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August 23, 2012

Mr. Larry Gottesman
Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (28227)
Washington, DC 20460

Re: FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Larry Gottesman:

I am writing to request a copy of each record in the possession, custody, or control of the U.S. Environmental Protection Agency ("EPA") relating to or referencing the involvement of EPA Headquarters in the decision by Dr. Al Armendariz and/or EPA Region 6 to continue the uncertainty over the permitting requirements for the proposed Las Brisas Energy Center (LBEC) in Corpus Christi, Texas, as memorialized in Dr. Armendariz's August 3, 2011 letters to Representatives Blake Farenthold, Gene Green, Joe Barton, Michael C. Burgess, Henry Cuellar, Ruben Hinojosa, Al Green, Pete Olson and Lamar Smith.

On May 20, 2011, these members of the U.S. House of Representatives sent a letter to Administrator Jackson regarding the LBEC. They asked that the Administrator step in to resolve the uncertainty surrounding the \$3 billion, state-of-the-art electrical generating facility, which would provide 4,000 jobs during its five-year construction phase and thereafter provide a reliable, secure and affordable source of electric power for South Texas. Despite a three-year permitting process, which culminated in the project receiving a prevention of significant deterioration (PSD) permit from the Texas Commission on Environmental Quality (TCEQ), the EPA suggested the LBEC might require an EPA greenhouse gas (GHG) air permit. In their May 20 letter, the Representatives outlined their view that, based on EPA's GHG regulations and guidance documents, LBEC did not need a GHG permit and asked Administrator Jackson to resolve the uncertainty, one way or another, by June 3, 2011.

Over two months later, Dr. Armendariz sent each of the Representatives a one-page letter briefly recounting TCEQ's and EPA's GHG permitting authority in Texas; EPA's general views of the Las Brisas PSD permit; the status of the matter as of May 18, 2011; and EPA's GHG tailoring rules and permitting guidelines. Dr. Armendariz's letter said nothing about how these rules might apply to LBEC or where EPA was in its decision-making process regarding that critical question. Indeed, the choice of Dr. Armendariz as a respondent to a letter of this

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importance was curious given his role as an expert witness for private litigants in the LBEC matter prior to his joining EPA.

I presume that the Administrator did not choose to either ignore the Representatives' request or allow Dr. Armendariz to draft a response on her behalf without any input from her, her staff, and/or others at EPA headquarters. Thus, I wish to obtain all communications between EPA Headquarters and EPA Region 6 both authorizing Dr. Armendariz to respond on the Administrator's behalf and discussing the content of that response.

This information is requested pursuant to Freedom of Information Act (5 U.S.C. § 552). At this time, please provide me with copies of all the documents in EPA's possession, custody, or control related to Dr. Armendariz's August 3, 2011 letter, including, but not limited to:

- Discussions surrounding the response, including
 - What was to be said
 - Who was to write it
 - Why there was not to be a substantive response to the Representatives' request
 - What consideration was to be given to potential conflicts of interest or appearances of bias in allowing Dr. Armendariz to respond?
- Drafts of the letter
- EPA's analysis, prior to August 3, 2011, about the potential need for LBEC to apply for or obtain a GHG permit
- Communications between May 20, 2011 and August 3, 2011 directly between EPA and any opponent or opponents of LBEC

I would ask that the response to this request include all draft and final copies of emails, memos, letters, notes, meeting minutes, etc that may be in possession of the agency and related to this matter. I also ask that all communications between Dr. Armendariz and any of the private litigants in this matter for which he was an expert witness, as well as any environmental NGOs, or their staff/representatives, related to the LBEC be provided.

These requests use the word "record" as that word is defined in the Freedom of Information Act, 5 U.S.C. § 552(f)(2). In these requests, the term "document" has the meaning given to it by Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure, namely, physical documents or electronically stored information including, but not limited to, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the USFWS into a reasonably usable form.

Please identify and inform me of all responsive or potentially responsive documents within the statutorily prescribed time, and the basis of any claimed exemptions or privilege and to which specific responsive or potentially responsive documents(s) such objection applies; and please inform me of the basis of any partial denials or redactions. Specifically, if your office takes the position that any portion of the requested records is exempt from disclosure, I request that you provide me with an index of those documents as required under *Vaughn v. Rosen* 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972), with sufficient specificity "to permit a

reasoned judgment as to whether the material is actually exempt under FOIA” pursuant to *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and “describing each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

Your work in obtaining the requested information within the statutorily mandated timeframe of 20 days is appreciated. If there are any fees for searching or copying the records please contact me before filling my request.

If you have any questions please do not hesitate to contact Bryan Zumwalt in my office at bryan_zumwalt@vitter.senate.gov or 202-224-4623.

Sincerely,



David Vitter
United States Senate