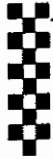


# Attachment B



APR 23 2018 01

OTHER - 2 HOURS SEARCH FREE, 100 FREE PAGES

Pub Int

April 20, 2018

**VIA MAIL AND FACSIMILE**

FOIA Requester Service Center  
1000 Independence Ave., SW  
Mail Stop MA-46  
Washington, DC 20585  
Facsimile: (202) 586-0575

**RE: *Records Relating to Department of Energy Emergency Orders***

Dear FOI Officers:

This is a request for information on behalf of Sierra Club pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the U.S. Department of Energy's (the "Department") FOIA regulations, 10 C.F.R. pt. 1004. Sierra Club also requests a fee waiver for this request under 5 U.S.C. § 552(a)(4)(A)(iii) and 10 C.F.R. § 1004.9(a)(8).

**I. Records Requested**

Sierra Club requests the following records concerning the Department's administration of section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c). This request is limited to records generated or received by the Department on or after October 1, 2016 through the date upon which the Department begins searching for records responsive to this request.

- (1) All records relating to any request or proposal that the Department exercise its authority under section 202(c) of the Federal Power Act, 16 U.S.C. § 824a.

Kyle

For purposes of this request, the term "records" means information of any kind, including, but not limited to, documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letters, e-mails, facsimiles, memoranda, correspondence, notes, 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. As used herein, "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any information which might be deemed outside their scope by any other construction.

Further, for purposes of this request, the term "records" includes any personal email messages, telephone voice mails or text messages, and internet "chat" or social media messages, to the full extent that any such messages fall within the definition of "agency records" subject to FOIA, 5 U.S.C. § 552.

We remind you that FOIA requires that you respond within 20 working days of your receipt of this request, see 5 U.S.C. § 552(a)(6)(A)(i), and that that response must "at least indicate within the relevant time period the scope of the documents [you] will produce and the exemptions [if any you] will claim with respect to any withheld documents." *Citizens for Responsibility and Ethics in Washington v. F.E.C.*, 711 F.3d 180, 182-83 (D.C. Cir. 2013).

We ask that you disclose this information as it becomes available without waiting until all of the communications and records have been assembled for the time period requested. We request electronic copies of the records whenever possible.

If any aspect of the above-described request is ambiguous or unclear, or if you would like to discuss the requests' scope, please do not hesitate to contact me.

## **II. Date Range of the Records Requested**

On June 26, 2017 Sierra Club submitted a FOIA request seeking the same records described in Section I - Records Requested above.<sup>1</sup> Our earlier request, which the Department assigned to its Office of Electricity Delivery and Energy Reliability with reference number HQ-2017-01331-F, covered all records generated or received by the Department on or after October 1, 2016. This new request covers records generated or received by the Department from October 1, 2016 through the date upon which the Department begins searching for records responsive to this request,

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<sup>1</sup> See Letter from Sanjay Narayan, Sierra Club, to FOI Officers, U.S. Department of Energy, *Re Records Relating to Department of Energy Emergency Orders* (June 26, 2017) at 1-2, attached as Ex. 1.

excluding any records already covered by the June 26, 2017 request (HQ-2017-01331-F). If any record covered by the June 26, 2017 request was subsequently modified or transmitted, such modification or transmission qualifies as a separate record for the purposes of this request, and should therefore be included among the responsive records. This request does not modify—and should not affect the processing of—the June 26, 2017 request.

### III. Claims of Exemption from Disclosure

If the Department regards any documents as exempt from required disclosure under the Freedom of Information Act, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency's justification for withholding it. This explanation should take the form of a *Vaughn* index, as described in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and other related cases. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure. Finally, if a document does not exist, please indicate that in your written response.

### IV. Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 10 C.F.R. § 1004.9(a)(8), Sierra Club requests that the Department waive all fees associated with responding to this request. Sierra Club seeks this information in the public interest and will not benefit commercially from this request. The Department granted a fee waiver for Sierra Club's June 26, 2017 FOIA request seeking the same records described in Section I – Records Requested above.<sup>2</sup> Sierra Club believes we are entitled to a fee waiver for substantially the same reasons described below. If the Department does not waive the fees entirely, Sierra Club requests that it reduce them to the extent possible.

