



Electric Power Supply Association
*Advocating the **power** of competition*

February 17, 2004

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PI-40
Office of Policy and International Affairs
U.S. Department of Energy
Room 1E190
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Attention: Comments on Proposed Guidelines for Voluntary GHG Reporting

Dear Mr. Friedrichs:

The Electric Power Supply Association (EPSA)¹ respectfully submits these comments on the proposed revised general guidelines for the Voluntary Reporting of Greenhouse Gases Program (VGGRP). 68 Fed. Reg. 68204 (Dec. 5, 2003) (hereinafter “the proposed guidelines”).

As you are aware, EPSA and its members are actively involved in the implementation of the President’s climate policy, including the development not only of a credible VGGRP but also an effective Climate VISION program tailored to the power generation sector. Participation in the Electric Power Industry Climate Initiative (EPICI) has been one of the important means for EPSA to contribute to development of the President’s climate policies. Through the public comment process, EPICI has provided many recommendations for revising the VGGRP. While these comments generally reflect many of EPSA’s views, there are several issues on which EPSA has determined it needs to make additional comments in order to highlight the greenhouse gas (GHG) reporting issues of greatest concern to the EPSA membership. EPSA submits the following comments in an effort to clarify and bolster the viewpoints of its members on these key policy issues.

As a general matter, EPSA strongly supports revising and enhancing the registry. A revised VGGRP with greater transparency and credibility can make a vital contribution to

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving global power markets. EPSA seeks to bring the benefits of competition to all power customers.

implementation of the President's climate policies. It is EPSA's general view that the revised program should provide companies with an effective tool to report their GHG emissions accurately and to register their verifiable reductions, avoidances, and removals, whether achieved on an entity-wide or project basis. The revised program should provide for a variety of performance metrics for measuring GHG intensity improvements.

The following comments are subject to a few important qualifications. First, a full understanding of how the revised VGGRP will operate will not be possible without a review of the Technical Guidelines, which DOE has said will not be available until the summer. Accordingly, some of the below comments are necessarily conditional in nature. EPSA urges DOE to ensure that the public has an opportunity to comment on both the proposed General and Technical Guidelines as a full package.

Second, the below comments should be viewed solely for the purpose of revising the VGGRP. The comments are not intended to address EPSA's position regarding the development or structure of any future regulatory scenarios.

1. Overview: The proposed guidelines establish unnecessarily onerous reporting requirements in return for highly uncertain benefits

As a general matter, the proposed guidelines elaborate a program in which participants would be subject to extraordinarily burdensome reporting requirements in exchange for ill-defined benefits. On the one hand, the guidelines would mandate that many participating companies report 99.9 percent of their GHG emissions. Yet, the reward for incurring such reporting costs only would be the ability to "register" in an EIA database any entity-wide reductions achieved by the company.

In short, the proposed guidelines in their current form could do more to encourage participation or to provide value for those companies that are actively working to track and reduce their GHG emissions. Below are comments that suggest refinements to the rule.

2. Definition of Entity

EPSA supports the approach in the proposed guidelines to defining the reporting entity. In complex industries like the power generation sector, a flexible approach is necessary because the "highest level of *meaningful* financial and operational control" (emphasis added) could be located in different types of business units in different companies. *Id.*, at p. 68208, c.1. In EPSA's view, requiring that the entity be, at a minimum, "legally distinct" is a useful and appropriate basic standard that will achieve DOE's aims. *Id.*

3. Emission Sources and Sinks Covered

The primary flaw with the proposed guidelines is the extensive reach of the emissions inventory requirements for entity-wide reports. These requirements would force entities

to report all of their direct and indirect emissions of all six GHGs. In addition, entity-wide reporters would be required to calculate and report carbon stock changes at all of the terrestrial sinks they own. See Id., at §300.6.

These requirements are unnecessarily onerous and would likely deter participation in the program. For the power sector, the overwhelming majority of GHG emissions are CO₂ emissions from power generation. Tracking and calculating other types of relatively insignificant emissions from disparate non-generation sources would be highly costly. Moreover, power companies have little means of reducing their minimal non-generation, non-CO₂ emissions. Thus, for all of the cost of such extensive reporting mandates, the VGGRP would gain little in the way of additional emissions coverage or additional reductions.

This point also applies, with even greater force, to the obligation that each entity calculate and inventory carbon changes on terrestrial sinks it owns. Some power companies have significant land holdings. The requirement to measure carbon stock changes would require each company to start measuring and accounting for changes in the size of all of the various species of trees and plants on each acre of land it owns. This would be a costly undertaking and, for practically all power companies, a process in which they have no in-house expertise.

Moreover, all of this effort would yield little new information on emissions changes. Power companies are not in the forest management business; they are neither cutting forests on their land for timber, nor widely involved in afforestation projects on their land. Accordingly, the year-to-year changes in their terrestrial carbon stocks, whether negative or positive, on their land are likely to be exceedingly small. Furthermore, there is no reason to believe that excluding terrestrial carbon stock changes from the entity-wide reporting requirements would encourage power companies to enter the timber business.

