrant, and actively participates in the planning, supervision, or control of such lobbying activities.” The purpose of this law is to ensure that companies or entities seeking to lobby cannot remain anonymous if they are significant financial sponsors and organizers of a lobbying coalition.

Summary of Findings:

- The Commercial Energy Working Group is an advocacy organization that does not disclose the individual companies or entities that constitute its active membership.
- The Commercial Energy Working Group operates out of the offices of Sutherland, Asbill & Brennan.
- The Commercial Energy Working Group is extremely active in influencing public policy, with a representative serving on a U.S. Commodity Futures Trading Commission Advisory Committee, and attorneys representing the organization frequently file comments before the CFTC, FERC, the Federal Reserve, the Securities and Exchange Commission, and Congress.
- While the membership of the Commercial Energy Working Group is private, through a variety of agency FOIA-related disclosures, Public Citizen has been able to piece together five

probable members: Vitol Inc., Royal Dutch Shell, NextEra Energy, ConocoPhillips and Hess Corp.

- In the second quarter of 2015, Sutherland, Asbill & Brennan filed a Lobby Report with Congress on behalf of the Commercial Energy Working Group listing \$60,000 in lobbying income.¹
- Contrary to the disclosure requirement of HLOGA for lobbying coalitions, the Commercial Energy Working Group does not disclose its active members either on a web page or in lobbying reports.

Public Citizen hereby requests that the Secretary of the Senate and the Clerk of the House investigate the Commercial Energy Working Group for possible violation of the Honest Leadership and Open Government Act for failing to disclose members who contributed more than \$5,000 in the second quarter of 2015.

The Commercial Energy Working Group And Its Lobbying Activities

The Commercial Energy Working Group doesn't have a web site; it has no incorporation records in any state; and no entity by its name has filed a Form 990 with the Internal Revenue Service. A May 9, 2013 Lobbying Registration form submitted by Sutherland, Asbill & Brennan lists the mailing address of the Commercial Energy Working Group as 700 Sixth St NW in Washington, DC—the same address as Sutherland, Asbill & Brennan.² Since then, Sutherland, Asbill & Brennan has filed Lobbying Reports each quarter, listing the Commercial Energy Working Group as its client, with income ranging from \$10,000 to \$60,000 per quarter.

The Commercial Energy Working Group describes itself as “a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities.”³

The Commercial Energy Working Group, in a variety of filings before the Federal Energy Regulatory Commission, the Commodity Futures Trading Commission, the Securities and Exchange Commission, the Federal Reserve, Congress, and other federal executive agencies, is always represented by Sutherland, Asbill & Brennan.

Despite refusing to identify its members who actively support the organization's mission, the Commercial Energy Working Group spends significant expenditures attempting to influence the legislative and regulatory operations of the federal government.

For example, Ron S. Oppenheimer serves as “Representative” of the Commercial Energy Working Group on the CFTC's Energy & Environmental Markets Advisory Committee.⁴ In addition to serving as a representative for CEWG, Mr. Oppenheimer is employed as a Senior Vice-President and General Counsel for Vitol, Inc. It is important to note that in his service on the Advisory Committee, his affiliation is with CEWG, and not with Vitol, Inc.

¹ <http://disclosures.house.gov/ld/ldxmlrelease/2015/Q2/300744464.xml>

² <http://disclosures.house.gov/ld/ldxmlrelease/2013/RR/300587229.xml>

³ FERC Docket RM15-23, Footnote 1, filed January 27, 2016 <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14126511>

⁴ www.cftc.gov/About/CFTCCommittees/EnergyEnvironmentalMarketsAdvisory/eemac_associatemembers

According to an “External Meeting” record at the CFTC, on April 15, 2015 there was a “Meeting with Commercial Energy Working Group” with certain CFTC staff. Attendees included Bob Reilley (Shell), James Allison (ConocoPhillips), Ronald Oppenheimer (Vitol Inc.), Michael Sweeney (Sutherland Asbill & Brennan), Meghan Gruebner (Sutherland, Asbill & Brennan).⁵