FOIA provides that fees shall be reduced “if 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); 10 C.F.R. § 1004.9(a)(8). Sierra Club's request meets both prongs of that standard, as set forth below.

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<sup>2</sup> See Letter from Alexander Morris, U.S. Department of Energy, to Sanjay Narayan, Sierra Club, *Re: HQ-2017-01331-F* (June 29, 2017) at 2, attached as Ex. 2.

**A. The Request Will Contribute Significantly to Public Understanding of the Department's Operations and Activities.**

The Department's regulations enumerate four factors by which to determine whether a request will contribute significantly to public understanding, so as to require a waiver of fees under FOIA:

- (1) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) The contribution to an understanding of the subject by the general public likely to result from disclosure, and
- (4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

10 C.F.R. § 1004.9(a)(8)(i). As set forth below, each of those factors indicates that this request qualifies for a waiver of fees under FOIA.

- (1) **The request concerns the operations or activities of the government.**

Sierra Club seeks information related to the Department's operations and activities—specifically, its exercise of its emergency powers under the Federal Power Act, 16 U.S.C. § 824a.

- (2) **The disclosure is "likely to contribute" to an understanding of government operations and activities.**

The Department has itself acknowledged the importance to the public of the matters addressed by the orders, emphasizing the public importance of its actions relating to "energy security and reliability," and the need to study, *inter alia*, federal "interventions" into the markets and state mechanisms that normally govern electricity generation. Memorandum from Rick Perry dated April 14, 2017. Moreover, the Department's Orders authorize the Grand River and Yorktown coal-fired power plants to operate without complying with applicable environmental laws and regulations, including the Environmental Protection Agency's Mercury and Air Toxics Standards, promulgated under the Clean Air Act, 42 U.S.C. § 7412. The orders thereby permit pollution which, according to the EPA, threatens

significant harm to public health and the environment. *See* 77 Fed. Reg. 9304, 9310 (Feb. 16, 2012). The disclosure will contribute to the public understanding of its exposure to those harms, and the Department's reasons for permitting that exposure.

**(3) The information will contribute to the understanding of a reasonably broad audience of persons interested in the subject.**

This information will contribute to the understanding of a reasonably broad audience of persons interested in the subject. Sierra Club is well positioned to ensure that the information requested will be disseminated to the general public. Sierra Club is the nation's oldest and largest grassroots environmental organization, with more than 2.7 million members and supporters, including online activists and newsletter subscribers. Its website is highly trafficked and Sierra Club media and communications reach hundreds of thousands of people through an extensive digital communications network and online information system, print magazine, radio show, web videos, and news reports.

In addition, Sierra Club has the ability and intention to convey the information sought by this request to interested members of the public. Sierra Club can publicize information received from this request in monthly electronic newsletters, through social media, and email action alerts, which together reach hundreds of thousands of members, supporters, and subscribers. Sierra Club maintains chapters in both Oklahoma and Virginia, with the ability to disseminate information regarding the orders within the States in which the Department has deemed an emergency to exist, and where much of the pollution authorized by the Order will occur. And Sierra Club has demonstrated its ability to analyze and disseminate information from the Department of Energy to the public, in a fashion that enhances public understanding of the Department and its activities.<sup>3</sup> Sierra Club's communications staff can also disseminate newsworthy information obtained from this request to the media.

In sum, Sierra Club has the ability to digest and disseminate information gleaned from FOIA requests to the general public, and will make any newsworthy information or documents received in response to this request publicly available. It will further integrate that information with the Sierra Club's existing educational efforts regarding energy and environmental policy, both within Virginia and Oklahoma, and nationally.

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<sup>3</sup> A recent example is available at <https://www.docdroid.net/G6n1mYC/sierra-club-clean-energy-jobs-report-final-1.pdf>



**(4) The information will contribute "significantly" to public understanding of government operations or activities.**

The information Sierra Club seeks will contribute significantly to public understanding of the Department's decisions, especially as regards electricity generation and the environment. The Department's Emergency Orders exercise an infrequently used statutory authority, and do so without the administrative processes that accompany most other Department decisions. See 18 C.F.R. Part 385. As a result, the public currently has no opportunity to understand the manner in which the Department has made the decisions embodied in those orders. The requested information is likely to provide that opportunity, by disclosing the process and substance by which the Department reached the decision to determine that the emergencies described in the orders existed, and to prescribe the relief provided by the orders. They will therefore significantly aid public understanding of the Department's decision-making process. As discussed above, Sierra Club intends to make any newsworthy information or documents received in response to this request publicly available and will use them as the bases for public advocacy.

