

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN ALLIANCE FOR CLEAN ENERGY)
117 S Gay Street)
Knoxville, TN 37902-1004,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF ENERGY)
1000 Independence Avenue, S.W.)
Washington, DC 20585-0001,)
)
Defendant.)
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Southern Alliance for Clean Energy (“SACE”) brings this action against Defendant U.S. Department of Energy (“DOE”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, SACE alleges as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

Parties

3. SACE is a non-profit, non-partisan, environmental advocacy organization operating throughout the southeastern United States and having its principal place of business at 117 S Gay Street, Knoxville, TN 37902-1004. The mission of SACE is to promote responsible energy choices that solve global warming problems and ensure clean, safe, and healthy

communities throughout the southeast. SACE's activities include bringing about policy change through education and outreach.

4. DOE is an agency of the United States government and is headquartered at 100 Independence Avenue, S.W., Washington, DC 20585-0001. DOE has possession, custody, and control of records to which SACE seeks access.

Statement of Facts

5. On February 16, 2010, President Obama announced that DOE had offered conditional commitments for a total of \$8.33 billion in loan guarantees for the construction and operation of two new nuclear reactors at Vogtle Electric Generating Plant in Burke County, Georgia (the "Loan Guarantees").

6. On March 25, 2010, SACE submitted a FOIA request, via U.S. mail and facsimile, to DOE for records pertaining to the Loan Guarantees. Specifically, SACE sought:

- A. The Part I and Part II applications received by DOE for the Loan Guarantees (the "Loan Guarantee Applications").
- B. All records concerning the Loan Guarantee Applications, including all correspondence between DOE and Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Authority of Georgia, or the City of Dalton, Georgia (collectively, "SNC").
- C. All records related to any environmental critique or evaluation prepared by DOE in regards to the Loan Guarantee Applications, including records containing evaluations of potential environmental impacts, records related to the process or objective criteria used by DOE in its evaluations,

correspondence regarding any environmental evaluation, and records pertaining to conclusions or recommendations made by DOE as the result of an environmental critique.

- D. All records regarding involvement of DOE's Credit Review Board with the Loan Guarantee Applications.
- E. All records related to the use of union labor as a condition, criteria, prerequisite, or factor in DOE's decision to award the Loan Guarantees.
- F. All records related to the general terms and conditions of the Loan Guarantees.
- G. All records related to issuance of the Loan Guarantees to SNC.

7. On April 2, 2010, DOE acknowledged receipt of the FOIA request and stated that "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."

8. The April 2, 2010 DOE letter did not purport to respond to SACE's FOIA request. Indeed, the letter stated that "upon completion of the searches and review of any records located, [SACE] will be provided a response."

9. On April 22, 2010 DOE sent an email again acknowledging receipt of the FOIA request.

10. The April 22, 2010 DOE email did not purport to respond to SACE's FOIA request. Indeed, the email 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."

11. By phone calls on April 22 and April 26, 2010, DOE confirmed that it did not yet have a response to the FOIA request.

12. On May 27, 2010, SACE sent a letter to DOE's Office of Hearings and Appeals, again requesting a response to the FOIA request.

13. By letter dated June 1, 2010, the Office of Hearings and Appeals indicating that it had no role to play in SACE's demand for a response to its FOIA request.

14. By phone calls on June 8 and June 22, 2010, DOE again confirmed that it did not yet have a response to the FOIA request.

15. Then, on July 6, 2010, DOE sent SACE a letter and email, purporting to provide a "partial response" to the FOIA request. The three heavily redacted documents enclosed with the letter were responsive to the items requested in paragraph 6 of the FOIA request (as summarized in paragraph 6F of this Complaint). On July 16, 2010, SACE filed an administrative appeal concerning the inadequacy of this July 6, 2010 partial response.

16. On July 8, 2010, DOE sent SACE another letter and email, purporting to provide a "partial response" to the FOIA request. The two redacted documents enclosed with the letter were responsive in part to the items requested in paragraph 3b of the FOIA request (as summarized in paragraph 6C of this Complaint).

17. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), DOE was required to respond to SACE's entire FOIA request within twenty (20) working days after receipt of the request, or by April 22, 2010. *See also*, 10 C.F.R. § 1004.5(d)(1). As of the date of this Complaint, DOE has failed to produce any records responsive to items 1, 2, part of 3, 4, 5, and 7 of the FOIA request (as summarized in paragraphs 6A, 6B, 6C, 6D, 6E, and 6G of this Complaint). Nor has it indicated

whether or when any records responsive to the outstanding items will be produced. In short, DOE has failed to respond to the entire request, as mandated by FOIA.

Count 1
(Violation of FOIA)

18. SACE realleges paragraphs 1 through 17 of this Complaint as if fully stated herein.

19. DOE has violated FOIA by failing to produce any and all non-exempt records responsive to items 1, 2, part of 3, 4, 5, and 7 of the FOIA request (as summarized in paragraphs 6A, 6B, 6C, 6D, 6E, and 6G of this Complaint) within the twenty (20) day time period required by 5 U.S.C. § 552(a)(6)(A)(i).

20. SACE is being irreparably harmed by reason of DOE's violation of FOIA, and SACE will continue to be irreparably harmed unless DOE is compelled to conform its conduct to the requirements of the law.

WHEREFORE, SACE respectfully requests that the Court:

- (1) Declare unlawful DOE's failure to respond to items 1, 2, part of 3, 4, 5, and 7 of the March 25, 2010 FOIA request;
- (2) Order DOE to search for and produce within five (5) days any and all non-exempt records responsive to items 1, 2, part of 3, 4, 5, and 7 of the FOIA request;
- (3) Order DOE to produce within five (5) days a "*Vaughn* index" of records responsive to items 1, 2, part of 3, 4, 5, and 7 of the FOIA request that are withheld from release under any FOIA exemption;
- (4) Grant SACE an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant SACE such other relief as the Court deems just and proper.

Dated: _____

Respectfully submitted,

James B. Dougherty
709 3rd Street SW
Washington, DC 20024
(202) 488-1140
DC Bar No. 939538

Lawrence Sanders
1301 Clifton Road
Atlanta, Georgia 30322
(404) 712-8008
GA Bar No. 625711
Pro hac vice application pending

Counsel for Southern Alliance for Clean Energy