Please forward assigned FOIA request to your Division Director <u>so they can determine</u> if request should be assigned to RA for responsive records. (This includes 6RA, 6RA-D and 6RA-DA.)

FREEDOM OF INFORMATION ACT REQUEST

EPA-R6-2018-007731

REQUEST DATE: May 16, 2018 **REQUEST RECEIVED:** May 17, 2018

REQUESTOR INFORMATION:

Joshua Smith
Sierra Club
2101 Webster Street
Suite 1300
Oakland, CA 94612

Email: Joshua.smith@sierraclub.org Work Phone # 415-977-5560
Fax: # N/A

FEE CATEGORY: Commercial **FEE WAIVER Requested**

**********************************SUBJECT*** ***

Please see attached for additional details. Please provide copies of the following: 1. All records from May 2013 through present, reflecting EPA information requests pursuant to Section 114 of the Clean Air Act to Cleco Power, L.L.C., regarding the Dolet Hills Power Station, including correspondence (including electronic mail) between the EPA, its consultants or representatives, or Cleco Power, L.L.C., or its consultants or representatives, including all information and documents submitted by Cleco Power in response to EPA's information requests. 2. All records from May 2013 through present, reflecting EPA information requests pursuant to Section 114 of the Clean Air Act to Cleco Power, L.L.C., regarding the Brame Energy Center, including correspondence (including electronic mail) between the EPA, its consultants or representatives, or Cleco Power, L.L.C., or its consultants or representatives, including all information and documents submitted by Cleco Power in response to EPA's information requests.

**********************ASSIGNED OFFICE(s)**

6EN
6MM

DUE DATE: June 15, 2018

**********************SPECIAL INSTRUCTIONS TO DIVISIONS************************

1. **Always note Fee commitment by requester: $25**
2. **Call the requester with a fee estimate, if cost is expected to exceed amount committed $ 25**
3. **Each Division must obtain Division Director or delegate concurr ence on denial log before routing to ARA signature.**
4. **Send a copy of the response and cost information sheet to the FOIA Office (6MD-OE).**

**************DO NOT WRITE IN THIS SPACE, FOR FOIA OFFICE USE ONLY*************

BILLABLE COST

$4.00	$7.00	$10.25	Pages	Other	TOTAL

6EN
6MM

ADMINISTRATIVE COST

Postage	Free Docs.	Other	TOTAL

EPA-R6-2018-007731

Please see attached for additional details. Please provide copies of the following: 1. All records from May 2013 through present, reflecting EPA information requests pursuant to Section 114 of the Clean Air Act to Cleco Power, L.L.C., regarding the Dolet Hills Power Station, including correspondence (including electronic mail) between the EPA, its consultants or representatives, or Cleco Power, L.L.C., or its consultants or representatives, including all information and documents submitted by Cleco Power in response to EPA's information requests. 2. All records from May 2013 through present, reflecting EPA information requests pursuant to Section 114 of the Clean Air Act to Cleco Power, L.L.C., regarding the Brame Energy Center, including correspondence (including electronic mail) between the EPA, its consultants or representatives, or Cleco Power, L.L.C., or its consultants or representatives, including all information and documents submitted by Cleco Power in response to EPA's information requests.

May 16, 2018

Via FOIA online

U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Freedom of Information Act request relating to Cleco Power LLC's Dolet Hills Power Station in De Soto Parish, Louisiana, and Brame Energy Center Rapides Parish, Louisiana

Dear EPA FOIA Officer:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency ("EPA") provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and EPA regulations at 40 C.F.R. § 2.100, *et seq*. This request is sent to you because you were identified as the proper person to receive such requests. If this request should be directed at another person, please forward this request to that person.

Sierra Club is the nation's oldest grassroots organization. It has 822,000 members and 3 million supporters nationwide, including more than 3,300 members living in Louisiana. 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 a leading non-governmental organization seeking to educate and mobilize the public on issues of industrial discharges of air and water pollutants, development of natural resources, and the use of fossil fuels. It has been conducting multiple public campaigns around these issues, including educating the public about deep-water drilling and the transportation of fossil fuels. This request is made on behalf of those education campaigns, as well as the organization's long-standing interest in government accountability and transparency.