**B. The Sierra Club Has No Commercial Interest in Disclosure**

Sierra Club is a non-profit organization with no commercial, trade, or profit interests in the requested information. We seek to use this information solely to inform the public and to ensure government accountability, as well as to enhance public understanding of public health and the environment and its relationship to the nation's environmental and energy laws. Sierra Club has no relevant commercial interest, and the request is entirely in the public interest.

For all of the foregoing reasons, a fee waiver is warranted here under 5 U.S.C. § 552(a)(4)(A)(iii) and 10 § C.F.R. 1004.9(a)(8). If the Department does not believe that the above information is sufficient to justify a fee waiver, please contact us for further documentation before deciding upon the waiver request.

**V. Conclusion.**

Thank you for your assistance processing this request. Please contact me at the email or telephone number below if you have any questions or concerns about this request for information.

Sincerely,

*/s/ Sanjay Narayan* \_\_\_\_\_

Sanjay Narayan  
Sierra Club Environmental Law Program  
2101 Webster St., Ste. 1300  
Oakland CA 94612  
(415) 977-5769  
sanjay.narayan@sierraclub.org



**Exhibit 1**



June 26, 2017

**VIA MAIL AND FACSIMILE**

FOIA Requester Service Center  
1000 Independence Ave., SW  
Mail Stop MA-46  
Washington, DC 20585  
Facsimile: (202) 585-0575

**RE: *Records Relating to Department of Energy Emergency Orders***

Dear FOI Officers:

This is a request for information on behalf of Sierra Club pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the U.S. Department of Energy's (the "Department") FOIA regulations, 10 C.F.R. pt. 1004. Sierra Club also requests a fee waiver for this request under 5 U.S.C. § 552(a)(4)(A)(iii) and 10 C.F.R. § 1004.19(a)(8).

**I. Records Requested**

Sierra Club requests the following records concerning the Department's administration of section 202(c) of the Federal Power Act, 18 U.S.C. § 824a(c). This request is limited to records generated or received by the Department on or after October 1, 2016.

- (1) All records relating to the Department's order number 202-17-1, dated April 14, 2017, determining that an emergency exists in Oklahoma, and directing the Grand River Dam Authority to generate electricity from Unit No. 1 of the Grand River Energy Center;

**Exhibit 1**

- (2) All records relating to the Department's order number 202-17-2, dated June 16, 2017, determining that an emergency exists in Virginia, and ordering Dominion Energy Virginia to operate Units Nos. 1 and 2 of the Yorktown Power Station;
- (3) All records relating to any requests to extend the determinations or requirements of the Department's Orders Nos. 202-17-1 and 202-17-2, including any extension pursuant to section 202(c)(4), 18 U.S.C. § 824a(c)(4); and,
- (4) All records relating to any other request or proposal that the Department exercise its authority under section 202(c) of the Federal Power Act, 18 U.S.C. § 824a.

For purposes of this request, the term "records" means information of any kind, including, but not limited to, documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letters, e-mails, facsimiles, memoranda, correspondence, notes, 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. As used herein, "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any information which might be deemed outside their scope by any other construction.

Further, for purposes of this request, the term "records" includes any personal email messages, telephone voice mails or text messages, and internet "chat" or social media messages, to the full extent that any such messages fall within the definition of "agency records" subject to FOIA, 5 U.S.C. § 552.

We remind you that FOIA requires that you respond within 20 working days of your receipt of this request, *see* 5 U.S.C. § 552(a)(6)(A)(i), and that that response must "at least indicate within the relevant time period the scope of the documents [you] will produce and the exemptions [if any you] will claim with respect to any withheld documents." *Citizens for Responsibility and Ethics in Washington v. F.E.C.*, 711 F.3d 180, 182-83 (D.C. Cir. 2013).

We ask that you disclose this information as it becomes available without waiting until all of the communications and records have been assembled for the time period requested. We request electronic copies of the records whenever possible.

