

October 2011: Vogtle Loan Guarantee Freedom of Information Act - Important Dates and Events

This narrative highlights important dates and events related to five FOIA requests sent on behalf of the Southern Alliance for Clean Energy to the Department of Energy, Department of Treasury, and Office of Management and Budget.¹ Each request concerns the conditional commitments for federal loan guarantees issued to Georgia Power Company, Municipal Electric Authority of Georgia, and Oglethorpe Power Corporation in connection with the Plant Vogtle project.

- February 16, 2010: President Obama announces that the Department of Energy (“DOE”) has offered conditional commitments for loan guarantees totaling \$8.33 billion for the Plant Vogtle project.
- March 25, 2010: Southern Alliance for Clean Energy (“SACE”) submits a Freedom of Information Act (“FOIA”) request to DOE for records pertaining to the loan guarantees.
- April 2, 2010: DOE acknowledges receipt of the FOIA request and states 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.”
- April 22, 2010: DOE sends an email again acknowledging receipt of the FOIA request.
- April 26, 2010: DOE confirms, by phone, that it does not yet have a response to the FOIA request.
- May 27, 2010: SACE sends letter to DOE’s Office of Hearings and Appeals, again requesting a response to the FOIA request.
- June 1, 2010: Via letter, DOE’s Office of Hearings and Appeals denies that it has any responsibility to respond to SACE’s demand for a response to its FOIA request.
- June 8, 2010: DOE again confirms, by phone, that it does not have a response to the FOIA request.
- June 22, 2010: DOE again confirms, by phone, that it does not have a response to the FOIA request.
- July 6, 2010: DOE sends to SACE a “partial response” to the FOIA request consisting of three heavily redacted loan guarantee term sheets purported to be responsive to ¶ 6 of the FOIA request.
- July 8, 2010: DOE sends to SACE another “partial response” to the FOIA request consisting of two redacted documents purported to be responsive in part to ¶ 3 of the FOIA request regarding the environmental critique of the loan guarantee applications.
- July 16, 2010: SACE files an administrative appeal concerning the inadequacy of the July 6 “partial response.” The administrative appeal challenges DOE’s application of FOIA Exemption 4 to the term sheets, and seeks their release in unredacted form.

¹ Information related to each request is color coded as follows: March 25, 2010 request to DOE; July 19, 2010 request to DOE; November 10, 2010 request to DOE; February 9, 2011 request to Office of Management and Budget; and March 3, 2011 request to Department of Treasury.

- July 19, 2010: SACE submits a FOIA request to DOE for the executed term sheets and definitive agreements, as well as any other documents pertaining to the loan guarantees not covered in the March 25, 2010 FOIA request.
- July 20, 2010: DOE sends an “interim response” acknowledging receipt of the FOIA request.
- August 9, 2010: SACE files a complaint against DOE in U.S. District Court for the District of Columbia, seeking to compel DOE to release the requested documents.
- August 11, 2010: DOE’s Office of Hearings and Appeals (“OHA”) issues a Decision and Order granting SACE’s July 16, 2010 administrative appeal regarding the term sheets. According to the OHA Decision, the “appeal, if granted would require [the DOE Loan Guarantee Program Office] to release the withheld information to SACE.” Notwithstanding this statement, the OHA does not order release of the withheld information, but rather remands the matter to DOE’s Loan Guarantee Program Office for further explanation on why the information was withheld.
- August 18, 2010: DOE sends a “partial response” to the FOIA request, but releases no documents. In this response, DOE states that the executed term sheets were already released pursuant to the March 25, 2010 FOIA request. The executed term sheets, however, had not been released.
- September 1, 2010: DOE sends a letter to SACE purporting to “withdraw” the July 6, 2010 determination letter regarding the term sheets.
- September 2, 2010: DOE issues a revised determination letter that is substantially similar to the July 6 initial determination. No responsive documents, redacted or otherwise, are released with this revised determination letter.
- September 10, 2010: SACE files an administrative appeal with DOE’s Office of Hearings and Appeals concerning DOE’s failure to (1) release the executed term sheets, and (2) respond timely to part 3 of the FOIA request, which requested release of loan guarantee records not otherwise covered in the March 25, 2010 FOIA request.
- September 16, 2010: The Office of Hearings and Appeals dismisses the appeal because (1) the Loan Guarantee Program Office acknowledged that it failed to produce the executed term sheets, and (2) OHA claimed not to have authority to address DOE’s failure to respond to a FOIA request.
- September 22, 2010: DOE sends another “partial response,” purporting to respond to ¶ 5 of the FOIA request regarding the use of union labor. DOE claims it did not locate any responsive records.
- September 24, 2010: DOE sends another “partial response,” purporting to respond to ¶ 1 of the FOIA request regarding the loan guarantee applications (releasing heavily redacted versions of the Georgia Power Company, Municipal Electric Authority of Georgia, and Oglethorpe Power Corporation applications), part of ¶ 2 of the FOIA request regarding correspondence (releasing heavily redacted emails regarding the Georgia Power loan guarantee), part of ¶ 3 of the FOIA request regarding the environmental critique of the loan guarantee applications (releasing no documents), ¶ 4 of the FOIA request regarding the Credit Review Board (releasing no documents), and part of ¶ 7 of the FOIA request regarding DOE’s review of the loan guarantee applications

