



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Before the

some conditions, all generators within one of the three U.S. transmission interconnects (East, West, and Texas) can affect prices and reliability throughout the interconnect. The task of obtaining, reconciling, and processing this volume of information from several hundred generators in the context of typical regulatory and litigation timetables is nearly impossible.

Potential means to reduce our concern about EIA's proposals include development of a program for selective, confidential access to the data for state and Federal antitrust and regulatory agencies. DOE may wish to consider the costs and benefits of its proposals and this alternative as it updates EIA's electric power survey program.

EIA expresses concern that with increasing competition among generators in U.S. wholesale and retail electric power markets, there is an increased need for confidential treatment of detailed plant-level data.⁽⁹⁾ In competitive markets, owners of electric generation facilities may have strong profit incentives to innovate and invest to improve the operation of their facilities. By lowering costs, for example, a generation facility is likely to be dispatched more often (i.e., sell more), and the profit margin between costs and the market clearing price will be increased. EIA is concerned that the incentives to innovate and invest may be blunted if competitors are more likely, due to public disclosure of relevant data, to quickly learn about and emulate the owner's innovations and investments.⁽¹⁰⁾

Although not explicitly discussed in the Notices, an additional social cost of detailed plant-level disclosures may be an increased likelihood of anticompetitive coordinated interaction among electric power generators.⁽¹¹⁾ Coordinated interaction generally requires that firms (1) agree (tacitly or explicitly) on pricing or output, (2) monitor the agreement, and (3) punish deviations from the agreement.⁽¹²⁾ Detailed knowledge of each other's costs can significantly ease the process of reaching agreement, and detailed, timely knowledge of each other's operating decisions can make monitoring of such an agreement easier as well.

The models are particularly important in evaluating electric power mergers and regulatory reforms because there are many variations in demand and supply conditions that substantially affect the definition of the relevant markets and that are likely to accentuate or moderate the potential anticompetitive effects of proposed mergers or regulatory reform plans.⁽²⁰⁾ Computer simulation modeling is also important because large numbers of generators, transmission lines, and loads (including those of numerous independent third parties) contribute to the supply and demand conditions affecting consumers of the firms involved in any potential merger or in any proposed regulatory reform program. Consequently, it is often extremely difficult to understand the effects of proposed mergers and regulatory reforms without the aid of such comprehensive modeling.

These difficulties in analysis arise in part because large-scale storage of electric power is not practicable either by suppliers or by customers.⁽²¹⁾ As a result, generation of electric power must closely match demand continuously in order to maintain electric system reliability. Electric power markets are further complicated by the physics of electric power transmission. In order to move electric power from generators to customers, the electric power must be transmitted over a network of high voltage wires that are subject to congestion, particularly during peak demand periods. As a result of the lack of practicable storage and of congestion on the transmission system, supply and demand conditions affecting a given location often differ dramatically over time. Suppliers that are important in some periods, for example, are largely outside the relevant market at other times.

In our view, the need for public access to affected EIA survey data is likely to be more acute at present than it will be in the future. If the transition from regulated monopolies to effective competition moves forward nationally and in additional states, the urgency of additional transition planning and monitoring through computer simulation models using public EIA data may eventually diminish. Consequently, DOE may wish to periodically review its confidentiality proposals, even if it determines that the present proposals are not advisable at this time.

III. DOE MAY WISH TO CONSIDER GRANTING SELECTIVE ACCESS TO OTHERWISE

competition. DOE may wish to consider means to allow public disclosure of plant-level data that reduce the risk that such disclosure will harm incentives and competition during this transition period. In the event that DOE does opt for confidential treatment of the plant-level data as proposed, some of the harm to effective regulatory and law-enforcement oversight might be alleviated by developing a system for selective access to the data for state as well as Federal agencies. We encourage DOE to assess the costs and benefits of the EIA proposals and of alternative approaches before reaching a final determination on expanding confidential treatment of EIA survey data. After a few years, the transition from regulated monopolies to effective competition in the electric power industry may be far enough along that the costs of confidential treatment of EIA survey data will be lower and the benefits will be higher.

Respectfully submitted,

Jeremy I. Bulow, Director
John C. Hilke, Electricity Project Coordinator
Bureau of Economics

Susan S. DeSanti, Director
Michael S. Wroblewski, Advocacy Coordinator
Policy Planning
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

1. This comment represents the views of the staff of the Bureau of Economics and of Policy Planning of the Federal Trade Commission. They are not necessarily the views of the Federal Trade Commission or any individual Commissioner. Inquiries regarding this comment should be directed to John C. Hilke (303-844-3565 or jhilke@ftc.gov).
2. The Federal Energy Administration Act of 1974 (Pub. L. No. 93-275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub. L. No. 95-91, 42 U.S.C. 7101 et seq.) require the EIA to carry out an energy information program in order to assess the adequacy of energy resources to meet near and longer term domestic demands. EIA already treats some of the survey data that it collects from industry as confidential. Information on categories of data treated as confidential would continue to be reported in aggregated or averaged form.
3. 65 *Fed. Reg.* 14562 concerning EIA Form 767 (Mar. 13, 2001) (Notice 1) and 65 *Fed. Reg.* 14564 (Mar. 13, 2001) (Notice 2). The surviving affected forms covered in Notice 2 include Forms EIA-411, 412, 423, 826, 560, 860A, 861, and 906.
4. Notice 1 at 14563 and Notice 2 at 14565.
5. See, e.g., Letter of the Federal Trade Commission to House Commerce Committee Chairman Thomas Bliley, Analysis of H.R. 2944 (Jan. 14, 2000) (Bliley Letter).
6. The staff of the FTC has commented to FERC on electric power regulation, for example, in Docket Nos. EL00-95-000 et al. (San Diego Gas & Electric Company and California regulatory issues more generally) (Nov. 22, 2000); Docket No. RM99-2-000 (regional transmission organizations) (Aug. 16, 1999) (FTC RTO Comment); Docket No. EL99-57-000 (Entergy transco proposal) (May 27, 1999); and Docket No. RM98-4-000 (merger filing requirements) (Sept. 11, 1998). The staff of the FTC also has submitted comments to numerous state agencies regarding electric power industry restructuring that have been compiled in an FTC Staff Report: Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform (July 2000). The FTC staff comments and report are available at: <http://www.ftc.gov/be/advofile.htm>.

7. The ability of potential entrants to better model the transmission system using the EIA plant-level data also may be particularly valuable during the transition from regulated monopolies to competition.

8. EIA will gr