If any aspect of the above-described request is ambiguous or unclear, or if you would like to discuss the requests' scope, please do not hesitate to contact me.

## Exhibit 1

### II. Claims of Exemption from Disclosure

If the Department regards any documents as exempt from required disclosure under the Freedom of Information Act, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency's justification for withholding it. This explanation should take the form of a *Vaughn* index, as described in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and other related cases. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure. Finally, if a document does not exist, please indicate that in your written response.

### III. Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 10 C.F.R. § 1009.10(a)(8), Sierra Club requests that the Department waive all fees associated with responding to this request. Sierra Club seeks this information in the public interest and will not benefit commercially from this request. If the Department does not waive the fees entirely, Sierra Club requests that it reduce them to the extent possible.

FOIA provides that fees shall be reduced "if 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); 10 C.F.R. § 1009.10(a)(8). Sierra Club's request meets both prongs of that standard, as set forth below.

#### A. The Request Will Contribute Significantly to Public Understanding of the Department's Operations and Activities.

The Department's regulations enumerate four factors by which to determine whether a request will contribute significantly to public understanding, so as to require a waiver of fees under FOIA:

- (1) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether the disclosure is

## Exhibit 1

likely to contribute “significantly” to public understanding of government operations or activities.

10 C.F.R. § 1009.10(a)(8)(i). As set forth below, each of those factors indicates that this request qualifies for a waiver of fees under FOIA.

**(1) The request concerns the operations or activities of the government.**

Sierra Club seeks information related to the Department’s operations and activities—specifically, its exercise of its emergency powers under the Federal Power Act, 18 U.S.C. § 824a.

**(2) The disclosure is “likely to contribute” to an understanding of government operations and activities.**

The Department has itself acknowledged the importance to the public of the matters addressed by the orders, emphasizing the public importance of its actions relating to “energy security and reliability,” and the need to study, *inter alia*, federal “interventions” into the markets and state mechanisms that normally govern electricity generation. Memorandum from Rick Perry dated April 14, 2017. Moreover, the Department’s Orders authorize the Grand River and Yorktown coal-fired power plants to operate without complying with applicable environmental laws and regulations, including the Environmental Protection Agency’s Mercury and Air Toxics Standards, promulgated under the Clean Air Act, 42 U.S.C. § 7412. The orders thereby permit pollution which, according to the EPA, threatens significant harm to public health and the environment. *See* 77 Fed. Reg. 9303, 9310-14 (Feb. 16, 2012). The disclosure will contribute to the public understanding of its exposure to those harms, and the Department’s reasons for permitting that exposure.

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## Exhibit 1

In addition, Sierra Club has the ability and intention to convey the information sought by this request to interested members of the public. Sierra Club can publicize information received from this request in monthly electronic newsletters, through social media, and email action alerts, which together reach hundreds of thousands of members, supporters, and subscribers. Sierra Club maintains chapters in both Oklahoma and Virginia, with the ability to disseminate information regarding the orders within the States in which the Department has deemed an emergency to exist, and where much of the pollution authorized by the Order will occur. And Sierra Club has demonstrated its ability to analyze and disseminate information from the Department of Energy to the public, in a fashion that enhances public understanding of the Department and its activities.<sup>1</sup> Sierra Club's communications staff can also disseminate newsworthy information obtained from this request to the media.

In sum, Sierra Club has the ability to digest and disseminate information gleaned from FOIA requests to the general public, and will make any newsworthy information or documents received in response to this request publicly available. It will further integrate that information with the Sierra Club's existing educational efforts regarding energy and environmental policy, both within Virginia and Oklahoma, and nationally.

**(4) The information will contribute "significantly" to public understanding of government operations or activities.**

The information Sierra Club seeks will contribute significantly to public understanding of the Department's decisions, especially as regards electricity generation and the environment. The Department's Emergency Orders exercise an infrequently used statutory authority, and do so without the administrative processes that accompany most other Department decisions. *See* 10 C.F.R. Part 385. As a result, the public currently has no opportunity to understand the manner in which the Department has made the decisions embodied in those orders. The requested information is likely to provide that opportunity, by disclosing the process and substance by which the Department reached the decision to determine that the emergencies described in the orders existed, and to prescribe the relief provided by the orders. They will therefore significantly aid public understanding of the Department's decision-making process. As discussed above, Sierra Club intends to make any newsworthy information or documents received in response to this request publicly available and will use them as the bases for public advocacy.