ED_001812_00001541-00004

Sierra Club Requests the Following Records:[1]

Please provide copies of the following:

1. All records from May 2013 through present, reflecting EPA information requests pursuant to Section 114 of the Clean Air Act to Cleco Power, L.L.C., regarding the Dolet Hills Power Station, including correspondence (including electronic mail) between the EPA, its consultants or representatives, or Cleco Power, L.L.C., or its consultants or representatives, including all information and documents submitted by Cleco Power in response to EPA's information requests.
2. All records from May 2013 through present, reflecting EPA information requests pursuant to Section 114 of the Clean Air Act to Cleco Power, L.L.C., regarding the Brame Energy Center, including correspondence (including electronic mail) between the EPA, its consultants or representatives, or Cleco Power, L.L.C., or its consultants or representatives, including all information and documents submitted by Cleco Power in response to EPA's information requests.

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 Sierra Club 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 Sierra Club at the address listed below.

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 40 C.F.R. § 2.107(l). The Sierra Club has spent years

[1] "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 EPA, and all of its Offices, Regions and other subdivisions.

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 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.

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended to "prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups.").

As explained below, this FOIA request satisfies the factors listed in EPA'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* 40 C.F.R. § 2.107(l).

1. <u>The subject matter of the requested records must specifically concern identifiable "operations and activities of the government."</u>

The requested records relate to EPA programs, projects, and observations. These activities are unquestionably within the meaning of "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. <u>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."</u>

The Department of Justice Freedom of Information Act 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. This information will facilitate meaningful public participation in the decision-making processes and other agency actions relating to the enforcement of the Clean Air Act, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to

contribute" to an understanding of your agencies' oversight of Cleco Power's Dolet Hills and Brame Energy Center power plants.

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 Clean Air Act compliance. 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 26,298,200 unique visits and 30,358,239 page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3,000,000 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. Sierra Club intends to share the information received from this FOIA request with the public.[2]

Sierra Club intends to share the information received from this FOIA request with our impacted members throughout Louisiana and across the region, the media and our allies who share a common interest in protecting air quality.

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."

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[2] For example, 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* Sierra Club Challenges Dirty and Dangerous Fossil Fuel Exports in Oregon, http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon. Sierra Club also recently publicized the results of its FOIA requests regarding agency job freezes, a story that was picked up by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration's hiring freeze*, The Washington Post, https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e.

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 EPA's "operations and activities," as the requested records include information regarding EPA's oversight of Cleco Power's Dolet Hills Power Station and Brame Energy center. The disclosure of the requested records is essential to the public's understanding of EPA's operations and activities. After disclosure of these records, the public understanding of EPA'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 non-existent 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 will contribute significantly to public understanding of EPA's activities and oversight of the Clean Air Act, and in particular, the agency's oversight of Cleco Power's Dolet Hills Power Station and Brame Energy Center.

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA 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.

Format of Requested Records

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.,* 5 U.S.C. §552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.") Please provide all records in an electronic .pdf format that is text-searchable and OCR-formatted. Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single or "batched" .pdf file.

Record Delivery

In responding to this request, please 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); 40 C.F.R. § 2.104. Please produce the 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 elected to produce.

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) 977-5560 or by e-mail at joshua.smith@sierraclub.org

Joshua Smith
Staff Attorney
Sierra Club
Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612

ED_001812_00001541-00009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS75202-2733

CERTIFICATION OF ADEQUACY OF SEARCH ON "NO RECORD" RESPONSES

I, _____, certify that I am employed by the Environmental Protection Agency, Region 6, in Dallas, Texas (or acting as a representative) as _____, that I am familiar with the records requested and/or that I am responsible for conducting the search for responsive records for Request Identification Number **EPA-R6-_____,** and that I have conducted an "adequate" search for responsive records by searching the below listed location(s) (as applicable):

1.

