Department of Energy
Washington, DC 20585

January 24, 2013

Mr. Craig Segall
Environmental Law Program
Sierra Club
50 F Street, NW, Eight Floor
Washington, DC 20001

Re: HQ-2013-00423-F

Dear Mr. Segall:

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. You asked for certain records related to a study recently commissioned and released from NERA Economic Consulting concerning liquefied natural gas exports from the United States including:

(A) contract or contracts with NERA Consulting (or any other relevant person or entity;

(B) all records related to DOE's selection of NERA Consulting;

(C) all records related to DOE's involvement in the preparation, release, and further consideration of the study;

(D) a complete technical description of NERA's "NewERA" model;

(E) a machine-readable copy of the NewERA model.

A search for responsive records will be conducted of the files of the Office of Fossil Energy and the Office of Acquisition and Project Management. Upon completion of the searches and the review of any records located, you will be provided a responses from those office.

In your letter, you requested a waiver of fees associated with the processing of the request. For purposes of assessment of fees, you have been categorized under the DOE regulation at Title 10, Code of Federal Regulations (CFR), 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 at no cost.

Pursuant to 10 CFR 1004.9(8), I have determined that a waiver is appropriate for 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 public understanding about the matter. You also have demonstrated the ability and intent of your organization to disseminate the information to the public in a form that can further understanding of the subject matter.

You also asked for expedited processing of the request. You stated that the Sierra Club seeks information on the NERA study in time to allow it and other members of the public to file fully-informed comments during DOE's comment period.

The FOIA permits agencies to expedite the processing of requests if requesters demonstrate a "compelling need." A "compelling need" is established when two criteria are met. The criteria are met when (1) failure to obtain the records quickly "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or (2) if the "requester is primarily engaged in disseminating information" and can demonstrate that there is an "urgency to inform the public concerning actual or alleged Federal Government activity."

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The reasons you have provided do not adequately address the basis for which a request may be expedited. You have not provided material that establishes that there is any threat to the life or safety of an individual that would justify expeditious processing of the request.

You have not identified yourself as a requester primarily engaged in the dissemination of information. You also have not identified an actual or alleged activity that poses any particular urgency that requires the dissemination of information in an expedited manner. In order to determine whether a requester has demonstrated an "urgency to inform," and hence a "compelling need," courts consider at least three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. Al-Fayed v. C.I.A., 254 F. 3d 300, 310 (D.C. Cir. 2001); Associated Press v. DOE, Case No. TFA-0273 (September 11, 2008). Your request does not address factor two.

For these reasons, I am denying your request for expeditious processing. The request will be .processed in accordance with provisions of the FOIA.

You may challenge the denial of expedited processing by submitting a written appeal to the Director, Office of Hearings and Appeals, at HG-1/L'Enfant Plaza Building, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. You should submit the appeal within 30 calendar days of receipt of this determination.

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. The appeal must contain elements required by 10 CFR 1004.8, including a copy of this letter. Judicial review will thereafter be available in the Federal District Court either (1) in the district where you reside; (2) in the district where you have your principal place of business; (3) in the district where the DOE records are located; or (4) in the District of Columbia.

Please refer to the above referenced number in any communications with the DOE about the request. If you have questions about processing the request, please contact Ms. Pamela Gentel in the Office of Fossil Energy (FE-6) on (301) 903-1856. You may contact Ms. Joan Ogbazghi in this office (MA-90) on (202) 586-3595 with any question about this letter. Ms. Gentel and Ms. Ogbazghi also can be contacted at U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

I appreciate the opportunity to assist you with this matter.

Sincerely,

Alexander C. Morris
FOIA Officer
Office of Information Resources