



**OZONE
TRANSPORT
COMMISSION**

May 14, 2001

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Connecticut

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

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Rhode Island

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Virginia

Re: Comments on 66 FR 14562-14564 and 66 FR 14564-14566

Dear Mr. Colligan:

The Ozone Transport Commission (OTC) appreciates the opportunity to provide comments into your docket on the U.S. Department of Energy, Energy Information Administration (EIA) proposals entitled "Agency Information Collection Activities: Proposed Collection; Comment Request" Requirements" (66 FR 14562-14564 and 66 FR 14564-14566). OTC was created by Congress, pursuant to the Clean Air Act Amendments of 1990, to coordinate ground-level ozone planning in Northeast and Mid-Atlantic States region of the U.S. Its members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, New Hampshire, New Jersey, New York, Massachusetts, Pennsylvania, Rhode Island, Virginia, and Vermont.

In the Federal Register notice, EIA proposes revisions to several electricity survey forms that it employs. If implemented, these revisions would essentially expand the Agency's confidentiality policy for several data elements, including: fuel consumption; fuel quantity; fuel quality; thermal output; financial data; and cost of purchase power. OTC objects to the proposed revisions for a number of reasons.

First, OTC States do not believe that the data proposed to be treated as confidential meet confidentiality criteria. General data on fuel quantity and quality have been routinely collected by various regulatory agencies, and do not provide trade secret information. EIA's presumption of confidentiality appears to contradict its earlier policy stances, and concedes discretion without any petition for confidentiality from generators. Under the Freedom of Information Act, generators seeking confidential treatment of information have the burden of showing actual competition and that the competitive harm they would suffer from disclosure is substantial enough to outweigh the public's interest in the information. That showing would likely be very difficult, if not impossible to make. EIA would still have the discretion to release those data, based on the public's need to know. In addition, some of these and similar data are already publicly available through various commercial services, which offer data down to the plant level; EIA would be hard pressed to make a finding of confidentiality on data that can be website-retrievable.

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Executive Director

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Second, the EIA provides a crucial service through its data collection activities; data on fuel quantity and quality are critical, and must remain accessible to State and Federal regulators and the public. State environmental regulators, such as the Ozone Transport Commission, rely on these data to develop and implement air pollution prevention and control programs that protect public health. They are vital to implementing and assessing compliance with the OTC's Allowance Trading Program for nitrogen oxides (NOx), which is an interstate, regional program. States need these data to calculate emissions for individual electricity generating units, to update emissions inventories, to update emissions budgets for market-based emissions cap-and-trade programs, and to establish energy efficient output-based emission standards for electricity generating units. For the OTC States and other environmental regulators, there is no comparable substitute available to fuel data; emission calculations are directly dependent on the amount of fuel burned. The bulk of these regulatory programs have been in place for many years and are federally mandated; all are necessary to protect public health and the environment.

Third, it is also critical to the OTC States that the U.S. Environmental Protection Agency (EPA) has access to the data, in order to monitor national and regional emission trends and develop market-based regulatory programs such as the Acid Rain Program. While most large electricity generators are currently required to report emissions data to EPA, we understand that EPA relies upon EIA's data to determine emissions for the majority of generating units and to verify the accuracy of EPA's collected data. This provides the necessary and appropriate quality assurance needed for implementing the Acid Rain and NOx Allowance programs, and for developing and promoting sound environmental policies, such as energy efficiency. We are concerned that EPA's activities would be significantly hindered should the proposed expanded confidentiality policy be adopted.

Fourth, OTC believes that establishing institutional barriers for States to collect currently available data on emissions and resource mix at the plant or company level will adversely affect newer and developing programs and activities that address electricity deregulation and promote energy efficiency. OTC has initiated a Clean Energy Initiative, and will rely on these data for analysis purposes. Other related and ongoing program activities by OTC States that would be affected include developing base information for renewable portfolio standards and environmental disclosure programs, and calculating emission reduction benefits of renewables and energy efficiency projects. Limiting access to these data could also hinder the ability of regulators to monitor emerging power markets.

Fifth, while States have the authority to collect the aforementioned data from electricity generating units, it is more efficient and more effective to have such data collected by one agency through one reporting system. If EIA were to expand its confidentiality policy, as proposed, and make the data unavailable through the existing national reporting system, States and others would be forced to develop and implement reporting systems on their own, each with its unique reporting format. Such an approach would foster a patchwork of reporting regulations, requirements, and deadlines, and create an onerous reporting and compliance burden for the regulated community. Under this scenario, owners of electricity generators might choose to work through each State's confidentiality process to make a case that the data are, in fact, subject to confidentiality laws; if the owners were to prevail, then separate confidentiality agreements would need to be developed between each owner and State in order for the data to be released. For

many States where a percentage of their energy is produced out-of-State, more elaborate data sharing systems would need to be developed. Overall, this scenario would impose significant additional costs on electricity generating unit owners, which would be passed on to consumers and businesses. OTC strongly believes that a nationally consistent data repository is appropriate from regulatory and economic perspectives. In order to avoid a patchwork of reporting requirements, EIA must maintain a national database and make its data available.

The issue of access to basic fuel data is not new, and dialogue has transpired between State and Federal agencies about the critical need for seamless coordination in this regard. In 1996, during the Ozone Transport Assessment Group proceedings, thirty-seven States, including those of the OTC, were assured by then-Chair of the U.S. Federal Energy Regulatory Commission, Elizabeth Mohler, that access to fuel data - and full disclosure - would be the underpinning for informed consumer choice in a deregulated electricity market. We are dismayed that the issue has resurfaced, particularly at this time, when the need for reliable energy is on Federal and State agendas. The fuel data are key to ensuring that responsible energy policies are developed that do not compromise our critical public health and environmental goals. Limiting public access to this critically important data seems to conflict with the EIA's mission statement, which states: "We provide policy-independent data, forecasts, and analyses to promote sound policy making, efficient markets, and public understanding regarding energy and its interaction with the economy and the environment." To make fuel-related data confidential at a time when power generators in California and in the Ozone Transport Region are facing intense scrutiny may give the appearance of agency support of generation owner interest in confidentiality and the discounting of public interest in disclosure.

OTC strongly urges EIA to withdraw its proposal. In addition, we recommend that EIA revise its current confidentiality policy so that fuel data are publicly available for all electric generators, including independent power producers (IPPs), since smaller generators and IPPs are covered under EIA's current confidentiality policy.

Should you have any questions, or wish to discuss this matter in further detail, do not hesitate to contact me at the OTC office at 202-508-3840. Again, thank you for the opportunity to comment.

Sincerely,



Bruce S. Carhart
Executive Director

Cc: OTC Members
John Seitz, USEPA
Brian McLean, USEPA