

May 14, 2001

John G. Colligan  
Energy Information Administration  
Electric Power Division, EI-53.1  
Forrestal Building  
U.S. Department of Energy  
Washington, DC 20585-0650

Dear Mr. Colligan:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for this opportunity to comment on the Department of Energy, Energy Information Administration's (EIA) proposals regarding "Agency Information Collection Activities," which were published in the *Federal Register* in two separate notices on March 13, 2001 (66 FR 14562 and 66 FR 14564). Specifically, we would like to comment on 1) the elements of the EIA proposals addressing the data elements that will be treated as confidential and 2) the change in the size thresholds for reporting from 10 to 50 megawatts. For reasons we will articulate below, STAPPA and ALAPCO recommend that the EIA reconsider and withdraw its proposals to make the changes it is contemplating, and make the changes related to reporting thresholds that we are suggesting.

We are interested in this proposal for two primary reasons. First, STAPPA and ALAPCO are the national associations representing air quality officials in 53 states and territories and over 165 major metropolitan areas throughout the country. The members of STAPPA and ALAPCO have primary responsibility under the Clean Air Act for implementing our nation's air pollution control laws and regulations. This includes addressing the emissions of air pollution from power generators. Second, power generation is a dominant source of air pollution from stationary sources. Electricity production and use, which have significant near- and long-term impacts on air quality and public health, create a disproportionate share of air pollution, including emissions of sulfur dioxide, nitrogen oxides, particulate matter, volatile organic compounds, carbon dioxide and mercury. It should come as no surprise, then, that we have concerns about proposals that could adversely affect our ability to obtain information useful in addressing power generation facilities.

### *Confidentiality Policy*

EIA is proposing to expand its confidentiality policy to include several key additional data elements, including fuel quantity; fuel quality; useful thermal output (from combined heat and power facilities); and financial data. We oppose this revision in policy. From the standpoint of environmental regulators, EIA's fuel quantity and quality data are critical for calculating emissions for individual generating units. While most large generators must report emissions data directly to the U.S. Environmental Protection Agency (EPA), EIA data is still used to estimate emissions for the majority of generating units. Emissions estimates in public EPA databases such as E-GRID and Trends depend substantially upon this EIA data, and EPA would probably be precluded from providing plant level data from these databases should the policy be adopted.

Perhaps more importantly for state and local air agencies, EIA's withholding these data could adversely affect several critical state and local agency activities, including:

- disclosure of emissions and resource mix data at the plant or company level;
- development of emissions inventories and output-based emissions standards;
- development of baselines for renewable portfolio standards;
- calculation of emissions impacts of renewables and energy efficiency; and
- monitoring of emerging power markets.

Restrictions on access to EIA fuel data would undermine the development of new market-based approaches to controlling air pollution, as well. EPA's Acid Rain Program was designed using EIA fuel data. The agency continues to use EIA fuel data to evaluate the existing Acid Rain Program and to develop new market-based programs that apply to other pollutants, such as mercury.

We do not believe EIA offers sufficient information to conclude that the data elements proposed for confidential treatment are "commercially sensitive information" – let alone that the disclosure of such data would cause generators substantial competitive harm or that the potential harm to individual generators outweighs the strong public policy favoring full public disclosure. Assuming all electricity generators must disclose the same basic information about their generating units, it seems that any competitive harm that might arise would be minimal, compared to the benefits to air quality from the disclosure of this information.

We are also concerned that the EIA policy is inconsistent with those of other federal entities, including EPA. For example, last year, EPA made available on a public website (through a contractor) the following plant- and unit-specific data for calendar year 1999 for all large U.S. coal-fired electric power plants: monthly fuel consumption data, monthly fuel quality data (including the moisture content, heating value, percent sulfur, percent ash, mercury content and chlorine content of the coal burned) and monthly fuel type data (type of coal burned). These data were submitted to EPA by electric

utilities as part of EPA's information collection request ("ICR") on mercury emissions from coal-fired electric power plants. EPA's release of these data to the general public would indicate that the agency considered the data to be non-confidential. Incidentally, EPA staff used the 1999 data independently collected by EIA to verify the accuracy of the plant- and unit-specific consumption data submitted to EPA by electric utilities in response to EPA's ICR on mercury.

Further, some of the data at issue must be reported by some of the generators to at least one other federal agency that does not keep the data confidential. The Federal Energy Regulatory Commission's Form 1 includes data related to (or from which can be derived) cost of generation, heat rates of generation units, and electricity sales and purchase data. In addition, many state utility commissions require utilities to report specific data about their generation sources, fuels used, and electricity sales. Thus, even if the data collected by EIA were considered to be otherwise competitively sensitive, EIA's withholding the data would have no competitive impact since the same or similar information is available from other sources. Accordingly, we believe EIA should ensure that its confidentiality policy is consistent with that of EPA and other federal agencies.

The environmental and economic impacts of electric power plants are not limited by state boundaries. Electricity and air pollution generated by an electric power plant operated in one state can and do affect the air quality in other states. EIA data have been and will continue to be essential in evaluating and addressing interstate transport. Eliminating the availability of these data to state and local air agencies and the public could result in a diminished ability to ameliorate the problem.

Finally, we believe EIA's confidentiality proposal is inappropriate, since the EIA is a public agency charged under federal law with collecting, analyzing and publishing electric power data. Indeed, federal, state and local regulators, as well as members of the public, need this information to, among other things, develop, evaluate and implement policies that ensure environmental protection.

#### *Change in Reporting Threshold*

STAPPA and ALAPCO are concerned that EIA is proposing to increase the reporting threshold for Form EIA-767 from 10 megawatts to 50 megawatts at a time when numerous electric power plants in this size range are being built in the United States to provide peaking power or "emergency power" (e.g., distributed generators). Due to the recent electric power crisis in California and other western states, many of these new power plants are being allowed to operate, under abatement orders, without having first installed Best Available Control Technology (BACT) that would otherwise be required under current federal, state and local air quality regulations. In addition, several existing electric power plants in this size range are also being allowed to operate in excess of their permitted hours. Without public access to the policy-independent data provided by Form EIA-767, it would be very difficult if not impossible for the general public to understand the impact of these actions and the interaction between energy, electricity, the economy and the environment.

There also appears to be some inconsistency between the EIA proposal to increase the reporting threshold from 10 to 50 megawatts for steam electric plants on form EIA-767, while at the same time proposing to “broaden the scope of the survey” on form EIA-412, new Schedule 10, to include all steam-electric generators with name plate rating of 25,000 kilowatts (kw) (25 MW) or larger, and gas-turbine and hydro plants with a name plate rating of 10,000 kw (10 MW) or larger. The preferable, more consistent and less confusing approach would be to have all types of generating units 10 MW or larger report all of the key data elements including those previously suggested.

For the reasons articulated above, STAPPA and ALAPCO recommend that the EIA withdraw its proposal to treat these additional data as confidential and to raise the reporting threshold.

Sincerely,

/s/

/s/

Ronald C. Methier  
Chair  
STAPPA Energy Committee

Ellen Garvey  
Chair  
ALAPCO Energy Committee