

February 17, 2004

Mark Friedrichs, Esq.
PI-40
Office of Policy and International Affairs
U.S. Department of Energy
Room 1E190
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: 10 CFR Part 300 General Guidelines for Voluntary Greenhouse Gas Reporting; Proposed Rule, 68 Fed. Reg. 68204 (December 5, 2003)

Dear Mr. Friedrichs:

The Electric Power Industry Climate Initiative (EPICI) respectfully submits the following comments in response to the above-referenced notice and request for comment from the Department of Energy (DOE). EPICI is the coalition of seven electric power groups formed to coordinate the electric industry sector's response to President Bush's Global Climate Change Initiative: American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Large Public Power Council, National Rural Electric Cooperative Association, Nuclear Energy Institute, and Tennessee Valley Authority. Since 1994, EPICI members have been the major voluntary reporters of greenhouse gas (GHG) reductions under the current section 1605(b) reporting program. For example, in 2001, as a result of aggressive reduction, avoidance and sequestration activities, the power sector reported more than 275 million metric tons (MMT) of GHGs out of total reported reductions of 352 MMT, or 78 percent of all reported reductions under section 1605(b).

EPICI continues to support the President's program for addressing the climate change issue, including the goal to reduce the emissions intensity of the U.S. economy 18 percent by 2012, the Climate VISION program, and the efforts to improve the Energy Policy Act 1605(b) greenhouse gas data base and reporting guidelines. Further, we continue to support the specific efforts detailed in the July 8, 2002, letter to the President from Secretaries Abraham, Evans and Veneman and Administrator Whitman (the four-agency letter).

EPICI notes the release of the proposed revised General Guidelines, and appreciates the opportunity to submit comments on them.¹ This proposal raises a number of

¹ EPICI hereby incorporates by reference the following comments submitted previously to this public docket and intends by this reference that they be included in the DOE docket for the December 5, 2003, revision:

important issues, and we are taking this opportunity to be as responsive as possible in the short time allotted, with the understanding that there will be additional opportunities to comment both informally and formally as DOE moves toward finalizing revisions to the existing voluntary guidelines.

Opportunity to Comment on the Entire 1605(b) Proposal Is Critical.

EPICI appreciates the decision by DOE to extend the deadline for comments on these proposed revised General Guidelines from February 3 to February 17, particularly in light of the number of complex issues raised in the proposed revisions. We wish to strongly emphasize the importance of allowing an opportunity to comment on the full set of revised documents, including the General Guidelines, Technical Guidelines, and Energy Information Administration (EIA) forms and instructions. As many participants noted at the January 12 workshop, it is difficult to comment on certain aspects of the General Guidelines without information on the detailed procedures that will be specified in the Technical Guidelines. We appreciate DOE's stated intention to provide an opportunity to comment on this full set of documents later this year. Taken together, these changes to the review process will allow the interested parties an opportunity to provide more detailed and thoughtful comments to assist DOE in its revisions to the 1605(b) guidelines.

The Proposal Falls Short of the President's Policy Goal of Encouraging Voluntary Actions and Fostering Industry Partnerships under the Climate VISION Program.

The four-agency letter specifies a primary goal consisting of three elements: (1) create a credible and transparent program; (2) report and credit real reductions; and (3) support the national goal of reducing U.S. emissions intensity 18 percent by 2012. The letter then goes on to identify 10 recommendations for achieving the three-part goal. While the December 5 proposal addresses some of these recommendations, a number of recommendations are not addressed, including awarding transferable credit (#1), providing credit for past actions (#8) and minimizing transactions costs for reporters

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- Letter of June 5, 2002, and enclosures from Robert Gehri and Robert Rainey to Jean E. Vernet, Esq., of the DOE Office of Policy and International Affairs.
 - Letter of September 25, 2002, and enclosure from Messrs. Gehri and Rainey to Ms. Vernet.
 - Letter of March 5, 2003, and enclosure from Mr. Gehri to Ms. Vernet.
 - Letter of May 6, 2003, and enclosures from Lee Ann Kozak to Under Secretary Robert G. Card.
 - In addition, prior to the NOI, EPICI submitted comments by letter of April 17, 2002, and enclosure from Messrs. Gehri and Rainey to Assistant Secretary Vicki A. Bailey.