This is not to say that EPSA members do not view sequestration projects as an important and valuable climate mitigation strategy. A number of EPSA members are members of UtiliTree and PowerTree, two multi-company ventures that are investing in sequestration offset projects in the Southern United States. Indeed, it is EPSA's view that the greatest potential for sequestration lies not on EPSA members' *own* land but in places like the Lower Mississippi River Valley. For these reasons, the guidelines should be designed in such a way as to encourage high-quality *offset* projects. For entity-wide emissions inventories, on the other hand, reporting on terrestrial carbon stock changes should be optional rather than mandatory.

4. *De Minimis* Threshold

The breadth of the reporting requirements in the proposed guidelines might be somewhat more manageable if entities could exclude their insignificant emissions through a reasonable *de minimis* provision. However, the *de minimis* threshold set forth in the

proposed guidelines – the lesser of 3 percent or annual emissions of 10,000 tons of CO₂-equivalent – is unreasonably low. *Id.*, at §300.6(e). Even the preamble acknowledges that many power companies would be forced to tally up 99.9% of their emissions in order to have the right to register their reductions. *Id.*, at p. 68211, c. 3.

EPSA members agree with the many individuals at DOE’s January 13, 2004 public workshop on the proposed guidelines who advocated a *de minimis* threshold set at 5 percent – an approach used by the World Resources Institute/World Business Council on Sustainable Development’s “GHG Protocol.” In EPSA’s view, such a threshold would allow the program to focus on the more meaningful and significant sources of emissions. It would strike the right balance between maximizing comprehensiveness in emissions reporting while keeping reporting costs reasonable.

5. Methods for Calculating Reductions

EPSA members appreciate that proposed guidelines suggest that DOE will offer entities multiple methods for calculating their emission reductions, including on an intensity basis. *Id.*, at §300.8. EPSA has made clear repeatedly in its public comments that the ability to measure emissions and reductions using intensity performance metrics will be a crucial element of the revised reporting program. EPSA believes that the revised reporting program must measure reductions through performance metrics that recognize improvements in GHG emissions intensity and not just absolute tonnage reductions from historic emissions levels. The use of such performance metrics is consistent with the President’s national goal of achieving an 18 percent reduction in GHG emissions intensity. Moreover, the failure to provide for an intensity metric approach disadvantages companies that may be growing, but are improving their own – and the nation’s – GHG emissions intensity.

The proposed general guidelines provide little detail on how precisely the methodology for calculating intensity and intensity reductions will work. Presumably, DOE intends to develop these methodological details for particular industries in the process of developing the Technical Guidelines.

EPSA members are eager to work with DOE on developing a methodological approach for the power sector. In the power sector, application of an intensity metric is particularly appropriate to assess the emissions changes that occur when a company adds capacity or increases utilization levels for low- or zero-emitting generating units. Low-emitting units include gas-fired units; zero-emitting units include renewable and nuclear units. EPSA has done extensive work on this subject, including developing up to eight different options for performance metrics that could measure intensity improvements by new gas-fired units. EPSA looks forward to working with DOE technical staff on this issue.

6. Pre-2003 Reductions

The proposed guidelines would allow entities to *report* reductions achieved prior to 2003 (so long as they are calculated in a manner consistent with the revised guidelines), but would *prohibit registration* of such reductions. Id., at p. 68206, c. 2.

EPSA sees no reason why the guidelines should deny the reporters the option of setting a pre-2003 baseline and registering reductions achieved prior to 2003. DOE gives no reason for ascribing any particular significance to the 2003 cut-off. At the January 13th public workshop, Undersecretary Card emphasized that the Bush Administration does not view VGGRP as the primary tool for achieving progress toward the President's 2002-2012 GHG intensity goal. In addition, DOE has suggested that it no longer believes it has the authority to provide assurances that reductions registered in the VGGRP will be credited in a future climate program.

The preamble asserts that the program should “focus on current and future actions,” but it is unclear why a future focus makes it necessary to penalize companies that achieved real, measurable reductions prior to 2003 by denying them the ability even to register them in the new database. Indeed, this approach actually could *discourage* current and future participation in the VGGRP because it would set a precedent under which DOE could, by administrative fiat, arbitrarily and at any time wipe the slate clean on real reductions already achieved.

In any event, if DOE believes it is important for some reason to distinguish between pre-2003 reductions and more current reductions, it has other, less punitive, means at its disposal. For example, it could design the database in such a way as to identify registered reductions by the year in which they were achieved (*i.e.*, their “vintage.”)

7. Ownership/Right to Register Emission Reductions

A critical issue in any enhancements to the VGGRP is the establishment of clear rules as to which entity has the right to register reductions in various circumstances.

EPSA strongly supports the proposed approach to determining ownership of “avoided emissions,” *i.e.*, changes in emissions associated with the sale of electricity, steam, hot water or chilled water generated by non-emitting or low-emitting sources. DOE proposes to allow the owner of the non-emitting or low-emitting source to register the avoided emissions, rather than the purchaser of electricity from that source. Id., at 68212, c 2. The preamble provides an example of how this rule would operate in a particular setting:

For example, the owner of a wind turbine that sells its power to the grid is presumed to have the right to register such resulting emission reductions, even though this wind-generated electricity might be purchased at a premium by a local utility and, ultimately, resold at a premium rate to a local manufacturer. Id.

