



Turner Environmental Law Clinic

May 27, 2010

**VIA U.S. MAIL
AND FACSIMILE**

Director, Office of Hearings and Appeals
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585
Facsimile: (202) 586-0575

Re: Freedom of Information Act Request HQ-2010-01170-F

Dear Sir or Madam:

On behalf of Southern Alliance for Clean Energy (“SACE”), and pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and applicable Department of Energy (“DOE”) regulations, 10 C.F.R. Chapter X, Part 1004, we again respectfully request the release of documents as set forth in FOIA Request HQ-2010-01170-F (the “FOIA Request”). SACE demands that DOE produce, within the next twenty working days, all agency documents that have been improperly withheld.

Statutory and Regulatory Background

Under DOE regulations, the agency has ten working days in which to take action on a request for agency documents. 10 C.F.R. § 1004.5(d)(1). In the case of “unusual circumstances,” DOE may provide written notice of its intention to take up to ten additional days to respond. Id.

If the agency entirely fails to respond to the request within the statutory period, the requesting party “may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States.” 10 C.F.R. § 1004.5(d)(4). The agency shall nevertheless continue processing the request, and it shall inform the requester of the reason for the delay and the date on which a determination is expected to be made. Id.

Factual Background

On March 25, 2010 SACE submitted a FOIA request for documents pertaining to the loan guarantee applications and issuance of loan guarantees to Southern Nuclear

Director, Office of Hearings and Appeals

May 27, 2010

Page 2

Operating Company for construction and operation of two nuclear reactors at the Vogtle Electric Generating Plant. FOIA Request (Attachment 1). On April 2, 2010, DOE provided “an interim response” in which it stated the FOIA Request had been sent “to the Office of the Loan Programs Office and the Office of the General Counsel to conduct a search of their files for responsive records.” Letter from Morris to Goldstein and Kincheloe of April 2, 2010 (Attachment 2). In that letter, DOE also granted waiver of fees as requested by SACE.

On April 22, 2010, DOE sent an email again acknowledging receipt of SACE’s FOIA Request. Email from Jackson to Goldstein of April 22, 2010 (Attachment 3). This email stated “the DOE Loan Program Office will provide a written response to your request once it has been reviewed and approved by the appropriate staff in the Loan Program Office.”

Since receipt of the April 22 email, Mindy Goldstein has had telephone conversations with Mr. Christopher Reyes of the DOE office on April 22 and 26, 2010. In none of these conversations did Mr. Reyes state whether the request would be granted or when the requested documents would be made available. Since the telephone call on April 26, 2010, SACE has received no further communication from DOE about the FOIA Request and has received no responsive records.

Discussion

DOE had until April 8, 2010, ten working days after receipt of the FOIA Request, to provide a response to SACE. 10 C.F.R. § 1004.5(d)(1). DOE, however, wholly failed to respond. The letter dated April 2, 2010 did not purport to respond to SACE’s request. Indeed, DOE stated that “upon completion of the searches and review of any records located, [SACE] will be provided a response.” Attachment 2.

Failure to respond within the ten-day time period is only permitted if the agency exercises the “unusual circumstances” extension. 10 C.F.R. § 1004.5(d)(1). DOE, however, did not exercise that extension. And, in any event, the extension only provides an additional ten days in which to respond to the request. Thus, had DOE exercised the extension, the response deadline would have moved to April 22, 2010. DOE failed to respond within that extended time period. The email dated April 22, 2010 did not purport to respond to SACE’s request. In that email, just as in the April 2, 2010 letter, DOE stated that the FOIA Request was being processed and that a written response would be provided “once it has been reviewed and approved by the appropriate staff in the Loan Program Office.” Attachment 3.

SACE has not received the response promised in April 2, 2010 letter and the April 22, 2010 email.

Pursuant to 10 C.F.R. § 1004.5(d)(4), because DOE failed to respond within the statutory time period, SACE may deem its administrative remedies exhausted and seek

Director, Office of Hearings and Appeals

May 27, 2010

Page 3

judicial review in a district court of the United States at this time. Nevertheless, SACE again requests that DOE produce the documents as described in the FOIA Request within twenty working days. If the documents are not received within the allotted time, SACE may elect to exercise its right to seek judicial review.

Conclusion

DOE has failed to comply with the relevant provisions of FOIA and its own regulations regarding the time limit for responding to SACE's FOIA Request. If the documents described in the FOIA Request are not released within twenty working days, SACE may elect to exercise its right to seek judicial review.