<sup>1</sup> A recent example is available at <https://www.scribd.com/document/343243328/Sierra-Club-Clean-Energy-Jobs-Report-Final-1>

**Exhibit 1**

**B. The Sierra Club Has No Commercial Interest in Disclosure**

Sierra Club is a non-profit organization with no commercial, trade, or profit interests in the requested information. We seek to use this information solely to inform the public and to ensure government accountability, as well as to enhance public understanding of public health and the environment and its relationship to the nation's environmental and energy laws. Sierra Club has no relevant commercial interest, and the request is entirely in the public interest.

For all of the foregoing reasons, a fee waiver is warranted here under 5 U.S.C. § 552(a)(4)(A)(iii) and 10 § CFR 1004.9. If the Department does not believe that the above information is sufficient to justify a fee waiver, please contact us for further documentation before deciding upon the waiver request.

**IV. Conclusion.**

Thank you for your assistance processing this request. Please contact me at the email or telephone number below if you have any questions or concerns about this request for information.

Sincerely,

Sanjay Narayan  
Sierra Club Environmental Law Program  
2101 Webster St., Ste. 1300  
Oakland CA 94612  
(415) 977-5769  
sanjay.narayan@sierraclub.org



**Exhibit 2**



**Department of Energy**  
Washington, DC 20585

JUN 29 2017

Sanjay Narayan  
Sierra Club Environmental Law Program  
2101 Webster St., Ste. 1300  
Oakland, CA 94612

Via email: [sanjay.narayn@sierraclub.org](mailto:sanjay.narayn@sierraclub.org)

Re: HQ-2017-01331-F

Dear Mr. Narayan,

This is in response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552: You requested the following records generated or received by DOE:

1. All records relating to the Department's order number 202-17-1, dated April 14, 2017, determining that an emergency exists in Oklahoma, and directing the Grand River Dam Authority to generate electricity from Unit No. 1 of the Grand River Energy Center;
2. All records relating to the Department's order number 202-17-2, dated June 16, 2017, determining that an emergency exists in Virginia, and ordering Dominion Energy Virginia to operate Units Nos. 1 and 2 of the Yorktown Power Station;
3. All records relating to any requests to extend the determinations or requirements of the Department's Orders Nos. 202-17-1 and 202-17-2, including any extension pursuant to section 202(c)(4), 18 U.S.C § 824A(C)(4); and,
4. All records relating to any other request or proposal that the Department exercise its authority under section 202(c) of the Federal Power Act, 18 U.S.C § 824a.

Your request has been assigned to DOE's Office of Electricity Delivery and Energy Reliability (OE). Upon completion of the search and review of any records located, you will be provided a response.

In your letter, you requested a waiver of all fees associated with the processing of the request. For purposes of assessment of any fees, you have been categorized under the DOE regulation that implements the FOIA at Title 10, Code of Federal Regulations (CFR), § 1004.9(b)(4), as an





**Exhibit 2**

"other" requestor. Requestors in this category are entitled to two hours of search time and 100 pages of duplication at no cost.

Pursuant to 10 CFR § 1004.9(8), I have reviewed the information you provided in the request to support your request for a fee waiver. I have determined that the information satisfies the criteria considered for a waiver of fees. A waiver, therefore, is appropriate for any fees that may be incurred because the subject of the request relates to a government activity, and information about the activity could lead to greater understanding by the public about the matter. You also have demonstrated the ability and intent to disseminate the information to the public in a form that can further understanding of the subject matter.

You may contact DOE's FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, at 202-586-5955 or by mail at MA-46/Forrestal Building 1000 Independence Avenue, S.W. Washington, D.C. 20585 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Please refer to the above reference number in any communications with the DOE about your request. If you have questions about this letter, please contact Ms. JoAnna Gorsage in this office at MA-46/Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, or at (202) 586-2708.

I appreciate the opportunity to assist you.

Sincerely,



Alexander C. Morris  
FOIA Officer  
Office of Public Information