

October 29, 2007

Mr. Nathan J. Frey
OMB Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place, NW
Washington, DC 20503

*Re: Proposed Forms and Collection Activities for the Energy Information Administration's
"Electric Power Program"*

Dear Mr. Frey:

The Northeast States for Coordinated Air Use Management (NESCAUM) offers the following comments on the U.S. Department of Energy, Energy Information Administration's (EIA's) proposal for its "Electric Power Program," as referenced in the September 28, 2007 Federal Register (72 FR 55193-55194), entitled *Agency Information Collection Activities; Submission for OMB Review; Comment Request*. NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

The NESCAUM states are keenly interested in EIA's newly designed Electric Power Program. The state air pollution control agencies rely on the data EIA plans to collect through the associated forms to meet our air quality obligations, which include complying with federal statutory requirements. Over the past 18 months, NESCAUM has engaged in discussions with EIA as it developed the proposed forms. Attached are comments that NESCAUM filed in response to the April 4, 2007 Federal Register notice (72 FR 16337-16341), in which EIA proposed the new forms.

We are pleased that EIA has incorporated a subset of our comments with respect to reinstating certain elements that were initially proposed for elimination and ensuring accessibility to restricted data. However, we remain concerned about two critical issues that appear not to have been addressed by EIA, as reflected in the supporting materials to the September 28 Federal Register notice, i.e., useful thermal output and calendar year 2006 data. We have also identified a few new issues related to new source review, mercury allowances, new source performance standards, and data collection to which we would like to draw your attention.

1. Useful Thermal Output and Related Data Elements. EIA has chosen to no longer collect useful thermal output data from respondents, and has indicated that it will allow stakeholders to review a new methodology that it develops. Given the importance of these data for determining the compliance status of electric utility sources subject to Federal New Source Performance Standards (NSPS), we urge that EIA continue

collecting useful thermal output data *while* concurrently developing a sound and robust new methodology for calculating these data. This would allow for the new methodology to be quality assured/quality controlled as it is developed. We further recommend that EIA conduct a rigorous stakeholder process for vetting the methodology, including a series of workshops. In addition, we note that EIA did not respond to our comments regarding the related data elements and reporting requirements that it has also chosen to eliminate, e.g., identifiable uses of useful thermal outputs, breakdown of MMBtu for electricity purposes, collecting data from all sources. Collection of thermal output data may become even more critical in the future, should EPA move forward with its proposed revisions to the New Source Review (NSR) program. Accurate and complete thermal output data will be critical to assessing EPA's NSR triggers based on hourly achieved emission per Btu produced. These data are important in order for state and local agencies to be successful in our work of ensuring appropriate permit limits, and we are concerned about their proposed elimination. Please refer to pages 2 and 3 in NESCAUM's attached comments for more detail on our concerns and recommendations.

2. Calendar Year (CY) 2006 Data. We remain concerned that EIA has chosen not to collect CY 2006 data. The current CY 2006 data gap has already adversely affected necessary state regulatory analyses, and the complete loss of CY 2006 data will only exacerbate this problem. We urge EIA to collect the CY 2006 data when it collects the CY 2007 data under its new Electric Power Program.
3. Additional Issues:
 - a. New Source Review. Form 860, Schedule 6, Part B, "Boiler Information – Air Emission Standards," line 2a, contains the question, "Is Boiler Subject to New Source Review (NSR) requirements?" We are puzzled as to its inclusion in the form at this late stage in the process. We did not see the question in the April 4, 2007 proposal materials, nor did we note any reference to it in EIA's summary of and response to comments for this Federal Register notice. The question is inappropriate and should either be struck from the Form or significantly modified. NSR applicability determinations are complex. They should be based on calculations that can be verifiable by the appropriate permitting authorities, issues that are not typically within the purview of the federal government and certainly not EIA. In many states, NSR applicability is objectively determined using the appropriate thresholds as per regulations and confirmed by the U.S. Environmental Protection Agency. It would be inappropriate to employ this question on the Form in a dispositive manner. EPA maintains a separate NSR applicability database, which can be accessed through its NSR website.¹ Should

¹ <http://www.epa.gov/nsr/links.html>

EIA choose to collect NSR-related data, a more suitable and useful question would be “Provide date of issuance of the latest NSR permit and its permit identification number.”

