

2nd DRAFT

April 11, 2001

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

Dear Mr. Colligan:

On behalf of the Committee on Regional Electric Power Cooperation (CREPC), I am writing to convey our comments on EIA's March 13, 2001 proposals to modify its policies regarding the collection of and access to electric power information. CREPC is a joint committee of the Western Interstate Energy Board and the Western Conference of Public Service Commissioners. It includes the public utility commissions, governors' energy agencies and state facility siting agencies from the 11 major states in the Western Interconnection and the Provinces of Alberta and British Columbia.

The EIA proposes to make confidential the individually-identifiable data from power plants for fuel use, fuel cost, fuel quality, and thermal output. These data are currently available. The CREPC opposes making these data confidential. Doing so would substantially harm efforts by states to disclose the air emissions associated with retail power sales. These data are also essential for states to monitor how well wholesale markets are operating.

Disclosure of these data will not harm individual power plant operators and will improve the competitiveness of wholesale power markets. In addition, the CREPC believes that the EIA should better assemble this information on all thermal power plants with peak output of 10 megawatts.

We appreciate the work of the Energy Information Administration. We believe that adopting our suggestions will ensure that your work leads to electricity markets that are less polluting and more competitive. More detailed comments are attached.

Sincerely,

Marsha H. Smith, Chair
Committee on Regional Electric Power Cooperation

Attachment: Detail comments

DRAFT

DETAILED COMMENTS OF

THE COMMITTEE ON REGIONAL ELECTRIC POWER COOPERATION

April 11, 2001

SUMMARY

The EIA proposes to make confidential the individually-identifiable data from power plants for fuel use, fuel cost, fuel quality, and thermal output. These data are currently available. Although individual monthly average heat rates are not available, they are easily calculated from available data. The CREPC opposes making these data confidential. Doing so would substantially harm efforts by states to disclose the power sources or air emissions associated with retail power sales.

Monthly fuel costs combined with the other data are essential for states to monitor how well wholesale markets are operating. Individual plant data are needed to compare actual wholesale market behavior with competitive models. If wholesale markets are not competitive, retail direct access will not work. About half of the 50 states have made moves to restructure retail electric markets. These are state jurisdictional decisions.

Disclosure of these data will not harm individual power plant operators and will improve the competitiveness of wholesale power markets. In addition, the CREPC believes that the EIA should better assemble information on all thermal power plants with peak output of 10 megawatts or more. EIA should have these data available in timely manner in a consistent format.

States need consistent and timely data for power plants of 10 MW or greater.

The CREPC believes that the EIA should assemble individual plant fuel use, fuel cost, fuel quality, and power and thermal output on all thermal power plants with peak output of 10 megawatts or more. States need consistent and timely data for power plants of this size or greater. Due to changes in technology, rising power costs and concerns over reliability, many small power plants are being built. The reporting burden on the operators of plants of this size or greater is insignificant relative to their power plant costs. A 10 MW plant with a heat rate of 10 MMBtu/MWh, a fuel cost of \$3/MMBtu and a capacity factor of 75 percent would have fuel costs of about \$2 million per year.

If possible, the EIA should coordinate with the Federal Energy Regulatory Commission to ensure that the same information is not collected twice. In any case, the monthly data for all power plants of 10 MW or greater should be available from EIA at the same time in a consistent format with a lag of no more than three months.

EIA has a substantive duty to publish, and otherwise make available to the public, statistical data that reflect national electric supply and demand activity as accurately as possible.

Since 1997 EIA has been authorized by the Federal Government as the *sole* federal agency responsible for gathering and reporting detailed energy industry financial and technical data. EPACT further extended EIA's duties with a requirement to collect data on fuel source, emissions, and renewable resources.

The burden lies with EIA to show why all the information it collects should not be available to the public. It is not the responsibility of other state or federal agencies to collect this data. EIA should not rely upon the jurisdiction of state or federal agencies over utilities to cover the gaps that may arise as a result of EIA's failure to fully disclose all the information that it is required to collect under federal law. While some states may collect this type of data, many do not. Broad geographical coverage, that only the federal government can provide, is necessary.

The burden lies with those requesting confidential treatment of such information to show, incontrovertibly, that the information for which they are requesting protection is a trade secret or would otherwise result in loss of intellectual property if disclosed to the public. The burden is **not** on the states or other federal agencies to show why they need such data. The public is entitled to all the data collected by EIA unless each and every request for confidentiality meets the legal test for protection from public disclosure. Vague claims of the information being "proprietary" or "commercial sensitive" do not meet this test.

Universal disclosure of these data will not harm individual power plant operators

Electricity is a commodity that cannot be differentiated. A generator in a competitive wholesale market need only compare the market clearing price with his incremental operating costs to decide whether to generate. Knowing the fuel cost, power and thermal output, heat rate, fuel use of other power plants would not affect output decisions in a competitive market. The average monthly power and thermal outputs and the cost, quantity and quality of fuel are currently known for larger plants. This has not harmed the competitive wholesale market. These data can be used to calculate average monthly heat rates.

Because all power operators over 10 MW would have this data available at the same time, it cannot disadvantage individual operators. Potential advantages to operators of plants below 10MW are negligible. In contrast to universal disclosure, EIA's proposal could lead to disclosure for some plants and not for others.