2.

3.

I further certify that I am aware that a search for responsive records need not be perfect, only adequate and that adequacy is measured and/or determined by the "reasonableness" of the effort of the search in light of the specific request. Specifically, I have searched for the documents in all places that it is practical for the documents to be located. Moreover, after conducting an adequate search for records on behalf of the _____Division/Unit, I have located no records responsive to this request or portions thereof. Further, I am attaching an itemized listing of all records which my search supports are not in the Region's possession.

Dated: _____ _____, _____ _____
Signature of Person Conducting Search

Dated: _____ _____, _____ _____
Signature of Designated Supervisor for
Person Conducting Search

Approved by OGC

STAFF CHECKLIST FOR TRANSMITTAL OF RECORDS/INFORMATION

EPA-R6-_____

	YES	NO	N/A
Program has responsive records	____	____	____
Searched all possible locations (hard copy/e-mail, Files in workstation, file rooms, hard/flash/shared drives, CDs, blackberries etc.)	____	____	____
Advised RFO/DFC of any special circumstances/ Sensitivity related to the FOIA Request	____	____	____
Consulted with the FOIA Requester and/or RFO/DFC For further clarification of the request	____	____	____
Completed "Certification of Adequate Search" form for "No Records" Response	____	____	____
Completed Cost Sheet	____	____	____
Provided responsive records to the assigned FOIA Specialist by due date on transmittal form	____	____	____

Date: _____ Signature: _____ Ext. _____
Printed Name: _____ Office Name: _____

COMMENTS: _____
_____
_____
_____
_____

THIS FORM SHOULD BE COMPLETED AND RETURNED TO THE REGIONAL FOI OFFICER ALONG WITH THE RESPONSIVE RECORDS, A COST SHEET AND "NO RECORDS" CERTIFICATION FORM (IF NECESSARY), FOR EACH FOIA REQUEST PROCESSED.

INTERNAL USE ONLY – DO NOT SEND THIS TO REQUESTER
Please read instructions on back before completing form.

FOIA FEE CALCULATION WORK SHEET

1.REQUEST NUMBER EPA-R6-	2.TYPE OF REQUESTER	3.DATE COMPLETED	4.ACTION OFFICE

NOTE: The Freedom of Information Act and EPA's regulations state that the Federal Government must obtain a fee commitment from a FOIA requester before billing can occur. So if no fee commitment is plainly given in the request letter or if other Divisions also have records, please contact the requester. Provide the requester with an estimate. Make sure the requester understands what program records you refer to and make a note of his/her fee commitment.

5. FEE COMMITMENT AMT	6. DATE OF VERBAL/WRITTEN COMMITMENT	7. FEE COMMITMENT RECEIVED FROM

8. CLERICAL PERSONNEL	TOTAL HRS	¼ HOUR RATE	COST
a. Search - $4.00 @ ¼ HOUR		x $4.00 =	
b. Review - $4.00 @ ¼ HOUR		x $4.00 =	
9. PROFESSIONAL PERSONNEL	**TOTAL HRS**	**¼ HOUR RATE**	**COST**
a. Search - $7.00 @ ¼ HOUR		x $7.00 =	
b. Review - $7.00 @ ¼ HOUR		x $7.00 =	
10. MANAGERIAL PERSONNEL	**TOTAL HRS**	**¼ HOUR RATE**	**COST**
a. Search - $10.25 @ ¼ HOUR		x $10.25 =	
b. Review - $10.25 @ ¼ HOUR		x $10.25 =	
11. DUPLICATION/REPRODUCTION	**TOTAL**	**RATE OR ACTUAL**	**COST**
a. Paper or Computer Page (2 sided copy = 2 copies)		x $ .15 pg =	
b. Diskette or CD (Specify 3 CD's, 1 CD etc.)		x $ 1.00 each =	
c. Microfiche		x $ 1.00/sheet =	
d. Microfilm		x $10.00/cartridge =	
e. Video or Audio Cassette (Specify)		x $5.00/each =	
f. Maps			
g. Photos			
12. OTHER COSTS	**TOTAL**	**RATE OR ACTUAL**	**COST**
a. Computer Cost		x =	
b. Certifications		x $25.00 =	
c. Special Handling – Overnight Mail		x =	
d. Other		x =	
13. ACTUAL ADMIN. COST FOR NON-BILLABLE STAFF TIME	**TOTAL**	**¼ HOUR RATE**	**COST**
a. Preparer's Name: Grade/Step:		x =	
b. Preparer's Name: Grade/Step:			

