

Following is a summary of the major supporting and opposing arguments received in response to EIA's proposed policy.

General Concerns—Arguments for Release of Aggregated Information Collected Under a Pledge of Confidentiality

Nine responders to the October 24, 2002, **Federal Register** notice generally supported EIA's approach to not using disclosure limitation methods before disseminating information collected under a pledge of confidentiality at an aggregate level in statistical tables after a three-year period. They stated that the release of such information at least three years after collection and aggregated at the State, regional, or national level will adequately safeguard the competitive position of any survey respondent. If an affected survey respondent disagrees, the respondent has the option to request confidential treatment through the DOE's Office of Hearings and Appeals or in court. Further, some stated that disseminating historically confidential information at the State level is especially important as States move into an era characterized by the need for portfolio management of power supply, demand, and related factors. Others believe that the release of aggregated information after a three-year period expands the historical information available and has the potential to benefit information users, researchers, and policymakers.

Other persons argued that the industry has failed to document any specific harm that will arise from the release of EIA aggregated survey information despite the fact that competition has existed in the industry for several years. They also stated that much of the information is already available, that the statistical tables will not have any competitive impact by the time they are released by EIA, and that public policy goals depend on this information.

Some supporters of the release of aggregated information after three years believe that both EIA's enabling statute and the Freedom of Information Act (FOIA) mandate that EIA disseminates its information. They state that the FOIA contains nine exemptions from public disclosure, and only Exemption 4 (which protects against release of confidential commercial or financial information), potentially relates to the type of information collected on EIA's electric power surveys. In fact, one commenter stated that the purpose of FOIA is to promote disclosure, not to justify secrecy.

Another commenter in favor of the release of historical information stated that with the movement toward a more competitive market, it should be clear to all that energy markets can function best in the presence of wide access to information.

Also in support of the proposed policy, many commenters to previous EIA **Federal Register** notices published March 13, 2001 (Vol. 66, No. 49) who opposed the release of individually-reported information believed that EIA could fulfill its statutory duties without disclosure of individual plant level information by disseminating the information in an aggregated form. In addition, several supported a delay in the disclosure of sensitive information to protect against competitive harm.

General Concerns—Arguments Against Release of Aggregated Information Collected Under A Pledge of Confidentiality

Nine responders to the October 24, 2002, **Federal Register** notice opposed EIA's proposal to release information collected under a pledge of confidentiality at an aggregate level after a three-year period. They believe that disclosure even at an aggregate level of competitively sensitive information will harm respondents, the electricity market, and the consumer. In particular, some believe their entities hold market share in certain States and regions. If the number of entities included in the aggregate is small, they believe that their information could be easily discerned. Others understood that the confidential information would remain proprietary even when disseminated at aggregate levels. They stated that EIA is changing its policy on confidentiality.

Some had an issue with the three-year time period. Their concern is that much of the information provided in the responses to the EIA surveys would potentially change little over time. Thus, if the number of entities included in a particular aggregate is small, individually reported information could be discerned. If the information changes little over time, competitive harm could occur with respect to fuel purchase prices and plant operating costs.

One commenter opposed the proposal to release aggregate information collected under a pledge of confidentiality after three years stating that the proposal is too broad and unfounded. The person also stated that the new proposal violates the expectations of companies that have submitted the information in reliance on confidentiality assurances. The person went on to say that the mere passage of time does not ensure that information

treated as confidential because of commercial and security concerns no longer need to be treated as confidential. The commenter believes that the proposal is a generalization, which can not be made for all categories of information or for all facilities and companies. Also, companies have provided the information in reliance on EIA assurances, which should not now be withdrawn after the information has been submitted.

EIA's Response to Comments

EIA finds that the comments on the issue are thoughtful and reflect the nature of the tradeoff in ensuring information is available for monitoring and analyzing the electric power industry and markets while at the same time ensuring that information collected under a pledge of confidentiality in EIA's electric power surveys is not released in statistical tables in such a way as to cause potential substantial competitive harm to the survey respondents.

EIA's final policy is to discontinue the use of disclosure limitation methods such as suppression and complimentary suppression for statistical tables derived from historical electric power survey information collected under a pledge of confidentiality only if the information is not currently collected under a pledge of confidentiality. This decision is based on the need to provide additional tabulations that will improve and broaden the understanding of the electric power industry by releasing more aggregated information (State, regional, or national level) while using disclosure limitation methods to ensure the confidentiality of information currently collected under a pledge of confidentiality. The potential disclosure of data that were confidential and older than three years will not have a major impact on the competitiveness of the respondents, as their current data are no longer confidential.

III. Current Actions

The EIA is establishing a policy regarding the use of disclosure limitation methods for information in statistical tables derived from historical electric power survey information collected under a pledge of confidentiality. (Disclosure limitation methods are used to ensure that sensitive table cell values are suppressed; *i.e.*, withheld from public release.) Under this policy, disclosure limitation methods will be used on statistical tables based on aggregated historical electric power survey information collected under a pledge of confidentiality only if the information is