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Mr. John Asalone  
OMB Desk Officer for DOE  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
726 Jackson Place, NW  
Washington, DC 20503

By fax to: 202/ 395-7285

Re: **EIA “Electric Power Program” Forms 411, 412, 423, 767, 826, 860, 860M, 861, 906, and 920 – 69 Fed. Reg. 54769 (September 10, 2004)**

Dear Mr. Asalone:

The Edison Electric Institute (EEI) is filing these comments in response to the Energy Information Administration’s (EIA) request to the Office of Management and Budget (OMB) for reauthorization of the EIA “Electric Power Program” forms mentioned in the above subject line. EIA published a notice on September 10, 2004, at 69 Fed. Reg. 54769, inviting such comments by October 12, 2004.

**EEI Has a Direct Interest in This Proceeding**

EEI is the association of U.S. shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve more than 90 percent of all customers served by the shareholder-owned segment of the industry. They generate almost 70 percent of all electricity generated by electric companies in the country, and serve nearly 70 percent of all ultimate customers in the nation.

EEI members file most of the EIA electric power survey forms that are the subject of the September 2004 *Federal Register* notice. Increasingly, our members are operating in competitive markets, in particular at the wholesale level and in the generation and sale of electricity and related services. Furthermore, electricity is vital to the national economy, and electricity generation, transmission, and distribution facilities are critical infrastructure that needs to be safeguarded against security threats.

In such an environment, the burden and the disparity among electricity market participants of collecting and reporting large quantities of information required by the EIA forms and other federal and state forms are a significant concern. So too is the public disclosure of proprietary, trade secret, and competitively sensitive commercial and financial information and the disclosure of information that is sensitive from a security perspective. The release of such information in discrete form can directly harm EEI members as well as their customers, shareholders, and electricity facilities and markets.

As a result, EEI has a direct interest in the data collected in the EIA electric power survey forms. We also have a direct interest in ensuring that EIA avoids unnecessarily collecting information – in particular commercially, financially, and security sensitive information – and that any such information EIA does collect is not disclosed to the public in a form that negatively affects reporting companies, their customers, their facilities, or electricity markets.

#### EEI Incorporates Our Prior Comments by Reference

On June 1, 2004, EEI provided EIA with detailed comments on the electric power survey forms, in response to EIA's request for comments in a *Federal Register* notice published on April 2, 2004. In addition, a number of our members provided comments on the forms. Though EIA has acknowledged a number of our concerns in its supporting statement to OMB in connection with the current *Federal Register* notice and has taken steps to address some of the concerns, EIA has not sufficiently addressed a number of our concerns, which we will highlight in this letter. For a fuller discussion of our concerns, we refer OMB to our June 1 comments, which we incorporate here by reference.

#### Our General Concerns with EIA's Current Proposal

EEI's goal in this proceeding is to ensure that: (1) EIA collects only information it needs and does so in the least detail and with the least burden possible; and (2) EIA provides effective confidentiality for information that is likely to cause commercial harm or to raise security concerns if released to the general public.

**In regard to information collection and burden, we urge OMB to pay special attention to EIA's proposed new collection of transmission data in the Form 411 and planned facility data in proposed Form 860M.** In particular, EIA has proposed to collect substantial new information about transmission outages, maps, and power flow base cases in proposed new Schedules 7 and 8 of the Form 411. But as we will discuss further in the next section of these comments, EIA has not demonstrated the need for this new information or adequately recognized the substantial burden collecting and reporting the information will impose. We encourage OMB to require EIA to delete these proposed new data collections.

**As for confidentiality, EEI encourages OMB to discuss with EIA whether further improvements can be made in collecting and handling information that is commercially sensitive or that may raise security concerns.** In our June 1 comments, we encouraged EIA to make additional data elements of its forms confidential, looking at the issue from both a commercial and a security perspective and taking into account prior comments EEI has filed at EIA on this issue. Instead, EIA has largely declined to expand the list of data it will treat as confidential, adding only transmission location and power flow base case data to the list of confidential data.

In contrast to the electric power survey data, which EIA treats as mostly public, EIA treats much of the non-electric information it collects as confidential in discrete form without the need for further substantiation by individual reporting entities. EIA should afford the same protection to the discrete electric power survey information it collects, especially if that information raises commercial or security concerns.

Moreover, the Federal Energy Regulatory Commission (FERC) and Department of Homeland Security have taken steps in recent years to protect critical energy infrastructure information whose release can raise security concerns. EIA should be sure to stay fully in step with those agencies on that issue.

Furthermore, EIA should allow reporting companies to identify additional data elements that warrant confidential treatment in their individual filings. In our June 1 comments, EEI specifically asked EIA to delete the current statement from its forms that only information it has identified as confidential will be treated as such. But EIA has not made the change.

Also, EIA should more widely use CIPSEA to ensure confidentiality of the data elements EIA plans to treat as confidential. The act was passed specifically to enable statistical agencies such as EIA to collect accurate information from the private sector by providing companies with an assurance of confidentiality. Yet EIA proposes to treat only cost information provided in the Form 412 as confidential under CIPSEA.