(#10). The President's February 14, 2002, climate policy statement separately directed DOE to provide baseline protection., The proposed guidelines also do not address this directive. Important changes in the proposal are needed to address these three recommendations from the four-agency letter and the baseline protection directive..

Tiered Reporting System. One of our major concerns is that the December 5 proposal misses significant opportunities to encourage voluntary action and, in some instances, may inadvertently discourage voluntary action. The creation of two primary classes for reductions (reporting and registering), with no overall characterization of the attributes of each category other than to say that "special recognition" comes with registration, is a case in point. Since this "special recognition" is undefined, there is no clear incentive to action. As evidenced by the comments at the January 12 workshop, this has left the impression that the key difference between the two categories is one of quality – reductions that are merely reported are second class and of questionable quality, while only registered reductions and the associated actions are viewed as representing credible, "real" reductions that contribute to the President's goal. Establishing these two classes effectively creates a disincentive to taking voluntary actions and to reporting them.

Missing Incentives. The December 5 proposal is totally silent on transferable credits and ensuring that entities making reductions are not penalized under future climate policy (*i.e.*, baseline protection). Without these important attributes, there are no demonstrated incentives for persons or entities under section 1605(b) to take action to reduce and report their GHG emissions intensity. No reason is given in the proposal for this silence. Options exist for providing meaningful recognition to companies and other entities that achieve GHG emissions reductions. DOE should explore these options to provide such recognition for credible reductions in GHG emissions intensity that are achieved on a project and entity-wide basis. Providing such recognition is critical to spur voluntary action across all sectors of the economy and promote industry partnerships with the federal government under Climate VISION and other such voluntary initiatives. By failing to develop approaches for maximizing such recognition, the proposal has missed an opportunity to provide additional incentives to take credible action that would contribute to achieving the President's goal.

This shortcoming is exacerbated by the fact that pre-2003 reductions cannot be registered. By disallowing registration of any these earlier actions, DOE is implicitly devaluing these earlier reductions. Entities that took action prior to 2003 are disadvantaged under the proposal, relative to those that have held off on taking action, because they have already reduced their own baselines. In essence, the new system established by the revised guidelines penalizes entities that took previous action. This creates great concern that taking action now will only result in being penalized again in the next iteration, and, in turn, creates further disincentive to taking action now. By not providing a mechanism for registering reductions from activities prior to 2003, the proposed revisions to the guidelines have missed an opportunity to reduce the risk of

taking action, and thus provide an incentive to take credible action that would contribute to achieving the President's goal.

The Proposed Guidelines for Entity-Wide Reporting Are Unduly Prescriptive and Unworkable for the Electric Power Sector.

The narrow, highly prescriptive provisions for registration create additional strong disincentives. One such disincentive is the onerous nature of the entity-wide inventory, with requirements to report all sources for all GHGs as well as all terrestrial sinks. Although a *de minimis* exclusion is included, it provides no real relief. For electricity generators, the GHGs from generation are the emissions of greatest interest, and comprise the vast majority of their entity-wide emissions. For perspective, a generator with a 200-MW coal unit running at about a 60 percent capacity factor would emit about 1 MMT of CO₂. The 10,000-MT *de minimis* threshold is 1 percent of the emissions of that 200-MW unit. Thus, under the current inventory provisions for registration, a generator with five such 200-MW units could exclude only 0.2 percent and would need to inventory more than 99.8 percent of its emissions, even though all other non-generation emissions and sinks are insignificant and "in the noise." Accounting for these non-generation emissions and sinks would be very time-consuming and costly. This would be a significant barrier to "registration" or recognition and, in turn, to any kind of reporting.

Another feature that creates a significant disincentive is the requirement that any annual increases in net entity-wide emissions be offset with future net entity-wide reductions before additional net reductions can be registered. A variety of circumstances beyond the control of generators will affect the path of their overall emission intensity over time, including fluctuations in weather, the economy, hydro and nuclear unit availability, and fuel prices. While actions could be taken that would lower the entire emissions intensity path over some time period, they may not be sufficient to offset the normal up-and-down fluctuations to produce an emissions intensity path consistently below the baseline level. With the entity-wide offset reductions requirement in the December 5 proposal, entities taking actions would not receive registered reductions in years where either the overall intensity rises (relative to the baseline level) or when the intensity decreases cannot count because they are offsetting overall increases from previous years.

The Proposed Rules Are Biased Against Project-Based Reductions.