EPSA believes this is the correct approach. The proposed guidelines should reward and encourage those companies that incur the higher costs and risks involved in investing in low-emitting or zero-emitting energy. Recognizing ownership in the generator rather than the purchaser is more consistent with the preamble's stated goal of "ensur[ing] . . . that recognition for reductions is given to those entities *primarily responsible* for those reductions." Id. (emphasis added). Without these investments, it will not be possible to diversify the nation's energy portfolio, with all of the attending climate mitigation benefits. In addition, the proposed approach is more consistent with existing State renewable energy credit trading programs, which recognize the generator as the entity presumptively entitled to credits. Finally, it is EPSA's view that an approach that recognizes registration rights in the generator will be far easier to administer.

On the issue of indirect emission reductions – *i.e.*, reductions associated with implementation of energy efficiency measures by electricity purchasers – EPSA is satisfied with the approach suggested in the proposed guidelines. As EPSA reads the proposal, DOE would require entities to calculate and report their indirect emissions and indirect emission reductions separately from their direct emissions and direct emission reductions. DOE then will keep track of these different types of reductions separately. Id.

8. Tracking of Registered Reductions

The proposed guidelines provide almost no information as to how the enhanced VGGRP will meet the President's directives and the cabinet secretaries' recommendations (as set forth in their July 8, 2002 letter to the President) that the revised program provide "transferable credits" and generally support private emissions trading markets. Indeed, the proposed guidelines provide little information about how the database even will help entities keep track of their "registered reductions."

Even if DOE determines it lacks the legal authority to award transferable "credits" to companies or provide assurances about how reductions will be treated in future climate programs, this does not prevent DOE from designing the database in such a way that entities at least can keep track of their registered reductions and have some amount of flexibility in what they do with their registered reductions. EPSA members believe that if the revised VGGRP is going to provide *any* kind of value for action, it is important – at a minimum – that the database individually track registered reductions. The database should include accounts for each entity in which it is clear how many registered reductions the entity holds and the vintage of those reductions. In addition, some kind of individualized identification reductions would make it possible for one entity to transfer some portion of its registered reductions to another entity without leading to confusion or disputes about ownership. Establishing this minimal framework does not surpass DOE's legal authority under the 1605(b) statutory provisions. It might be that DOE intends to address these issues in the Technical Guidelines. If so, EPSA members hope that DOE takes these considerations into account.

9. Rules for Emissions Offsets

EPSA members believe that offset projects are a critical element of the nation's climate mitigation strategy and of efforts to meet the President's emissions intensity goal. However, the proposed guidelines' approach to offset transfers is seriously flawed.

The basic approach in the proposed guidelines is that an offset buyer could register an offset seller emission reductions only if the offset seller has observed all of the requirements that would apply if the seller had registered the reductions into the program itself. *Id.*, at §300.7(c)(1). Thus, if the seller were a large enough emitter, it first would have to meet the entity-wide reporting requirement and only would have offsets to sell if it has achieved *net entity-wide* emission reductions.

This rule places extraordinary obstacles in the way of offset transactions. It would mean that, even if a potential offset seller has put together an emissions reduction project that achieves real reductions, it could not transfer any of those reductions if its entity-wide emissions have increased. This approach will discourage the development of high quality emission reduction projects – and project-based transactions currently constitute the bulk of the private U.S. emissions trading market.

It could be that DOE's concern is to avoid registered project-related reductions where the reductions resulted from emissions shifting or "leakage." However, requiring sellers first to demonstrate net entity-wide reductions is neither the only nor the best way to police against leakage. It is, without question, an exceedingly blunt policy approach, which will exclude not only "bad" projects but also numerous good ones.

Even more troublesome are some of the additional issues on which DOE is soliciting comment respecting offset transactions. For example, DOE is asking whether a participating company even should be allowed to transfer different portions of its registered reductions to different buyers. EPSA cannot see any reason why that should *not* be allowed. (Note, however, that such transactions will not be possible without serialization of reductions.)

DOE also solicits comment as to whether the guidelines should require an offset buyer to have demonstrated that it actually financed the activities that achieved the emission reductions. Again, EPSA members can conceive of no rationale for such a rule. If the offset seller has calculated the reductions using the methods set forth in the guidelines, there should be ample assurances that the reduction is credible and real. Accordingly, there should be no need for a further demonstration that the offset buyer actually has provided the financing for the reduction. Such a rule would have, to say the least, a chilling effect on private trading markets.

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10. Conclusion

The proposed revisions to the general guidelines for the VGGRP are an important milestone in implementation of the President's climate policy. EPSA members look forward to working with DOE to ensure that the VGGRP becomes a credible, workable, and valuable program.

Thank you again for the opportunity to provide comments on revisions to the VGGRP. EPSA member companies would be pleased to work with the DOE and EIA to further develop the concepts proposed in these comments.

Sincerely yours,

A handwritten signature in cursive script that reads "Lynne H. Church". The signature is written in black ink and is positioned above the typed name and title.

Lynne H. Church
President