If you wish to discuss or have questions regarding this request, please contact Mindy Goldstein at magolds@emory.edu or (404) 727-3432.

Sincerely,



Mindy Goldstein
Turner Environmental Law Clinic
Emory University
1301 Clifton Road
Atlanta, Georgia 30322
Tel: (404) 727-3432
Fax: (404) 727-7851

Attachment 1



EMORY
SCHOOL OF
LAW

Turner Environmental Law Clinic

March 25, 2010

VIA U.S. MAIL AND FACSIMILE

FOIA Officer
U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585
By Fax to: (202)586-0575

Re: Freedom of Information Act ("FOIA") Request

Dear Sir or Madam:

On behalf of Southern Alliance for Clean Energy ("SACE"), and pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and Department of Energy ("DOE") regulations, 10 C.F.R. Part 1004, we respectfully request the following records that are related to the DOE's Loan Guarantee Program for new nuclear power reactors, as described at 72 Fed. Reg. 60,116 (Oct. 23, 2007).

- 1) The Part I and Part II applications received by DOE for the Vogtle Electric Generating Plant ("VEGP") in Burke County, Georgia.
- 2) All records concerning the VEGP loan guarantee application including all correspondence between DOE and Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, or the City of Dalton, Georgia (collectively, "SNC").
- 3) All records related to any environmental critique or evaluation prepared by DOE in regards to the VEGP loan guarantee application, including but not limited to:
 - a. All records containing an evaluation of the potential environmental impacts of VEGP;
 - b. All records related to the process and/or objective criteria used by DOE in its critique or evaluation;
 - c. All correspondence regarding any environmental critique or evaluation between the DOE and SNC;

- d. All records pertaining to any conclusions drawn and/or recommendations made by DOE as the result of an environmental critique, including the basis or bases for those conclusions and/or recommendations.
- 4) All records regarding the involvement of the DOE's Credit Review Board with the submitted VEGP loan guarantee application.
- 5) All records related to the use of union labor in connection with VEGP application for a loan guarantee, including all records concerning the use of union labor as a condition, criteria, prerequisite, or factor in DOE's decision to award a loan guarantee.
- 6) All records pertaining to the issuance to SNC of a term sheet, or the drafting of any final or proposed term sheet for SNC, that sets forth the general terms and conditions under which DOE may issue a loan guarantee to VEGP.
- 7) All records pertaining to the issuance of a loan guarantee to VEGP, including but not limited to:
 - a. All records related to the process and/or objective criteria used by DOE in its evaluation;
 - b. All records pertaining to DOE's evaluation or the relative strengths and/or weaknesses of VEGP applications.

For the purposes of this request, the term "record" means: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, forms, records, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazines, newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail, meaning electronically transmitted text or graphic communication created upon and transmitted or received by any computer or other electronic device, and all materials stored on compact disk, computer disk, diskette, hard drive, server, or tape; (3) any audio, aural, visual, or video records, recordings, or representations of any kind, including without limitation all cassette tapes, compact disks, digital video disks, microfiche, microfilm, motion pictures, pictures, photographs, or videotapes; (4) any graphic materials and data compilations from which information can be obtained; (5) any materials using other means of preserving thought or expression; and (6) any tangible things from which data or information can be obtained, processed, recorded, or transcribed. The term "record" also includes any drafts, alterations, amendments, changes, or modifications of to any of the foregoing.

If it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure pursuant to 10 C.F.R. § 1004.10, please identify the records that are being withheld and state the basis for the denial

March 25, 2010

for each record (or portion) being withheld. In addition, please provide the non-exempt portions of the records.

Request for Waiver of Fees

SACE hereby requests that all fees in connection with this FOIA request be waived in accordance with 10 C.F.R. § 1004.9(a)(8), which states, “[t]he DOE will furnish documents without charge or at reduced charges 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 disclosure is not primarily in the commercial interest of the requester.” SACE qualifies because the requested documents will significantly contribute to the public’s understanding of the operations and activities of the DOE by illuminating the process and criteria used by DOE to select recipients of loan guarantees. The materials will not be used for SACE’s commercial use or gain.

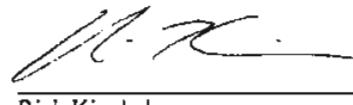
SACE is a non-profit, non-partisan environmental advocacy organization operating throughout the Southeast. The mission of SACE is to educate the public and promote the use of clean energy in order to protect the quality of life in the Southeast and to preserve its natural resources. SACE intends to use the requested information in furtherance of its goal in educating the public on the risks associated with nuclear energy and DOE processes employed to determine awards of loan guarantees. SACE will disseminate the disclosed information to the public through its website—www.cleanenergy.org—media campaign, educational programs, and events through the community.