Finally, EIA has proposed to release some confidential data 6 months after the year for which they were reported. However, as we will discuss in the following sections, the fuel cost and fuel inventory information EIA proposes to release remain sensitive over time and should not be disclosed.

#### EIA 411

**EEI strongly encourages OMB to require EIA to delete proposed new Schedules 7 and 8 as well as lines 8 and 13-17 in Schedule 6 from the Form 411.** In our June 1 comments, EEI asked EIA to delete these items from the form. In particular, we noted that EIA had not justified the need for the new Schedule 7 data, which would require substantial new resources and reprogramming for utilities to collect and report, and that the Schedule 8 data would duplicate other existing federal data collections.

In response, EIA has largely declined to modify the proposed form. EIA has said it will keep the form “voluntary” rather than mandatory. But EIA plans to work with NERC to resolve technical and inter-regional differences that preclude making it mandatory, implying that the form will become mandatory over time.

EIA also has proposed to give the NERC regional councils 30 more days until April 30 each year to file the form. While EIA should give the councils this additional time for completing the current Form 411, the additional time certainly is not sufficient to address the substantial new burden that EIA would impose with the new data collections it is proposing. Nor does it justify the new data collections – the threshold issue that EIA must address.

EIA also has added a new 1-hour minimum for scheduled outages to be reported on Schedule 7 and has agreed to treat the Schedule 8 electric transmission maps and power flow base cases as confidential. Again, while these are positive steps, and EIA and other federal agencies should treat the maps and base cases as confidential, these steps do not address the threshold question about the need for the information, nor do they sufficiently reduce the burden of EIA’s proposed new information collection.

#### *Schedule 6*

EEI believes there is limited value in collecting information requested on lines number 8 (Line Type), 13 (Conductor Material Type), 14 (Bundling Arrangement), 15 (Circuits per Structure Present), 16 (Circuits per Structure Ultimate), and 17 (Pole/Tower) of the Form EIA-411. These attributes can change between the time the line is first conceived and when it is finally built. The approval process may also result in a change to the route of the circuit. EEI does not see a benefit to collecting this information, which may not be available at the time of collection and which may subsequently change during the planning and approval process. The information that EIA collected prior to the addition of these items to the form last year was sufficient to give EIA an indication of projected transmission facility additions, and these added data elements should be dropped.

#### *Schedule 7*

EIA has not substantiated the need for the transmission outage data it proposes to collect in new Schedule 7. Most utilities do not currently collect or report information of the sort and in the detail that EIA is proposing in Schedule 7. To begin collecting and reporting the information would impose a very large burden on the companies, for no good reason.

Neither NERC nor EIA needs the information for reliability purposes, and the information would not produce meaningful analyses. In fact, NERC filed comments on June 2, 2004 also encouraging EIA to drop Schedule 7, demonstrating that NERC does not need the information.

Moreover, the data in Schedule 7 are insufficiently well defined and focused. For example, the term transmission circuit outage has a broad scope. It does not take into consideration the size or complexity a “circuit” may have within a transmission system. A line outage on a given circuit would have a different impact on system reliability than multiple line outages on the same circuit. According to the EIA outage definition, these two cases would be counted as one circuit outage. This result does not convey the intended measure of transmission system reliability EIA seeks.

Adding Schedule 7 would change the nature of the Form 411 from one that examines grid capability to one that tracks outages, at a substantial cost to the companies that would collect the information, without any corresponding benefit.

For all these reasons, OMB should direct EIA to delete Schedule 7 as unjustified and excessively burdensome. If EIA wishes to pursue this schedule any further, EIA must work more closely with NERC and the industry to identify whether there actually is a need for more selective information about outages. And if so, EIA must provide at least a year for companies and NERC to prepare to collect such information, and EIA should keep the information collection voluntary.

#### *Schedule 8*

Schedule 8 also needs to be deleted. Regional seasonal power flow cases are already provided in the FERC Form No. 715 and are protected by FERC as confidential energy infrastructure information (CEII). While EIA proposes to treat the information as confidential, and we support that position, the Confidentiality discussion on Page xi of the submitted EIA-411 is vague and not comforting.

#### EIA 412

EIA has addressed our concern about requiring companies to report gross generation in the Form 412 by clarifying that they may report either gross or net generation. We support that clarification.

EIA has proposed to provide extra confidentiality under CIPSEA for cost data reported in the Form 412. If investor-owned companies file the form and the CIPSEA provision would put them on a level playing field with municipalities and others that also file the form, EEI agrees with this provision. However, **if this proposal would provide confidentiality for municipalities but not investor owned companies whose data are otherwise likely to be public, we would have a concern about the inequity of some market participants benefiting from such protection not afforded to others.**

### EIA 423

EIA proposes to release fuel cost data 6 months after the year for which they were reported. **EI encourages OMB to require EIA not to release these data because this information relates directly to plant efficiency and operating performance, which are highly sensitive from a commercial perspective.**

