



November 9, 2017

Via email at FOIA-CEII@ferc.gov and US Mail

Mr. Leonard Tao
Director, Office of External Affairs, and Chief FOIA Officer
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Freedom of Information Act Request – Federal Energy Regulatory Commission’s Records Regarding the Resiliency, Reliability, and Sources of Generation of the Nation’s Electricity Grid.

Dear Mr. Tao,

This is a request for copies of records described below on behalf of Sierra Club, Earthjustice, Environmental Defense Fund, and the Natural Resources Defense Council (collectively, “Public Interest Groups”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the regulations of the Federal Energy Regulatory Commission (“Commission”) set forth at 18 C.F.R. Part 388.

Definitions

For purposes of this request, the following words have the meanings indicated:

“Records” means information of any kind, including internal and external communications, 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 the Commission, any of its offices, or any of its custodians.

Records Requested

The Public Interest Groups seek records regarding the resiliency, reliability, and sources of generation of the nation's electricity grid, including, but not limited to, the records listed below. The Public Interest Groups seek records from June 1, 2017 to the date that the Commission commences its search for responsive records.

1. All records related to the topics of resiliency, reliability, baseload generation, fuel-secure generation, and the relationship between coal- and nuclear-fueled generation and reliability or resiliency;
2. All records related to the U.S. Department of Energy's ("DOE") Notice of Proposed Rulemaking for the Grid Resiliency Pricing Rule, 82 Fed. Reg. 46940 (Oct. 10, 2017);
3. All records related to the topics covered by DOE's Notice of Proposed Rulemaking for the Grid Resiliency Pricing Rule, 82 Fed. Reg. 46940 (Oct. 10, 2017), including, but not limited to:
 - a. Reliable and resilient electric supply,
 - b. Retirements of fuel-secure generation,
 - c. Resiliency of the electric grid,
 - d. Market pricing of resiliency attributes of fuel-secure generation,
 - e. Preservation of generation diversity, and
 - f. Threats to the reliability and resiliency of the bulk power system from the premature retirements of fuel-secure generation.
4. All records related to any correspondence with external entities, including, but not limited to, the Executive Branch, other federal agencies, state and local governments, companies, corporations, associations, and lobbyists regarding the topics of resiliency, reliability, and the relationship between sources of generation of the nation's electricity grid and resiliency or reliability.

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Public Interest Groups to appeal the denial. To comply with legal requirements, the following information must be included:

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 a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Public Interest Groups.

Fee Waiver Request

The Public Interest Groups, which do not fit into the categories defined at 18 C.F.R. 388.109(b)(1), 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 18 C.F.R. § 388.109(c). The Public Interest Groups have spent years promoting the public interest through the development of policies regarding the nation's energy policy, will not benefit commercially from this request, and have routinely received fee waivers under FOIA in the past.

As explained more fully below, the above referenced FOIA request satisfies the six factors listed in the Commission's governing regulations for waiving or reducing 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)(iii), *see also* 18 C.F.R. § 388.109(c).

1. Whether the subject of the requested records concerns the operations or activities of the government.

The requested records relate to the resiliency, reliability, and sources of generation of the nation's electricity grid. The Commission is the federal agency tasked with regulating, among other things, the interstate transmission of electricity in order to assist consumers in obtaining energy that is reliable, efficient, and sustainable, which is unquestionably “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. There can be no question that this is such a case.

2. Whether the disclosure is likely to contribute to an understanding of government operations or activities.

The Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the “likely to contribute” determination hinges in substantial 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 the Commission's decision-making process regarding the interstate regulation of electricity because they are not otherwise in the public domain and are not accessible other than through a FOIA request.

As the debate over how to combat global warming and the direction of energy policy in the United States moves forward, it is imperative for information relating to the government's operations or activities regulating interstate electricity and determining how to best assist consumers in obtaining reliable, efficient, and sustainable energy to be made available to the

public. This information will facilitate meaningful public participation in the decision-making process, therefore fulfilling the requirement that the documents requested be “likely to contribute” to an understanding of the Commission’s decision-making process with regard to energy policy.

3. Whether disclosure of the requested information will contribute to public understanding.

The Public Interest Groups and their members have a long-standing interest and expertise in the development of energy policy, as well as consumers’ access to reliable, efficient and sustainable energy, and these issues remain at the forefront of the Groups’ efforts. Information regarding what the Commission relies on to establish its policies will contribute to the understanding of the general public, which has been closely following issues related to the resiliency, reliability, and sources of generation of the nation’s electricity grid.

Sierra Club is the nation’s oldest and largest grassroots environmental organization, with approximately three million members and supporters. One of Sierra Club’s priority national conservation campaigns is to move the nation away from dirty, non-renewable energy sources, such as coal, to cleaner, cheaper renewable energy sources, such as wind and solar, by organizing people nationwide to work on energy issues and educate the public. Sierra Club disseminates the information it receives through FOIA through 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 and social media accounts, emailing and list serve distribution to our members. Last year, the Sierra Club website received approximately 5.5 million visits. Sierra Magazine, published bimonthly by the Sierra Club, reached over 870,000 people in 2016. Sierra Club has over 280,000 followers on Twitter. In addition, Sierra Club disseminates information obtained through FOIA through comments to administrative agencies, and where necessary, through the judicial system. The Sierra Club has published, posted, and disseminated numerous articles on energy sources and alternatives.