(releasing no documents). DOE also sends a “final response” to the July 19, 2010 FOIA request, releasing heavily redacted versions of the executed term sheets.

- October 25, 2010: SACE files an administrative appeal to DOE’s Office of Hearings and Appeals concerning the correspondence records released in the September 24, 2010 “partial response.” SACE also files an administrative appeal concerning the redacted term sheets released pursuant to the July 19, 2010 FOIA request.
- November 10, 2010: The Office of Hearings and Appeals dismisses the appeal as premature, claiming that the Loan Program Office has not completed its search of correspondence records. SACE also sends a third FOIA request to the DOE requesting documents related to the credit subsidy fee.
- November 19, 2010: DOE sends a letter informing SACE that it is continuing to search for Georgia Power correspondence documents responsive to ¶ 2 of the FOIA request.
- November 29, 2010: DOE sends an “initial response” to the November 10, 2010 FOIA request stating that the request has been sent to the Loan Program Office and that a final response will be forthcoming.
- December 3, 2010: DOE releases new versions of the term sheets with fewer redactions; however, DOE continues to withhold substantial portions of the term sheets from release. DOE does not provide any explanation or justification for the redactions beyond its September 2, 2010 revised determination letter. On the same day, the U.S. District Court for D.C. issues a scheduling order instructing DOE to make rolling productions of documents on the 10th day of each month.
- December 10, 2010: DOE sends an “interim response” to the November 10 request, promising that the “request will be processed in as timely a manner as possible.”
- January 10, 2011: DOE produces heavily redacted Credit Review Board documents.
- January 14, 2011: SACE files an amended complaint in the D.C. District Court, adding a claim regarding DOE’s unlawful withholding of portions of the term sheets.
- January 21, 2011: DOE’s Office of Hearings and Appeals denies SACE’s administrative appeal, finding that the information within the term sheets was properly withheld.
- February 1, 2011: SACE files a Motion for Partial Summary Judgment in the D.C. District Court, asserting that the term sheets should be released in their entirety. SACE claims that (1) DOE failed to meet the government’s heavy burden of proving that the information in the term sheets falls under a FOIA exemption, and (2) even if DOE had provided the necessary support for claiming an exemption, the requested information does not qualify for protection under FOIA Exemption 4 because the information was not “obtained from a person” and would not result in competitive harm to the applicant.
- February 9, 2011: SACE submits a FOIA request to the Office of Management and Budget (“OMB”) for records related to the credit subsidy calculator used by DOE to determine the credit subsidy fees to be paid by Georgia Power, MEAG, and Oglethorpe.

- February 10, 2011: DOE produces heavily redacted Credit Review Board documents.
- February 15, 2011: SACE submits a FOIA request to the Department of the Treasury for records related to implementation of DOE's Loan Guarantee Program, including records related to the credit subsidy calculator.
- February 17, 2011: Department of Treasury sends a letter to SACE, requesting a better description of the documents requested.
- February 25, 2011: OMB sends an "initial response" to SACE acknowledging receipt of the FOIA request.
- March 1, 2011: DOE files a Cross-Motion and Opposition to SACE's Motion for Partial Summary Judgment in the D.C. District Court, asserting that information in the term sheets was properly withheld because (1) the terms and conditions of DOE's loan guarantee offers were obtained from the applicants themselves, and (2) these terms and conditions constitute confidential commercial information, the release of which would cause the applicants competitive harm. DOE also produces a new version of the MEAG term sheet, which remains heavily redacted.
- March 3, 2011: SACE sends a revised FOIA request to the Treasury, requesting all records of correspondence between the Treasury, OMB, and DOE regarding the loan guarantees or credit subsidy fees.
- March 10, 2011: DOE produces Credit Review Board documents.
- March 21, 2011: The Treasury sends a response acknowledging receipt of the FOIA request and requesting an additional 10 days for processing.
- March 22, 2011: SACE files a Response to DOE's Cross-Motion for Partial Summary Judgment and Reply in support of SACE's Motion for Partial Summary Judgment in the D.C. District Court.
- April 8, 2011: DOE produces heavily redacted Georgia Power correspondence documents.
- April 21, 2011: DOE produces Office of General Counsel correspondence documents.
- April 26, 2011: DOE files a Reply in Support of its Cross-Motion for Partial Summary Judgment in the D.C. District Court.
- May 10, 2011: DOE produces heavily redacted Georgia Power correspondence documents. OMB sends a status update to SACE, promising a response to the FOIA request by May 27, 2011.
- May 31, 2011: SACE sends a letter to the Treasury, again requesting a response to the March 3, 2011 FOIA request.
- June 3, 2011: DOE sends SACE an index of documents produced to date. OMB sends another status update to SACE, promising a response by June 30, 2011. Treasury sends a letter to SACE