- b. Mercury Controls and Allowances. Form 860, Schedule 6, Part E, “Boiler information on Mercury Controls,” line 2, lists “Allowances” as an option for respondents to check as a potential mercury control option. This is the first time we have seen this option in the EIA forms, and we did not note any reference to this option in EIA’s summary of and response to comments. We do not understand the intent of this question. First, the use of allowances is an incorrect characterization, as allowances are a compliance mechanism, not a mercury control. We recommend the question either be struck from or moved to another location on the Form and clarified. Second, mercury allowances under the Clean Air Mercury Rule (CAMR) will be tracked through a separate federal regulatory program at the U.S. EPA. EIA resources are better used toward collecting the operational data that has been unique to the EIA program over the years (e.g., useful thermal output). Should EIA opt to collect information about mercury allowance use as a compliance strategy under the CAMR, it should delete the option from the Mercury Controls section and add a separate question, perhaps as Line 7a in Schedule 6, Part E, such as “Is this boiler using allowances to comply with the Clean Air Mercury Rule?”
- c. Characterization of Regulatory Programs. The instructions to Form 860, Schedule 6, Part D, “Boiler Information – Air Emission Standards,” state that the respondent should indicate the applicable standards as described, and should “Select from the following codes of the New Source Performance Standards (NSPS).” Two of the codes, Clean Air Interstate Program and Clean Air Mercury Rule, are not part of the NSPS. We recommend the instruction be corrected.
- d. Coal Gasification Option: On Form EIA-860, Schedule 3, Part C, coal gasification was deleted from Line 11 as one of the options. We recommend that it be reinstated.
- e. Size Limit: On Form EIA-923, Schedule 2, we do not understand why a 50 MW limit was chosen for respondents. We would appreciate an explanation for this change.

Thank you for the opportunity to comment. We look forward to your responses. If you have any questions, do not hesitate to contact Leah Weiss of my staff at 617-259-2094 or lweiss@nescaum.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur N. Marin". The signature is fluid and cursive, with the first name "Arthur" being the most prominent.

Arthur N. Marin
Executive Director

Attachment

Cc: Grace Sutherland, EIA
Howard Gruenspecht, EIA
Robert Schnapp, EIA
Brian McLean, EPA
NESCAUM Directors

May 30, 2007

Mr. Jorge Luna-Camara
Energy Information Administration
Electric Power Division, EI-53
Forrestal Building
U.S. Department of Energy
Washington, DC 20585

Re: Proposed Changes to Power Generator Data Collection Activities and Form EIA-767

Dear Mr. Luna-Camara:

NESCAUM offers the following comments on the U.S. Department of Energy, Energy Information Administration's (EIA's) proposal for its Electricity 2008 streamlining effort program, published on April 4, 2007 in the Federal Register (72 FR 16337-16341), entitled *Agency Information Collection Activities; Proposed Collection*. NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Form EIA-767 Data are Critical for Environmental Pollution Prevention Programs, including Climate Change

The NESCAUM states, along with other states across the nation, have accepted delegation to implement and enforce the requirements of the federal Clean Air Act. Our programs, once approved by the U.S. Environmental Protection Agency (EPA) in State Implementation Plans (SIPs), are published in the Code of Federal Regulations. For many years we have relied on the Form EIA-767 data to comply with federal statutory requirements and to develop, implement, and enforce air pollution control programs. Form EIA-767 is unique among state and federal forms with respect to its detailed data. These data are necessary to track the environmental performance of power plants across the country, understand power plant emissions relative to the amount of electricity produced, and design sound cap-and-trade and energy efficiency programs. We will need access to *all* of this operational and static data into the future. We therefore urge you to ensure that, in your efforts to streamline EIA forms, all of the Form EIA-767 data remain accessible to the states. Without a national program, there would be a patchwork of state-based data collection efforts of varying quality and greater expense for power plant owners and the states.