Earthjustice is a nonprofit environmental law organization. Earthjustice uses legal advocacy and the strength of partnership to protect people’s health, to preserve magnificent places and wildlife, to advance clean energy, and to combat climate change. Earthjustice provides no-cost legal representation to over 700 clients. Earthjustice regularly issues press releases to the public and publishes in-depth reports to increase the public understanding of issues related to our environment and to the public health. Earthjustice intends to disseminate any significant information released pursuant to this request through a number of channels, including its website, which averages approximately 28,000 page views a day, social media outlets, which reach over 500,000 followers, quarterly newsletter, which has a circulation of approximately 100,000 individuals, and/or electronic mailings, which are distributed to a list of over 2 million recipients. Earthjustice will also leverage its position as a leading public interest environmental organization to gain earned media coverage in newspapers, radio, and television for any newsworthy information obtained as a result of this request.

Environmental Defense Fund (“EDF”) is a national, not-for-profit, nonpartisan environmental organization with headquarters in New York, New York. Since 1967, EDF has linked science, economics, and law to create innovative, equitable, and cost-effective solutions to

urgent environmental problems. Protecting public health and the environment from harmful airborne contaminants, including greenhouse gases, is a core organizational mission. EDF has been actively involved in the development of policies to limit emissions of climate pollution and foster expansive clean energy at the state, national, and international levels. EDF is deeply committed to promoting government transparency and accountability, as well as to facilitating public access to information about environmental policies. EDF has a variety of channels for disseminating information received under FOIA, including but not limited to direct alerts to its more than 2 million members and outreach to its more than 300,000 followers on Facebook and 160,000 followers on Twitter. EDF routinely publishes press releases, blog posts, op-eds, and other materials—including a section of its website dedicated to records obtained under FOIA—which are frequently picked up by major media outlets.

Natural Resources Defense Council (“NRDC”) is a national non-profit environmental advocacy organization. Curbing climate change and building the clean energy future are among NRDC’s top institutional priorities. NRDC has a number of communications channels, through which it intends to disseminate any newsworthy information in the released records, and its analysis of such records, to NRDC’s membership and to the broader public. These channels include NRDC’s website, which is updated daily and features blogs by NRDC’s scientific, legal, and other staff experts, and draws approximately 1.3 million page views and 510,000 unique visitors per month. NRDC also publishes a regular newsletter for its more than two million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. NRDC updates and maintains several social media accounts, including Facebook (906,992 followers), Twitter (271,551 followers), Instagram (108,315 followers), YouTube, and LinkedIn. NRDC also is a regular contributor to Medium (1,478 followers) and the HuffPost.

The Public Interest Groups unquestionably are well-positioned to disseminate the information requested in the broad manner outlined above, and have the ability and resources to do so in a manner that contributes to “public understanding.”

4. Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.

There is currently little or no information publicly available regarding the Commission’s decision-making process concerning what constitutes reliable, efficient, and sustainable energy, nor what mechanisms might be needed to ensure reliability that are not provided for currently under the Commission’s rules. Absent disclosure of the records requested, the public’s near-term understanding of the Commission’s work on these topics may be shaped by what is disclosed by the private interests involved. The records requested will contribute to the public understanding of the Commission’s role in—and “operations or activities” associated with—regulating interstate energy, particularly as it pertains to the Grid Resiliency Pricing Rule or other stakeholder proposals intended to address perceived problems with the Commission’s current rules or existing tariffs. The disclosure of the requested records is also essential to public understanding of the impacts from the Commission’s decisions regarding interstate electricity, especially as they relate to climate change, and the reliability, effectiveness, and sustainability of

the nation's energy. 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 Public Interest Groups have no commercial interest in the requested records, or any intention to use these records in any manner that "furthers commercial trade, or profit interest" as those terms are commonly understood. The Public Interest Groups are all tax-exempt organization under section 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such have no commercial interest. The requested records will be used for the furtherance of the Public Interest Groups' missions to inform the public on the vitally important subject of the nation's energy policy.

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 non-existent interest is not required.

As noted above, the Public Interest Groups have no commercial interest in the requested records. Disclosure of this information is not "primarily" in the Public Interest Groups' commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of the Commission's decision-making process in regulating interstate electricity.

For all of the foregoing reasons, a fee waiver is warranted here under 5 U.S.C. § 552(a)(4)(iii) and 18 C.F.R. § 388.109(c). If the Commission 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.

Record Delivery

We request the Commission, in responding to this request, to 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); 18 C.F.R. § 388.108(c)(1). Please produce records on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and is able to produce.

If possible, please send all documents in PDF format via electronic mail, external website, or on CD or DVD via traditional mail. Alternatively, paper copies are acceptable, although electronic format is preferred. Please send copies of all requested records as soon as possible to the undersigned below.

If you find that this request is unclear in any way, please do not hesitate to contact Benjamin Levitan at (202) 572-3318 or blevitan@edf.org to clarify the request or to otherwise expedite and simplify your efforts to comply.

Sincerely,

/s/ Casey Roberts

Casey Roberts
Senior Attorney
Sierra Club Environmental Law Program
1536 Wynkoop St., Suite 312
Denver, Colorado, 80202
(303) 454-3355
casey.roberts@sierraclub.org

/s/ Kim Smaczniak

Kim Smaczniak
Clean Energy Staff Attorney
Earthjustice
1625 Massachusetts Avenue, N.W., Suite 702
Washington, DC 20036-2243
T: 202.667.4500
F: 202.667.2356
ksmaczniak@earthjustice.org

/s/ Benjamin Levitan

Benjamin Levitan
Attorney
Environmental Defense Fund
1875 Connecticut Ave., NW
Suite 600
Washington, DC 20009
(202) 572-3318
blevitan@edf.org

/s/ Tom Zimpleman

Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
Telephone: 202.513.6244
Email: TZimpleman@nrdc.org