



**EDISON ELECTRIC
INSTITUTE**

January 8, 2004

The Honorable Robert G. Card
Under Secretary for Energy, Science
and Environment
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Requests for Extensions of Comment Period on Proposed General Guidelines for Voluntary Reporting of Greenhouse Gases, 68 Fed. Reg. 68204 (December 5, 2003)

Dear Under Secretary Card:

The Edison Electric Institute (EEI) writes to you today in support of the requests by the Electric Power Industry Climate Initiative (EPICI) for extensions of the February 3, 2004, date for submittal of public comments provided in the Department of Energy's (DOE) December 5, 2003, public notice of its "Proposed Rule" (68 *Fed. Reg.* 68204) revising the current General Guidelines issued by the DOE in October 1994 (59 *Fed. Reg.* 52769) under section 1605(b) of the Energy Policy Act of 1992.

EEI is the association of U.S. shareholder-owned electric companies, international affiliates and industry association worldwide. Our U.S. members serve 90 percent of all customers served by the investor-owned segment of the industry. They generate more than 70 percent of all of the electricity generated by the electric utilities in the United States and serve nearly 70 percent of all ultimate customers of electricity in the nation. In addition, EEI currently has over 40 International Affiliate members spanning 19 countries. EEI is also one of seven members of EPICI.

The primary reason for this request is that our preliminary review of the preamble to the Federal Register notice and the proposed amendment to Title 10 of the Code of Federal Regulations shows that DOE wants to receive and consider the public comments derived from its December 5 proposal for purposes of developing and issuing "final revised General Guidelines" and that "[i]n parallel," DOE "intends to propose" a second set of documents, called "Technical Guidelines," relying, in part, on comments solicited in the preamble to the December 5 notice. There is no indication in the notice as to the timing of that second proposal other than the comment that those Guidelines will be proposed "subsequently." In addition, the notice explains that "[c]oncurrently with development of

the General and Technical Guidelines” the Energy Information Administration (EIA) will, at some unspecified time, “solicit public comment on the reporting elements” for the relevant reporting forms.

While this second set of Guidelines are designated as “Technical,” it is apparent from the notice that they have substantive implications for the electric utility sector and that they affect the understanding and application of a number of provisions of the proposed revised General Guidelines. Some of those provisions are: definitions; methods for reporting emissions, indicating the methods for calculating avoided emissions and project-based methods; criteria for identifying gases; methods, in the case of electricity generators, for calculating net emission reductions for the entire entity; identification of various output indicators and selection of appropriate indicators in the use of emission intensity as the basis for calculating emission reductions; factors to be used to convert purchased electricity use to greenhouse gas emissions; direction on how to calculate emission reductions associated with the generation and purchase of electricity; and determination of more than *de minimus* emissions on an entity-wide basis. In the case of several provisions of the proposed revision (*e.g.*, § 300.8), it is clearly stated that the reporting entity must use methods, measurements, calculations, etc. that “comply with DOE Technical Guidelines.” In the case of § 300.9, the proposed Guidelines provide that to be “recognized,” the reports “must conform to the measurement methods established by the Technical Guidelines.” However, it appears from the preamble that these Technical Guidelines have, in many cases, yet to be developed by the DOE.

It is neither fair nor consistent with the statutory requirement of the 1992 Act for an “opportunity for public comment” on the “guidelines for the voluntary collection and reporting of information on sources of greenhouse gases” to expect commenters to respond in piecemeal fashion, particularly when the proposals are so interrelated. Moreover, the statute does not recognize a distinction between “General” and “Technical Guidelines.” It calls for public comment on the “guidelines” as a whole, not in parts or in an incomplete fashion.

In addition, we observe that when the current guidelines were being developed in the 1993-94 timeframe, DOE proposed in June 1994 for public comment “draft guidelines and supporting materials” in “eight discrete parts,” with the first part being the “General Guidelines.” The other seven parts were sector specific or indices for representing greenhouse gases effects on climate. The Technical Guidelines mentioned in the December 5 notice appear akin to those seven parts. DOE obviously realized in 1994 that the eight parts were interconnected. Based on the December 5 notice, it appears that these General and Technical Guidelines are just as interconnected and interdependent.

A second reason for this request is that the notice on more than one occasion solicits comments and recommendations on issues set forth primarily in the preamble and, in some cases, asks specific questions. In some cases, the solicitation relates to the development of “necessary Technical Guidelines.” However, while the notice allows from December 5, 2003, to February 3, 2004 – a total of 60 calendar days for comment –

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the reality is that the 60 days is shortened considerably by the need for commenters to prepare for the January 12, 2004, public workshop and by three national holiday periods.

Like EPICI, we believe that the proper course for DOE is to develop and propose as soon as possible the several Technical Guidelines, including those by the Department of Agriculture, and to provide dual comment periods. At a minimum, we request that DOE extend the comment period for the General Guidelines for an additional 60 days, and in addition we also request that General Guidelines commenters have the opportunity to change, adjust, modify and extend their comments on such guidelines after the Technical Guidelines are published for comment.

The granting of this extension will not result in any additional delay in making the revised guidelines effective because that cannot occur until both the General and Technical Guidelines are finalized. In the meantime, the current guidelines will remain in effect. We urge DOE to respond affirmatively to these requests well before February 3, 2004.

Sincerely,



for William L. Fang
Deputy General Counsel and
Climate Issue Director

wlf:eh

cc:

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