On June 10, 2015, the Commercial Energy Working Group held another “External Meeting” with certain CFTC officials. In attendance for the Commercial Energy Working Group were: Ron Oppenheimer (Vitol Inc.), Jim Allison (ConocoPhillips), Michael Sweeney (Sutherland Asbill & Brennan LLP) and Meghan Gruebner (Sutherland Asbill & Brennan LLP).⁶

A similar “External Meeting” occurred on July 28, 2015. In attendance on behalf of the Commercial Energy Working Group were: Ron Oppenheimer (Vitol), Michael Sweeney (Sutherland Asbill & Brennan), James Allison (ConocoPhillips), and Meghan Gruebner (Sutherland Asbill & Brennan).⁷

A document from a 2013 meeting at the CFTC identified five “Working Group Members Attending”: Chuck Cerria, Trading Counsel, Hess Corporation; Brian Duncan, Senior Attorney, NextEra Energy Resources; Ron Oppenheimer, Senior Vice President and General Counsel, Vitol, Inc.; Matt Picardi, Vice-President, Regulatory Affairs North Region, Shell Trading (US) Company; R. Michael Sweeney Jr, Partner, Sutherland Asbill & Brennan LLP.⁸

In addition, a number of public documents note executive branch and Congressional lobbying by the Commercial Energy Working Group without identifying any of its members.⁹

Potential Violation of 2 USC § 1603(b)(3)(A) and (B)

The Lobbying Disclosure Act as amended by HLOGA requires registrants to list “the name, address, and principal place of business of any organization, other than the client, that contributes more than \$5,000 to the registrant or the client in the quarterly period to fund the lobbying activities of the registrant, and actively participates in the planning, supervision, or control of such lobbying activities.” In the second quarter of 2015, Sutherland Asbill & Brennan reported it received \$60,000 from the Commercial Energy Working Group to lobby on commodity market and derivative issues.

The Commercial Energy Working Group would have to have a minimum of 12 members in the second quarter of 2015 to be exempted from the law’s requirement that its paying members of more than \$5,000 be listed on its disclosure form. But records posted as part of agency FOIA-related disclosures document the Commercial Energy Working Group’s activities only reveal five members: Vitol, Inc;

⁵ www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/dfmeeting_041515_2371

⁶ www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/dfmeeting_061015_2482

⁷ www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/dfmeeting_072815_2382

⁸ www.cftc.gov/idc/groups/public/@swaps/documents/dfs submission/dfs submission_092513_2267_0.pdf

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[https://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/pdf/commodity%20markets%20council%20and%20commercial%20energy%20working%20group%20support%20of%20h.r.%202289%20\(commodity%20end-user%20relief%20act\)%20\(june%205,%202015\).pdf](https://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/pdf/commodity%20markets%20council%20and%20commercial%20energy%20working%20group%20support%20of%20h.r.%202289%20(commodity%20end-user%20relief%20act)%20(june%205,%202015).pdf) and www.agriculture.senate.gov/imo/media/doc/Commerical%20Energy%20Working%20Group.pdf and www.fdic.gov/regulations/laws/federal/2014/2014-covered_swap_entities-c_19.pdf and www.federalreserve.gov/SECRS/2016/February/20160204/R-1415/R-1415_013116_130181_508326432974_1.pdf and www.commoditymks.org/wp-content/uploads/2016/02/WG-CMC-FIA-API-Letter-in-Support-of-S.Amdt_3077-to-S.2012-Energy-Policy-Mod.-Act-Feb.-9-20161.pdf

Royal Dutch Shell; Hess Corp; ConocoPhillips; and NextEra Energy. There is a possibility that one or several members of the Commercial Energy Working Group exceeded the \$5,000 quarterly contribution amount in the second quarter of 2015, and therefore should have been required to disclose such membership in the CEWG.

Public Citizen hereby requests that the Secretary of the Senate and the Clerk of the House investigate the Commercial Energy Working Group for possible violations of the Lobbying Disclosure Act.

Respectfully submitted,

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