### EIA 860

In our June 1 comments, EI encouraged EIA to reconsider the need for maximum MVAR data in the Form 860, citing the difficulty in obtaining such information. In response, EIA has simply reworded the proposed information collection to ask for “maximum lagging MVAR at maximum anticipated real power output.” But this merely asks for the same information in different words. To collect such data, companies would have to measure their generating equipment at maximum output, putting their plants and systems at risk for no apparent good reason. The risks can include producing over voltages in surrounding plant areas, tripping generators off line due to excitation system tripping, and the like. Recognizing these concerns, NERC has dropped a comparable data element from its current Version 0, Draft 2 of its Planning Standard. **For these reasons, EI strongly encourages OMB to require EIA to delete the requirement for MVAR information.**

In addition, in Schedule 3, we encouraged EIA to delete references to reporting of “predominant, second most predominant, and other” energy sources. EIA has declined to do so, stating that this information has been collected in the past and is not difficult for most plant operators to provide. **We disagree and encourage OMB to require EIA to delete the questions about the different energy sources.**

### EIA 860M

In our June 1 comments, EI questioned the need for monthly updates relating to planned generating plant additions. EIA has responded by noting that the proposed new Form 860M would require reporting only of changes in planned generating plant additions from the prior month. However, there already are provisions in the annual EIA Form 860 to indicate when planned additions would occur and what size they will be.

Although EIA’s proposed adjustment to the Form 860M of having a respondent change a pre-populated form will somewhat reduce the burden, this is not the issue. The issue is what value does the monthly Form 860M add to the annual Form 860? **EI encourages OMB either to require EIA to drop the proposed new form or at most to require an entity to submit a simple revision of the capacity section of the annual form when such changes occur.** This would meet the need for EIA to have the most current information available while reducing the burden on reporting entities.

### EIA 861

In our June 1 comments, EEI expressed concern about having to report customer site generation information that may not be available or may be confidential. In response, EIA has clarified that it wants information on distributed generation to the best of the filer's knowledge, distinguishing dispersed generation not connected to the grid. Nonetheless, EEI remains concerned about companies having to provide customer-owned generation data that are considered confidential. Also, we question whether the "known distributed generation" would provide a complete picture of the distributed generation within a control area and, if not, what value the information would provide. **EEI encourages OMB to require EIA either to delete the distributed generation question from the Form 861 or at a minimum to clarify that no information considered to be confidential needs to be submitted.**

### EIA 906

In our June 1 comments, EEI asked EIA not to require companies to report gross generation in the Forms 423, 906, and 920, noting that many plants are metered to measure net generation and thus cannot measure gross generation. However, EIA does not appear to have addressed this concern in the Form 906. **EEI encourages OMB to require EIA to allow respondents to report either net or gross generation in the Forms 906 and 920, as EIA does in the Form 412, to avoid companies having to take burdensome new steps to measure generation in a way they are not currently measuring it, if that is even possible at their plants.**

EEI also asked EIA to extend the reporting deadline for the Form 906 from the 10<sup>th</sup> to the 20<sup>th</sup> of the following month. EIA has responded by providing until the end of the following month. We support and appreciate this change.

EIA proposes to release confidential fuel inventory data 6 months after the calendar year to which they refer. **EEI encourages OMB to require EIA not to release these data because this information relates directly to plant efficiency and operating performance, which are highly sensitive from a commercial perspective, and raises security concerns.**

### EIA 920

In our June 1 comments, EEI asked EIA not to require companies to report gross generation. But on the Form 920, EIA still calls for gross generation for combined heat and power plants. Again, **EEI encourages OMB to require EIA to allow respondents more broadly to report either net or gross generation in the Forms 906 and 920, as EIA does in the Form 412, to avoid companies having to take burdensome new steps to measure generation in a way they are not currently measuring it, if that is even possible at their plants.**

Also, EIA proposes to release fuel inventory data 6 months after the calendar year to which they refer. Again, **EEI encourages OMB to require EIA not to release these data because this information relates directly to plant efficiency and operating performance, which are highly sensitive from a commercial perspective, and raises security concerns.**

### Conclusion

EEI appreciates the opportunity to file these comments on the EIA electricity power survey forms. We also appreciate EIA's efforts to keep the forms clear and reasonable and EIA's positive efforts to respond to a number of our concerns by somewhat revising the forms prior to submitting them to OMB. At the same time, we encourage OMB and EIA to revisit the particular issues we have identified above.

Specifically, EIA should modify the forms further to: (1) allow companies to identify additional data elements as confidential in their individual filings; (2) delete proposed new Schedules 7 and 8 from the Form 411; (3) keep fuel inventory and cost data reported on the Forms 423, 906, and 920 confidential and not release the data even after a 6-month delay; (4) allow companies to report either gross or net generation on the Forms 906 and 920, the same as in the Form 412, depending on how the companies meter their plants; (5) delete the MVAR question from Form 860 as unworkable; (6) delete the proposed new Form 860M, at most asking companies instead to report changes in the capacity section of the annual form when those changes occur; and (7) delete the distributed generation question from Form 861 or clarify that no confidential information needs to be reported in answering the question.

If OMB or EIA have any questions about these comments, please contact either Chris Eisenbrey at 202/ 508-5574 or Henri Bartholomot at 202/ 508-5622 on EEI staff. Thank you.

Sincerely,

- signature -

David K. Owens

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