



**State of Louisiana**  
**DEPARTMENT OF NATURAL RESOURCES**  
**OFFICE OF THE SECRETARY**

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*via email*

RE: HERO's Response to FOIA Request for Applications Submitted  
Under DE-FOA-2740

Dear Ms. Gleockler:

In response to your above referenced request to review the specific application documents submitted by HERO under DE-FOA-2740, we assert the following exemptions to the Freedom of Information Act (FOIA) as more fully set forth below. We have included as attachments with this communication proposed redactions to the application documents you provided in the manner requested. While we have primarily focused on exemption 4 to FOIA, we have also include claims under exemption 6 of FOIA for several documents and/or portions of documents.

We claim exemption from FOIA as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential" all redactions in the attached documents labeled as "Exemption 4." All such requested redactions are justified under exemption 4 in that they contain either (1) trade secrets or (2) information that is (a) commercial or financial and (b) obtained from a person, and (c) is privileged or confidential.<sup>1</sup> We will provide redaction specific explanation as to whether the information contained in each proposed redaction is either a trade secret or commercial or financial below, but we do confirm that the information in each proposed redaction under this exemption is and has been treated as privileged or confidential. The exemption 4 redacted information has not been made publically available, shared with any non-HERO partners, and in some cases has been limited to only the primary applicant and key partners in a need to know basis. Furthermore, as a state governmental entity ourselves, we meet the requirement that the information be provided by a "person."<sup>2</sup>

The redacted program narrative is exempt from FOIA under Exemption 4 as in its totality it contains both trade secrets and information that is commercial or financial. This narrative includes information when taken together as a whole constitutes a secret, commercially valuable plan for developing carbon-free energy hubs in a manner that is economically feasible and sustainable. It is the

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<sup>1</sup> See 5 U.S.C. § 552(b)(4).

<sup>2</sup> See *Hustead v. Norwood*, 529 F. Supp. 323, 326 (S.D. Fla. 1981).

product of substantial effort and innovation with a direct connection between this trade secret information and the productive process. As such, it meets the narrower “common law” definition of trade secrets adopted by some courts and should be redacted.<sup>3</sup> But, even if DOE determines that the redacted project narrative does not qualify as trade secret information, it is still exempt from FOIA as containing commercial information. HERO, including its partners, The Accelerate Group and NextGen Energy Partners, have a commercial interest in the information as such the information concerns matters subject to commerce both of which have previously been determined by courts to meet the definition of commercial information.<sup>4</sup> The Accelerate Group and NextGen Energy Partners are the co-architects of the information claimed here as commercial and operate as small business firms specializing in complex energy systems, master energy designs, grid innovation, community energy resilience, and transformative energy solutions tackling some of the world’s most pressing and complex energy challenges. Consequently, public disclosure of their plans, detailed formula and other information found in the application adversely impacts the commercial viability of these small businesses by providing potential competitors with access to their intellectual property and work products putting their substantial financial investment, expertise, and innovation at risk. Finally, the fact that the primary applicant, the State of Louisiana through its Department of Natural Resources, does not have profit as its primary aim does not change the above analysis. This is because the information still concerns commerce in the energy field and market. This fact has been recognized by courts previously.<sup>5</sup> For the same reasons set forth in this paragraph, the following proposed redactions are also exempt from FOIA as either alone or together their public release would allow access to the underlying confidential trade secrets and commercial information: 1) Pilot Sites and Proposed Funding Amounts, 2) Detailed Workplans and Tasks, 3) Novel Strategies and Frameworks, 4) Commercial Plans and Metrics, 5) New Industry Concepts and Nomenclature 6) Project Organizational Structure and Expertise, 7) Proposed Operating Models and Benefits, 8) Novel Financing Alternatives, 9) Grid Innovative Concepts and Metrics, 10) Energy Security Plans and Metrics, 11) Hub Deployment Plan and Maps, 12) Community Sites and Metrics, 13) Critical Infrastructure and Maps, 14) Energy Equity Plans and Metrics.

The personnel rates have been redacted as exempt from FOIA under Exemption 4 and Exemption 6. Under the Exemption 4 analysis they clearly meet the definition of financial information, which has previously been found to apply to personal financial information before.<sup>6</sup> This information has been maintained as confidential, and was submitted by a person as more fully discussed above. In addition to meeting exemption 4, this information is exempt under exemption 6 as possessing personal privacy interests. Personal pay rates are the type of information that would normally be maintained in a personnel file in which there is a significant privacy interest in non-disclosure and for which there is not a compelling public interest for disclosure. Therefore, under previous court analysis, this information should be redacted as exempt from FOIA under exemption 6.<sup>7</sup>

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<sup>3</sup> See *Public Citizens Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983); and *Anderson v. HHS*. 907 F.2d 936, 944 (10<sup>th</sup> Cir. 1990).

<sup>4</sup> See *Public Citizens Health Research Group, Id.*; and *American Airlines, Inc. v. National Mediation Board*, 588 F.2d 863, 870 (2d Cir. 1978).

<sup>5</sup> See *American Airlines, Inc. Id.*; *Critical Mass Energy Project v. NRC*, 830 F.2d 278, 281 (D.C. Cir. 1987); and *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 398 (5<sup>th</sup> Cir. 1985).

<sup>6</sup> See *Defenders of Wildlife v. U.S. Department of the Interior*, 314 F. Supp. 2d 1, 15 (D.D.C. 2004).

<sup>7</sup> See *Multi Ag Media LLC v. USDA*, 515 F.3d 1224 (D.C. Cir. 2008) and *NARA v. Favish*, 541 U.S. 157 (2004).

The estimated amounts for the proposed studies are exempt under exemption 4. The contain commercial or financial information in that they are an estimate of potential costs to the submitting party, that if released this information would significantly damage HERO's ability to receive competitive costing for these studies, thereby potentially limiting the ability to expend any realized savings on other priorities of the grant program and related State goals. This information also meets the other requirements as stated more fully above.

The personal resumes are redacted both under exemptions 4 and 6. For purposes of exemption 6, these resumes should be redacted as they are similar to the information kept in a personnel file, they are not typically made public and contain personal privacy information with significant privacy interests against disclosure and for which there is not a compelling public interest for disclosure. Therefore, this information should be redacted. Additionally, public disclosure of the involvement in HERO of some of the individuals whose resumes are requested to be redacted may cause them significant commercial harm. Therefore, they should be redacted pursuant to exemption 4 as confidential or privileged commercial information.

Please contact me at either [blake.canfield@la.gov](mailto:blake.canfield@la.gov) or by phone at 225-342-3024 should you have any questions or if additional justification is required as to any of the proposed redactions.

Yours truly,



J. Blake Canfield

Executive Counsel - LDNR