



**OZONE
TRANSPORT
COMMISSION**

October 5, 2001

Connecticut

Desk Officer for DOE
Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place N.W.
Washington, DC 20503

Delaware

District of Columbia

To the OMB Desk Officer for DOE:

Maine

The Ozone Transport Commission (OTC) would like to file supportive comments on the Energy Information Administration's (EIA's) policy for collecting and disclosing electricity data, which was published in the Federal Register on September 11, 2001 (66 FR 47192-47193).

Maryland

Massachusetts

OTC was created by Congress under the Clean Air Act Amendments of 1990 to coordinate ground-level ozone air pollution planning in the Northeast and Mid-Atlantic region of the U.S. Environmental Commissioners and Secretaries and Air Pollution Control Officials from Connecticut, Delaware, the District of Columbia, Maine, Maryland, New Hampshire, New Jersey, New York, Massachusetts, Pennsylvania, Rhode Island, Virginia, and Vermont comprise OTC.

New Hampshire

New Jersey

New York

As you are probably aware, OTC and other stakeholders provided extensive input to EIA in the development of its current proposal concerning the collection and treatment of electricity data. This history of involvement reflects the strong interest States, other Federal agencies, academics, utility regulators, non-governmental organizations and the public share in continued access to EIA electricity and power generation data. These data are used for a variety of analytical, regulatory and public interest purposes. Earlier EIA proposals that would have limited access to these data or made only aggregated data available would have severely impaired State and Federal efforts to design and implement policies aimed at protecting vital consumer and environmental interests, and ensuring truly competitive power markets. We believe the EIA's current proposal appropriately balances industry's need for confidentiality to protect legitimate competitiveness interests and the public's need for access to timely and useful information, at least with respect to key environmental data.¹ The remainder of these comments elaborate on

Pennsylvania

Rhode Island

Vermont

Virginia

Bruce S. Carhart
Executive Director

444 N. Capitol St. NW
Suite 638
Washington, DC 20001
(202) 508-3840
FAX (202) 508-3841
e-mail: ozone@sso.org

¹ We note that economic regulators, as represented by the National Association of Regulatory Utility Commissioners (NARUC), have expressed continued concern about the adequacy of EIA's proposal with respect to the disclosure of financial data that may be important to the protection of consumer interests and to the identification and correction of flaws in emerging power markets. As environmental regulators we are sympathetic to NARUC's concerns and wish to emphasize that our support for the current EIA proposal is based on its treatment of emissions and generation data.

why it is so important that environmental regulators have access to detailed EIA data on emissions and resource mix at the unit, plant and company level. We hope this information is valuable to OMB in weighing input from various stakeholders as part of its review process.

The OTC States, along with many States across the nation, have accepted delegation to implement and enforce the requirements of the Federal Clean Air Act. All programs, including regulations, that are approved by the U.S. Environmental Protection Agency as part of a State Implementation Plan under the Clean Air Act are published in the Code of Federal Regulations.

States must have access to power generation data in order to develop, implement, and enforce the regulatory air pollution control programs that are required in order to comply with the Federal Clean Air Act. States' Clean Air Act regulatory programs have been in place for many years, have the force of Federal law, and are necessary to protect public health and the environment. Specifically, States need monthly fuel quantity, fuel quality, and useful thermal output data to: calculate emissions for individual electricity generating units; update emissions inventories; update emissions budgets for market-based emissions cap-and-trade programs; establish energy efficient output-based emission standards for electricity generating units; develop base information for renewable portfolio standards and environmental disclosure programs; and calculate emission reduction benefits of renewables and energy efficiency projects.

Fuel quantity, fuel quality, and emissions data have been routinely collected by various regulatory agencies for many years (emissions data are collected and accessible pursuant to federal Clean Air Act requirements), are in the public domain, and do not provide trade secret information. These data include: fuel inputs; generation; electrical outputs; and thermal outputs. They are publicly available through facility-specific air permits (which may also include heat rate data), and compliance, emissions, and other reports. Power markets operate in real time, whereas EIA data typically become available after a lag of 30 days or more. Several power generators have indicated that the data EIA collects is unlikely to be of competitive value given this time lag. Any presumption of confidentiality for these data would concede discretion of the Freedom of Information Act (FOIA) without proper petition for confidentiality. As you know, under FOIA, those seeking confidential treatment of information have the burden of showing actual competition and that the competitive harm they would suffer from disclosure is substantial enough to outweigh the public's interest in the information. That showing would likely be very difficult, if not impossible to make. EIA would still have the discretion to release those data, based on the public's need to know. In addition, many of these and similar data are already publicly available through various commercial services, which offer data down to the plant level. Therefore, it would be difficult to make a finding of confidentiality on data that can be retrievable from a web site.

While States have the authority to collect data from electricity generating units, the OTC States firmly believe that it is more efficient and effective to have such data collected by one agency, through one reporting system. If EIA were to expand its confidentiality policy and make the data unavailable through the existing national reporting system, States and others would be forced to develop and implement reporting systems on their own, each with its unique reporting format. Such an approach would foster a patchwork of reporting regulations, requirements, and deadlines, and create an onerous reporting and compliance burden for the regulated community. Overall, this

scenario would impose significant additional costs on electricity generating unit owners, which would be passed on to consumers and businesses. OTC strongly believes that a nationally consistent data repository is invaluable from a regulatory and economic perspective and serves vital public interest needs.

At present, Congress is seriously considering output-based, multi-pollutant initiatives to reduce the adverse environmental and public health impacts of power generation. If passed, the development and implementation of such programs will rely heavily on data - including fuel quality, fuel quantity and useful thermal output data - that EIA currently collects and makes available. Thus, while access to these data is already critically important for air pollution control programs, the need for continued access to these data is likely to grow, not diminish, in the near future.

In summary, the OTC States strongly support EIA's current data collection proposal with respect to fuel, emissions, and output data. We would be extremely troubled by any changes in the confidentiality treatment accorded those data that would make these data less available or available only in more aggregated -- and correspondingly less useful -- forms. We appreciate the opportunity to comment on this very important issue. Please do not hesitate to contact the OTC office if you have any questions.

Sincerely,



Bruce S. Carhart
Executive Director

Cc: Sen. Jim Jeffords, Senate Environment and Public Works Committee
Sen. Bob Smith, Senate Environment and Public Works Committee
Gov. Jeanne Shaheen, NH
Spencer Abraham, DOE
Francis Blake, DOE
Mary J. Hutzler, EIA
Robert M. Schnapp, EIA
Grace Sutherland, EIA
Christine Todd Whitman, EPA
Jeffrey Holmstead, EPA
Robert Brenner, EPA
Pat Wood, III, Chairman, FERC
OTC Members