By not allowing "registration" or recognition of credible reductions from projects alone, the proposed revisions to the guidelines have missed yet another opportunity to provide incentives to take action. Under the December 5 proposal, the only way an entity can "register" is if it undertakes actions that, taken collectively, result in the overall reduction of the emission intensity of the entire entity. This creates a disincentive to undertake projects that individually or collectively do not create an emission intensity path for the entire entity that is consistently below the baseline level. However, such projects can

still lead to significant reductions that would make real, valuable contributions to the President's goal. Allowing "registration" or recognition of reductions from projects would create an incentive to undertake such projects and make a contribution. Further, DOE's approach to entity-wide reporting is inconsistent with the realities of trading GHG emission reductions, which are focused on project-based reductions, avoidances, and sequestrations, not entity-wide reductions.

When combined with the lack of any definition of the "special recognition" or other benefits of "registration," all of these barriers ultimately create disincentives and represent missed opportunities to encourage action that would contribute to achieving the President's goal while still enhancing credibility.

The Proposed Rules Establish an Improved Framework for Calculating and Registering Entity-wide Emissions Reductions.

We strongly support DOE's efforts to allow the use of alternative methodologies for determining emissions reductions. This is a good example of the type of flexibility that enhances both the quality of the data and reductions, while broadening the opportunities for participation. Because the description provided in the December 5 proposal is still quite general, we cannot comment further on the specific methods at this time. However, we stand ready to work with DOE to flesh out the details of the methods in an appropriate way, particularly as they relate to the electricity sector. We encourage DOE to provide clear, practical guidance on each of the methods in the Technical Guidelines to be proposed later this year.

We also support DOE's proposal to make third-party verification optional. This is consistent with the statute, which calls for self-certification. Further, including a rigid requirement for third-party verification unnecessarily increases the costs of reporting to the entity, thus erecting another barrier to reporting and discouraging participation.

Other Issues

Including the Guidelines in the CFR. EPICl fully supports the DOE proposal to publish the voluntary General Guidelines as a *Federal Register* document. Nevertheless, we question whether a revision of the current voluntary guidelines – which were neither published as a rule nor placed in the C.F.R. – should now be designated as a proposed procedural or substantive rule and then added as an amendment to the C.F.R. Publishing the more complex, revised guidelines as a rule will create confusion over whether the program is voluntary or regulatory, and will make corrections to the guidelines more difficult as DOE gains experience and needs to fix errors.

DOE has not indicated the legal basis for designating the revisions as a proposed rule. As to the policy of publishing guidelines as a *Federal Register* document and even codifying them in the C.F.R., we certainly agree it is a better approach than the one

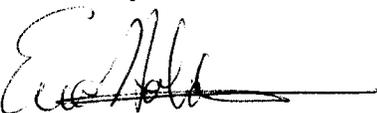
adopted by DOE in 1994 for the current guidelines. However, that policy must conform to the enabling statute and its legislative history, which does not support such publication as a rule.

CEO Certification. There is no need to require the certification of the 1605(b) reports by the Chief Executive Officer of the reporting entity. Allowing the person responsible for the reporting entity's compliance with environmental regulations to certify the report is completely adequate and appropriate. This is a voluntary reporting mechanism, and does not rise to a level requiring Sarbanes-Oxley Act type of certifications. Moreover, CEO certifications are not required even under regulatory environmental reporting systems, such as under the Clean Air Act.

Confidentiality. Finally, we strongly urge DOE to address confidentiality in the General Guidelines. The 1994 guidelines currently in effect do address confidentiality. Since the provisions of the 1994 guidelines will be superseded by these new, revised guidelines, it is important to ensure that the confidentiality provisions are transferred over to the new revised guidelines. At a minimum, the provisions on the revised guidelines should reiterate the protections included in the statute, and maintain the same level of protection for confidential information as reporters currently have under the existing guidelines.

EPICl appreciates the opportunity to submit these comments, and looks forward to further discussion and work with DOE and EIA on these and other issues relating to the enhanced data base and improved guidelines.

Sincerely,



for Lee Ann Kozak

Co-chair, Accounting and Reporting Committee
Electric Power Industry Climate Initiative

cc:

Robert G. Card, Under Secretary for Energy, Science and Environment, DOE
Vicki A. Bailey, Assistant Secretary, Office of Policy and International Affairs, DOE
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