As the Northeast states embark on efforts to develop and implement programs to address climate change, robust CO₂ emissions data from the power generation sector will not be the only necessity. For example, other data elements that EIA currently collects on Form EIA-767 will continue to be critical to support development, implementation, and enforcement of energy efficiency programs, including data fields relating to useful thermal output.

Collect the Calendar Year 2006 Data

Of particular concern to us is the fate of the calendar year 2006 (CY 2006) data. We understand that EIA rescinded all Form EIA-767 data collection activities for CY 2006 data due to fiscal year 2007 budgetary constraints. Loss of these data has affected and will continue to adversely affect the states' efforts to conduct regulatory analyses and to develop allocations for NO_x, SO_x, or CO₂ cap-and-trade scenarios based on recent facility operations. We urge EIA to collect the CY 2006 data when it collects the CY 2007 data under the Electricity 2008 program.

Maintain the Pool and Frequency of Form EIA-767 Respondents

Based on the wording in the Federal Register, there is no clear indication that the same sources would be required to continue to submit data at the same frequency as occurred under the Form EIA-767 program prior to 2006. We urge that the required parameters remain unchanged under the Electricity 2008 program in order to provide comparable, robust data sets into the future. This needs to be clearly stated when EIA finalizes its proposal so that no misunderstanding occurs among the states, EIA, respondents, and others after Electricity 2008 goes into effect.

Maintain Required Reporting of Useful Thermal Output and Related Data Elements

EIA has proposed to cease collecting reported useful thermal output data from respondents, with the reason cited that every source calculates this data element differently. EIA staff has indicated that it plans to develop a methodology, in consultation with ACEEE, to derive useful thermal outputs based on other reported data elements, which would apply to all units.

Useful Thermal Output Data are Critical to State Air Programs and Federal Requirements

Data on useful thermal outputs are critical to air pollution regulators for a number of reasons. These data are needed for states: (1) to ensure that sources are continuing to comply with federal New Source Performance Standards (NSPS); (2) to develop output based standards for cap-and-trade allocations at the state, regional, and national levels; and (3) to develop renewable energy portfolio standards and support energy efficiency programs, such as appropriately characterizing combined heat and power (CHP) operations.

We appreciate EIA's efforts to find a sound and robust methodology for calculating useful thermal output, based on other data collected. We are, however, concerned that a one-size-fits-all calculation methodology may neither be appropriate nor represent a more accurate surrogate than the data responders were previously reporting for useful thermal output. We recommend that EIA continue to collect useful thermal output data from respondents *while* concurrently exploring alternative methods for calculating these data. We further recommend that EIA engage in a public, peer-reviewed process to develop such methods to collect or generate useful thermal output data. This dual approach will ensure that necessary data continue to be collected

and also allows for these data to be quality assured/quality controlled once the new methodology is developed. We recommend that this methodology be developed in consultation with data end users such as the states' air and energy offices and the EPA. The NESCAUM states offer to participate in the process for developing this new methodology.

Other Data Elements are Important for Quantifying Useful Thermal Output

In order to accurately quantify the total useful thermal output from a combustion source, all of the various identifiable uses (e.g., direct heating, space heating and/or cooling, process steam, energy delivered to other end users) must be accurately quantified and reported so that compliance with output-based emission standards can be ensured. The continued collection and analysis of these data will also promote more efficient plant operation and level the regulatory playing field between competitive energy providers in the Northeast and nationally.

CHP facilities by definition generate electricity and useful thermal output in the form of heat. The proposed forms are incomplete, as they only contain the total MMBtu heat input from the Form EIA-920 and do not include the MMBtu for electricity. Unit-specific data on useful thermal output and electricity generated must be included on the new forms in order to provide a complete characterization of CHP facilities.