acknowledging receipt of the request for document production and stating that the Programs Office will contact SACE directly with a response. The Programs Office has not yet contacted SACE.

- June 9, 2011: This day is DOE's court imposed deadline for producing all documents responsive to the FOIA request. Because it has not completed its search, DOE requests a one month extension. SACE consents, and the D.C. District Court grants the extension. Also on this day, DOE produces heavily redacted Georgia Power correspondence documents.
- July 11, 2011: This day is DOE's extended deadline for producing all documents responsive to the FOIA request. Because it still has not completed its search, DOE requests another two month extension. SACE consents, and the D.C. District Court grants the extension. Also on this day, DOE produces heavily redacted Georgia Power correspondence documents.
- July 12, 2011: SACE sends a letter to OMB, again requesting a response to the February 9, 2011 FOIA request.
- July 15, 2011: General Counsel for OMB contacts SACE regarding the FOIA request, and assures SACE that documents will be produced soon. SACE agrees to narrow the FOIA request to assist in document production.
- August 10, 2011: DOE produces heavily redacted Georgia Power correspondence documents.
- August 22, 2011: SACE contacts OMB via phone and again requests production of the documents. OMB assures SACE that the documents will be produced soon. In an effort to avoid additional litigation, SACE provides DOE with examples of correspondence documents with information wrongfully withheld under Exemption 5 (the interagency deliberation exemption). DOE agrees to review these redactions.
- September 9, 2011: DOE informs SACE that it will have an assessment of SACE's November 10 FOIA request by September 20.
- September 12, 2011: This day is DOE's extended deadline for producing all documents responsive to the FOIA request. Because of a "technical glitch" with the document production, DOE requests a two day extension. SACE consents.
- September 14, 2011: DOE makes its "final" production of heavily redacted Georgia Power correspondence documents. Some documents have not been produced because their contents are still being reviewed by other agencies. Other documents have not been produced in legible formats.
- September 20, 2011: SACE contacts OMB via phone and again requests production of the documents. OMB assures SACE that the documents are being mailed to SACE today. DOE informs SACE that it is still reviewing the Exemption 5 issues brought to its attention by SACE on August 22. It is also still working to produce a few remaining documents. In an effort to avoid additional litigation, SACE provides DOE with examples of correspondence documents with the credit subsidy fee redacted under Exemption 4 (confidential business information exemption), and asks DOE to confirm that it stands behind the redactions. DOE agrees to review the redactions. DOE informs SACE that it is still processing the November 10 FOIA request, but new requests from Capitol Hill and

other parties (presumably about Solyndra) have taken precedence. DOE assures SACE that it will have a production schedule by September 26.

- September 28, 2011: SACE contacts OMB via phone and again requests production of the documents. OMB assures SACE that the documents are being mailed to SACE by the end of the week.
- September 30, 2011: OMB sends SACE a final determination letter, withholding all documents requested. SACE intends to appeal this response.
- October 3, 2011: DOE and SACE provide the D.C. District Court with a status report and briefing schedule regarding three remaining issues: (1) the withholding of the information regarding the credit subsidy fee under the confidential business information exemption; (2) the withholding of other loan terms under the confidential business information exemption; and (3) the withholding of records of correspondence with the power companies under the intra-agency deliberation exemption.
- October 4, 2011: D.C. District Court issues a scheduling order, adopting the parties' briefing schedule. The issues will be briefed in a series of filings from October 31, 2011 – March 2, 2012.