14. FOR FOIA OFFICE USE ONLY

a. TOTAL ADMINISTRATIVE/PROCESSING FEES _____
b. TOTAL COLLECTABLE FEES _____
c. TOTAL CHARGED _____
d. FEES WAIVED/REDUCED YES OR NO

R6 FOIA FORM 6/03

INSTRUCTIONS FOR COMPLETING THE FOIA FEE CALCULATION WORK SHEET

Pursuant to the Electronic Freedom of Information Act Amendment of 1996, the Annual Report to Congress that all agencies are required to submit must include the administrative cost to implement FOIA.

The FOI Office will generate a bill for the requester but we al so need your help to capture the actual administrative cost to process a FOIA request. Therefore, this worksheet is to be completed for all FOIA requests by all personnel involved in answering a FOIA request. Please complete the following information and return it to the FOIA Office along with a copy of the response letter. If you have any questions, please coht ct Leticia Lane at 214-665-7202 or lane.leticia@epa.gov.

1. REQUESTER NUMBER- e. g., 06-FOIA-0342-03.

2. TYPE OF REQUESTER

#1 Commercial Use Request: requester charged for search, review & duplication costs.
#2 Educational & Non-CommercialScientific Institutions: requester charged for duplication costs excluding the first 100 pages.
#3 Representative of the news media: requester charged for duplication costs excluding the first 100 pages.
#4 All Other Requests: requester charged for search & duplication time excluding the first two hours of search time & the first 100 pages of duplication.

3. DATE COMPLETED- Enter month, day and year.

4. ACTION OFFICE- Mailcode of responder.

5. FEE COMMITMENT AMT- fee commitment amount received from requester for the processing of FOIA request.

No Fee Charged for<= $14.00
Bills sent between $14.01 - $25.00, no payment assurance required
Written Assurance of payment from requester for amounts > $25.00

6. DATE OF VERBAL / WRITTEN COMMITMENT- date when verbalor written fee commitment was given.

7.FEE COMMITMENT RECEIVED FROM- name of person from which you received verbalor written fee commitment.

8. CLERICAL PERSONNEL - enter total hours x hourly rate = cost.

a. Search - Time spent in locating the requested informatio n.

b. Review- Time spent in reviewing the document content for releasable documents.

9. PROFESSIONAL PERSONNEL- enter totalhours x hourly rate= cost.

Search/Review - see explanation above.

10. MANAGERIAL PERSONNEL- enter total hours x hourly rate= cost.

Search/Rev iew - see explanation above

11. DUPLICATION / REPRODUCTION- Enter Total x Rate or Actual= Cost.

12. OTHER COSTS- Enter Total x Rate or Actual =cost.

13. ACTUAL ADMIN. COST FOR NON-BILLABLE STAFF TIME enter totalx hour rate = cost

Time spent in activity other than above, such as hand carrying documents to other locations, restoring files,preparing ltr, telephone calls etc.

a. Preparer's Name is the person who prepares ltrs/telephone calls etc. Grade/Step is grade & step of preparer.

14.FOR FOIA OFFICE USE ONLY

a. TotalAdministrative / Processing Fees- add the actual administrati ve cost block in the cost column.

b. TotalCollectable Fees- add the review / search blocks in the cost column.

c. TotalCharged- enter the amount that the requester was charged.

d. Fees Waived / Reduced - indicate i f the cost of processing the request was waived or reduced by circling yes or no.