Useful Thermal Output Data should be Collected from all Sources

Based on the proposed forms and instructions, it appears that EIA is requiring reporting of CHP-related data only for non-regulated entities, i.e., entities not operated by utility companies. There is a population of utility-related CHP operations, and without data from these entities the database is incomplete and cannot fully serve states' needs. EIA should be collecting data from *all* CHP systems, regardless as to whether or not EIA considers them to be regulated or non-regulated entities. As part of their energy efficiency programs, states must be able to characterize all sources of useful energy produced by all of their power producing facilities, and be able to assess the overall efficiency of those operations.

Continue Collecting Other Data Elements Proposed for Elimination

EIA proposes to eliminate three sets of data previously collected through Form EIA-767. Without these data, states will be impeded in their ability to evaluate the costs and benefits of environmental control technologies, to conduct air quality modeling and ensure that public health impacts are accurately portrayed, to create output-based standards that encourage efficient facility operation, and to conduct other analyses for evaluating the impacts of various types of power generation facilities with respect to air pollution.

1. Operating & Maintenance Expenditures

EIA proposes to eliminate data on total operating and maintenance (O&M) expenditures, and O&M expenditures for feed materials, labor and supervision, waste disposal, and maintenance. These data are important to state air regulators in terms of calculating cost-effectiveness of air quality program options. They help assess the overall cost-effectiveness of different control technologies (not only the hardware costs) and facilitate the quantification of cost effectiveness in term of dollars per ton of pollutant removed. O&M expenditures (e.g., waste disposal costs) can represent a significant portion of the total cost for certain types of control technologies. Continued collection of this type of O&M data will also allow other environmental impacts to be evaluated.

2. Actual Flue Gas Exit Temperatures

EIA proposes to eliminate data reported on actual flue gas exit temperatures for summer and winter. These data are important in terms of assessing temperature-specific pollution control options. Data on flue gas exit temperatures are also needed for performing source-specific modeling of impacts on local and regional air quality.

3. Stack Location Data

EIA proposes to eliminate data fields for stack latitude and longitude. We do not support this as these data are critical for air quality assessments. Examples of analytical exercises conducted using these data include Plume-in-Grid photochemical modeling, back trajectory analysis, assessing reasonable further progress (a federal Clean Air Act requirement) with respect to downwind impacts, and assessing impacts sources have on federal Class I areas (e.g., National Parks) under the federal Regional Haze program. It is more accurate to use location data on specific stacks rather than plant location data when more than one stack is involved, especially for large sources with stacks located in different parts of the same large parcel of real estate. One problem that has occurred in the past is that stack-specific data were either not reported or not accurately reported. Another problem for air quality modelers is how to accurately quantify stack emissions from multiple unit sources that vent through the same stack, or a single unit source that vents through multiple stacks. Having stack-specific data available through EIA greatly enhances the states' ability to conduct better analyses.

Ensure Accessibility and Use of Confidential and/or Restricted Data

Based on the wording in the Federal Register, it is unclear how the latitude and longitude data that will be reported on Form EIA-860 will be accessible to end users, and whether or what kinds of conditions on the data's release will be required. The Federal Register indicates that these data "will only be released upon request and will not be electronically available for the public to access through the internet." (72 FR 16340) As states routinely use these data for modeling purposes, it is critical that access to the data is automatic, not requiring requests for each source,

and that subsequent uses and publication of the modeling inputs and outputs will be able to proceed unhampered (i.e., subject to public review), and be unaffected by any data restrictions. Air quality modeling is used as part of SIP development to evaluate not only the compliance status of individual sources but also to evaluate the combined impact of various source sectors (e.g., all electric generating units in a state or in a region upwind of a given state). All input data used for air quality modeling and modeling outputs contained in a SIP are available for public review.

We value EIA's mission and efforts to ensure that its data collection programs serve its users' needs while being as efficient as possible. We appreciate your cooperation, and offer to continue working with you to ensure that the full dataset from Form EIA-767 continues to be collected to support our states' federal and state mandates to protect public health and the environment.

Sincerely,



Arthur N. Marin
Executive Director

Cc: Guy Caruso, EIA
Howard Gruenspecht, EIA
Robert Schnapp, EIA
Brian McLean, EPA
NESCAUM Directors