SACE requests a waiver of all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please advise SACE of the amount of any proposed search, review, and reproduction charges before those activities are carried out. SACE expects a response within ten (10) working days, as provided by 10 C.F.R. § 1004.5(d). If you have any questions regarding this request, please contact Rick Kincheloe or Mindy Goldstein at magolds@emory.edu or (404)727-3432.

Sincerely,



Mindy Goldstein



Rick Kincheloe

Attachment 2



Department of Energy

Washington, DC 20585

April 2, 2010

Ms. Mindy Goldstein
Mr. Rick Kincheloe
Turner Environmental Law Clinic
Gambrell Hall
Emory School Law
Atlanta, GA 30322-2770

Re: HQ-2010-01170-F

Dear Ms. Goldstein and Mr. Kincheloe:

This is an interim 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, on behalf of the Southern Alliance for Clean Energy (SACE). You asked for records that relate to the DOE Loan Guarantee Program for new nuclear power reactors. You asked for, among other records, the applications for the Vogtle Electric Generating Plant in Burke County, Georgia, and environmental critiques or evaluations by DOE with regard to the applications.

The request has been sent to the Office of the Loan Programs Office and the Office of the General Counsel to conduct a search of their files for responsive records. Upon completion of the searches and review of any records located, you will be provided a response.

In your letter, you requested a waiver of fees associated with processing of the request. You stated that the SACE will use the records to educate the public on the risks associated with nuclear energy and the DOE processes employed to determine awards of loan guarantees.

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, Section 1004.9(b)(4), as an "other" requester. In this category, you are entitled to two free hours of search time and 100 pages of duplication at no cost.

I have reviewed the information that you provided in your letter to support the request for a fee waiver and have determined that the information satisfies the criteria considered for a waiver of fees. A waiver, therefore, is appropriate for fees that may be incurred because the subject of the request relate to a government activity, and information about the activity could lead to greater public understanding about the matter.

The above referenced number has been assigned to the request and you should refer to it in correspondence with the DOE about this matter. If you have questions about the processing of the request, you may contact Ms. Ambler Jackson in the Loan Programs Office (AG-1) on (202) 287-5532, and Mr. Isiah Smith in the Office of the General Counsel (GC-77) on (202) 586-1522. Ms. Jackson and Mr. Smith also can be contacted at 1000 Independence Avenue, SW, Washington, DC 20585.

I appreciate the opportunity to assist you. Please contact Ms. Joan Ogbazghi in this office on (202) 586-3593 with any questions about this letter.

Sincerely,

Joan Ogbazghi
for Alexander C. Morris
FOIA Officer
Office of Information Resources



Printed with soy ink on recycled paper

Attachment 3

Goldstein, Mindy

From: Jackson, Ambler [Ambler.Jackson@hq.doe.gov]
Sent: Thursday, April 22, 2010 9:37 AM
To: Goldstein, Mindy
Subject: FOIA Request No. HQ-2010-01170-F

Dear Mindy Goldstein:

Per the Freedom of Information Act (FOIA) request that was received by the Department of Energy (DOE) on March 25, 2010 (HQ-2010-01170-F), you requested the following (note that the following is a summary of your request):

Records related to the DOE's Loan Program for new nuclear power reactors, as described at 72 Fed. Reg. 60,116 (October 23, 2007). You requested the following:

- 1) Part I and II of the applications received by DOE for the Vogtle Electric Generating Plant (VEGP) in Burke County, Georgia.
- 2) All records concerning the VEGP loan guarantee application including all correspondence between DOE and Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia or the City of Dalton, Georgia (collectively, SNC).
- 3) All records related to any environmental critique or evaluation prepared by DOE in regards to the VEGP loan guarantee application, including, but not limited to, records containing an evaluation of the potential environmental impacts of VEGP, the process and/or the objective criteria used by DOE, etc....

Your request is being processed by the Department of Energy's LPO in the Office of the Secretary. The LPO processes FOIA requests in the order in which they are received.

The DOE Loan Program Office will provide a written response to your request once it has been reviewed and approved by the appropriate staff in the Loan Program Office.

If you have further questions pertaining to your request, please contact Ambler Jackson, ambler.jackson@hq.doe.gov at (202) 287-5532.

Best regards,

Ambler T. Jackson
Consultant
eGlobalTech
Loan Guarantee Program/Advanced Technology Vehicles Program ambler.jackson@hq.doe.gov

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