

Attachment A



March 30, 2018

VIA ELECTRONIC MAIL

Alexander Morris
U.S. Department of Energy
FOIA Requester Service Center
1000 Independence Avenue, SW
Mail Stop MA-46
Washington, DC 20585
Phone: 202-586-5955
Email: alexander.morris@hq.doe.gov

RE: Freedom of Information Act request – DOE Communications: NETL Report, “Reliability, Resilience, and the Oncoming Wave of Retiring Baseload Units, Volume I: The Critical Role of Thermal Units During Extreme Weather Events”

Dear Mr. Morris:

On behalf of the Sierra Club, I write to request that the United States Department of Energy (“DOE”) provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the regulations of the Department of Energy set forth at 10 C.F.R. § 1004.

Sierra Club is the nation’s oldest grassroots environmental organization. It has more than 2.9 million members and supporters nationwide. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club’s purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Sierra Club is leading a non-governmental organization seeking to educate and mobilize the public on issues of climate change, fossil fuel energy and clean energy. It has been conducting multiple campaigns around these issues, including its Beyond Coal Campaign and

Dirty Fuels Campaign. This request is made on behalf of those campaigns, as well as the organization's long standing interest in government accountability and transparency.

On March 13, 2018, a Department of Energy subunit, the National Energy Technology Laboratory ("NETL") released a report entitled Reliability, Resilience and the Oncoming Wave of Retiring Baseload Units, Volume I: The Critical Role of Thermal Units During Extreme Weather Events Reliability (2018) (hereinafter "NETL Report").¹ This report contains analysis relevant to Sierra Club's efforts to educate its members and the general public regarding energy sector issues. Moreover, given previous statements by certain Department officials concerning the need for "baseload units," we seek to understand and educate the public about how NETL's work was informed or influenced by other DOE personnel and outside entities.

Requested Records:²

Sierra Club requests Records of the following type in the possession, custody, or control of DOE, and including but not limited to any subunits such as the National Energy Technology Laboratory ("NETL"):

1. All emails, text messages, faxes, voice mails, and other form of communications between officials and staff at DOE and any of its subunits such as NETL, and any outside entity or individual concerning or related to the NETL Report, or any topics evaluated in that Report. We request that records be searched for all DOE officials and staff with any involvement in the NETL Report, including but not limited to Secretary Rick Perry, Brian McCormack, Dan Brouillette, Travis Fisher, Peter Balash, John Brewer, Kenneth C. Kern, Chris Nichols, Justin Adder, Gavin Pickenpaugh, and Erik Shuster, ("DOE and NETL Personnel"),
2. All calendars, whether electronic or in paper format, of the above-listed DOE and NETL personnel for the time period starting January 1, 2018 through the present.
3. All sign-in sheets or other records memorializing attendance at any meetings with the DOE and NETL Personnel for the above-listed time period at which a person outside of DOE was in attendance.

¹ This report is available at <https://www.netl.doe.gov/energy-analyses/temp/Power System Reliability Report Published.pdf> (last visited Mar 29, 2018).

² "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of Department of Energy and its underlying offices.

Exempt Records

If you regard any of the requested records to be exempt from required disclosure under FOIA, I request that you disclose them nevertheless; as such disclosure would serve the public interest of educating citizens. *See* 10 C.F.R. § 1004.1 (authorizing disclosure of documents exempt from FOIA disclosure where such disclosure is in the public interest).

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for the Club to appeal the denial. To comport with legal requirements this information must include:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of the records requested are exempt from disclosure, please segregate the exempt portions and mail the remaining records within the statutory time limits after the exempted material has been redacted from the records the Club is seeking.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 10 C.F.R. § 1004.9(a)(8). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA. The Department has previously waived fees associated with requested submitted by the Sierra Club (DOE FOIA Request HQ-2017-00991-F).

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to maintain public websites containing the requested information, so the public can access this important information regarding pollution in their communities.

As explained below, this FOIA request satisfies the factors listed in DOE's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 10 C.F.R. § 1004.9(a)(8).

1. The subject matter of the requested records must specifically concern identifiable “operations and activities of the government.”

The requested records relate to DOE’s evaluations of energy markets and reliability. These activities are unquestionably “identifiable operations or activities of the government.” The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government.

2. The disclosure of the requested documents must have an informative value and be “likely to contribute to an understanding of Federal government operations or activities.”

The FOIA Guide makes it clear that, in the Department of Justice’s view, the “likely to contribute” determination hinges in part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of your agency’s activities and decisions related to DOE’s evaluations of energy markets and reliability. This information will facilitate meaningful public participation in the decision-making process, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined.

The Sierra Club and its members have long-standing experience and expertise in the subject area of FOIA requests, specifically, issues related to the Federal Power Act, Clean Air Act, Clean Water Act, and the development and use of energy resources and protection of endangered species. Sierra Club also has a long standing interest in government accountability and transparency.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, including, but not limited to: analysis and distribution to the media, distribution through publication and mailing, posting on the Club’s website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 40,730 unique visits and 100,381 page views; on average, the site gets 104 visits per day. Sierra Magazine, which is a quarterly magazine published by the Sierra Club, has a circulation of approximately 1,000,000. Sierra Club Insider, an electronic newsletter, is sent to over 850,000 people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, the Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on our various webpages, such as

our Beyond Coal Campaign portal, our Clean Energies Solutions portal and our press releases.³ Sierra Club intends to share the information received from this FOIA request with the public.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure must contribute “significantly” to public understanding of government operations or activities. The public’s understanding must be likely to be enhanced by the disclosure to a significant extent.

The records requested will contribute to the public understanding of the DOE’s “operations and activities,” as the requested records relate to DOE’s evaluations of energy markets and reliability. The disclosure of the requested records is essential to the public’s understanding of DOE’s operations and activities. After disclosure of these records, the public understanding of DOE’s activities will be significantly enhanced. The requirement that disclosure must contribute “significantly” to the public understanding is therefore met.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the “public interest” in disclosure. If no commercial interest exists, an assessment of that nonexistent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not “primarily” in the Sierra Club’s commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It

³ For example, the Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. *See* <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuelexports-oregon>.

will contribute significantly to public understanding of DOE's activities related to evaluations of energy markets and reliability.

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that DOE waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

We request that the DOE, in responding to this request, comply with all relevant deadlines and other obligations set forth in FOIA and the agency's regulations. 5 U.S.C. § 552, (a)(6)(A)(i); 10 C.F.R. § 1004. Please produce the records above in a timely manner by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for-or the deliberation concerning-certain records delay the production of others that the agency has already retrieved and elected to produce.

Lauren Hogrewe
lauren.hogrewe@sierraclub.org

- or -

Lauren Hogrewe
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
415-977-5789

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415-977-5789 or by e-mail at lauren.hogrewe@sierraclub.org.

Sincerely,



Lauren Hogrewe
Litigation Assistant
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5789
lauren.hogrewe@sierraclub.org

Cc: Ann Guy, FOIA/Privacy Act Officer
National Energy Technology Laboratory
626 Cochrans Mill Road
P.O. Box 10940
Pittsburgh, PA 15236-0940
Email: ann.guy@NETL.doe.gov