In Oregon the steady-state net heat rate for power generation is public information for all power plants that must file with the state Energy Facility Siting Council, including industrial cogeneration facilities. The California Energy Commission collects data directly from more than 700 generators on output and fuel use, which it discloses. Therefore, EIA has no ability to "protect" generator heat rate information because it will be disclosed, at least in California and Oregon.

Keeping this type of data publicly available will improve the competitiveness of power markets.

Many consumers want information on the fuels used and air emissions of their power sources. Availability of this data will allow consumers to make informed decisions, whether by influencing their utility or its regulators or, in some states, through market choices. Carbon dioxide emissions from individual power plants cannot be calculated without heat rate and fuel quality data. Individual power plant operators should not be able to suppress information about their emissions.

This data is critical to the ability of the states to implement legislative and regulatory requirements such as Generation Information Disclosure, Generation Portfolio Standards, and Renewable Portfolio Standards

In many states, legislative initiatives require states to make information available to consumers. This includes information that (1) shows whether a utility meets certain standards for a mix of generation in its portfolio or (2) discloses the fuel mix or emissions profile of the utility or the retail supplier's products. Utility regulators and attorneys general have also expressed concern about the need for data systems to evaluate green power marketing claims and to prevent double-counting of clean energy resources.¹

States with such requirements rely largely upon the EPA's E-Grid and National Emissions Trends database for this information. EPA in turn relies upon EIA's data for development of its database. If EPA can only access this data under a confidentiality agreement with EIA then it will not be able to release its database to the states.

Limiting access to utility data will significantly limit research studies in this rapidly changing industry.

Limiting access to data may undermine the research efforts of national industry research organizations (e.g., the Electric Power Research Institute (EPRI) and the Gas Research Institute) and government/utility collaboratives (e.g., California Institute for Energy Efficiency, New York State Energy Research and Development Agency, the North Carolina Alternative Energy Center, and the Energy Center of Wisconsin), . . .² Independent studies like these are necessary for informed policy discussions at the state and national levels.

Operating cost data is critical to an analysis of market power at the regional or power pool level.

Operating cost data is also necessary for states and others to monitor the competitiveness of wholesale markets and to see if economic withholding is occurring. If economic withholding is widespread or is perceived to be widespread, the FERC will have to reexamine deregulation of wholesale prices. States need this information to make state jurisdictional decisions on retail access. Public access to monthly individual power plant data is necessary for an informed public debate on these issues.

In DOE's report of March 2000, it stated the following: "The exploitation of market power can have a significant impact on wholesale power prices, which is in most regions the largest component of the total delivered electricity prices paid by consumers in competitive markets." And "both the record of restructured markets to date and simulation analyses conducted by the Department of Energy suggest that the exercise of market power could, under some circumstances, significantly offset the projected

¹ "Environmental Marketing Guidelines for Electricity," The National Association of Attorneys General, December 1999.

² Edward Vine, "Confidential Data in a Competitive Utility Environment: A Regulatory Perspective," Lawrence Berkeley National Laboratory, August, 1996, p.12..

benefits of competition in electricity generation markets.”³

In that report, DOE also cites to the work of other researchers. “Wolfram (1998 and 1999) examined strategic bidding behavior by National Power and PowerGen. Using data on fuel costs and heat rates, she estimated the marginal cost of electricity for the system and compared this cost with the pool’s ‘system marginal price.’”

Another study found that “the most sensible method of calculating market power impacts in an electricity market is to simulate the operation of that electricity market and, thereby, directly measure the price and revenue impacts of firms’ strategic bidding and capacity withholding behavior.”⁴

A study of market power done at Harvard Business School concludes that “while there is a tendency for electricity markets to become more competitive as the number of sellers active in the market is increased, transmission constraints lead to significant amount of residual “local” market power, which manifests itself through prices which remain high at some locations even at low rates of total market concentration . . .”⁵

FERC staff has come to similar conclusions in its recent analysis of the California market. The FERC report states that “the presence of transmission constraints can redefine the market so as to affect both concentration and market shares.”⁶ In a section on detecting the exercise of market power the staff recognizes that “in principle, economic withholding can be detected by comparing the bids offered by owners of generating units with the marginal production cost and marginal opportunity costs of the units.”⁷

CREPC concludes from the work being done today that ready access to data on electricity costs, heat rates, numbers of wholesale customers and sellers, transmission constraints, etc., is critical to an assessment of market power in the electric industry. And a market power analysis is incomplete unless it is done on data that is sufficiently disaggregated so that a determination can be made as to whether “localized” market power exists.

³ DOE, “Horizontal Market Power in Restructured Electricity Markets,” p.vi.

⁴ Eric Williams, Dr. Richard A. Rosen, “A Better Approach to Market Power Analysis,” p. 4.

⁵ Jurgen Weiss, “Market Power Issues in the Restructuring of the Electricity Industry: An Experimental Investigation,” p.30.

⁶ Staff Recommendation on Prospective Market Monitoring and Mitigation for the California Wholesale Electric Power Market, in Docket No. EL00-95-012 et. al., March 2001, at 11.

⁷ *Id.* at 12.