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EDISON ELECTRIC INSTITUTE

September 25, 2006

Stephen E. Calopedis
U.S. Department of Energy
Energy Information Administration, EI-81
1000 Independence Avenue, S.W.
Washington, D.C. 20585
E-mail: *stephen.calopedis@eia.doe.gov*

Re: Proposed Draft Revision of Form EIA-1605, "Voluntary Reporting of Greenhouse Gases" (Long Form), and of Applicable Draft Revision of Related Instructions: Proposed Discontinuation of Related Form EIA-1605EZ (Short Form); Information Collection Proposal, 71 Fed. Reg. 42637 (July 27, 2006).

Dear Mr. Calopedis:

The Edison Electric Institute (EEI) understands that, according to the above-referenced Federal Register notice, the Energy Information Administration (EIA), is providing, in compliance with the Paperwork Reduction Act of 1995 (42 U.S.C. §13385), an opportunity to "the general public and other Federal agencies" to submit comments "on collections of information conducted by or in conjunction with the EIA." In this case, EIA is proposing "revisions to Form EIA-1605" and its related revised instructions in "response to the finalization and issuance" by the Department of Energy (DOE) on April 21, 2006 of the "Revised Guidelines for reporting to the 1605(b) Voluntary Reporting of Greenhouse Gases Program," which was first established in 1994 pursuant to section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. §13385(b)). The notice also states that EIA proposes to discontinue the use of a related short form, "EIA-

1605EZ", and that EIA "will later seek approval by the Office of Management and Budget (OMB) under section 3707(a)" of the 1995 Act for the proposed "collection of information" and discontinuance.

The notice further explains that "any comments received help the EIA to prepare data requests that maximize the utility of the information collected and to assess the impact of collection requirements on the public,' including EEI and its members. The notice adds that the "first year of reporting to the Program under the revised Guidelines is expected to occur in the summer of 2007, for 2006 data." Any such comments to EIA "must be submitted by September 25, 2006."

EEI is the association of U.S. shareholder-owned electric companies, international affiliates and industry associations worldwide. Our U.S. members serve 97 percent of all customers served by the investor-owned segment of the industry. They generate more than 60 percent of all of the electricity generated by the electric utilities in the United States and serve more than 70 percent of all ultimate customers of the electricity in the nation. EEI is also one of six electric power trade associations in the United States that – acting through their member companies and along with the Tennessee Valley Authority – are collectively referred to as the "Power Partners[SM]." On December 13, 2005, Power Partners[SM] entered into the umbrella Climate VISION Memorandum of Understanding (MOU) with the Department of Energy (DOE) in

support of the President's efforts to reduce greenhouse gas (GHG) emissions intensity of the U.S. economy by 18 percent by the end of 2012.

EEI and the other Power Partners[SM] members, individually and collectively, have been significant voluntary reporters of GHG reductions to the EIA's database maintained under the current General Guidelines issued in 1994 pursuant to section 1605(b) of the Energy Policy Act of 1992. For example, in 2004, as a result of aggressive reduction, avoidance and sequestration projects and other direct activities, EEI member companies and the entire power sector reported more than 282 million metric tons (MMT) of GHGs, or 63 percent of all such reporting under section 1605(b), which is an increase of over 20 million metric tons over 2003.

EEI commented to EIA in letters dated August 4 and 29, 2005 on earlier proposals (70 *Fed. Reg.* 37798) to revise the existing EIA Form 1605 and its related Instructions and on discontinuance of the short form, EIA Form 1605EZ. That proposal was then based on an EIA interpretation of DOE's Interim Final Guidelines of March 2005. This latest proposal is based not on interpretation, but on the final revision of the DOE Guidelines. EEI appreciates the opportunity to submit comments on EIA's July 27 draft revision.

Accordingly, attached are our comments on the July 27 proposed draft revisions and on the EIA proposal to discontinue use of the short form. At the same time, we incorporate by reference our 2005 comments and request that they also become a part

of the docket for this notice. In addition, we support the comments on the draft forms and instructions filed by PowerTree Carbon Company, LLC and by the Utility Solid Waste Activities Group (USWAG).

If you have any questions about the attached comments or our earlier comments, please contact me (202-508-5617, bfang@eei.org) or Eric Holdsworth (202-508-5103, eholdsworth@eei.org).

Sincerely,

William L. Fang
Deputy General Counsel
and Climate Issue Director

cc (w/ att.):

Howard K. Gruenspecht
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COMMENTS OF THE EDISON ELECTRIC INSTITUTE[1]
ON THE ENERGY INFORMATION ADMINISTRATION'S
REVISED DRAFT FORM EIA-1605, REVISED DRAFT
INSTRUCTIONS AND RELATED MATTERS

September 25, 2006

I. Background

On July 27, 2006, the Energy Information Administration (EIA) issued a Federal Register notice that it has "developed" a new draft of its existing reporting Form EIA-1605 (long form), titled "Voluntary Reporting of Greenhouse Gases", and a draft of related "Instructions" for that form "[i]n response to the finalization and issuance" on April 21, 2006, by the Department of Energy (DOE) of its "revised Guidelines for reporting to the 1605(b) Voluntary Reporting of Greenhouse Gases Program" (71 Fed. Reg. 20784). The notice further indicates that the EIA "plans to issue" the "revised reporting forms and instructions for reporting under the revised Program Guidelines"; that it "will be requesting" Office of Management and Budget (OMB) approval of the revisions to Form EIA-1605 and related instructions; and that EIA is making these drafts available for public comments. At the same time, the EIA notice also proposes to discontinue the existing Short Form EIA-1605EZ (71 Fed. Reg. 42637).[2]

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[1] EEI is the association of U.S. shareholder-owned electric companies, international affiliates and industry associations worldwide. Our U.S. members serve 97 percent of all customers served by the investor-owned segment of the industry. They generate more than 60 percent of all of the electricity generated by the electric utilities in the United States and serve more than 70 percent of all ultimate customers of the electricity in the nation. EEI is also one of six electric power trade associations in the United States that – acting through their member companies and along with the Tennessee Valley Authority – are collectively referred to as the "Power Partners[SM]." On December 13, 2005, Power Partners[SM] entered into the umbrella Climate VISION Memorandum of Understanding (MOU) with the Department of Energy (DOE) in support of the President's efforts to reduce greenhouse gas (GHG) emissions intensity of the U.S. economy by 18 percent by the end of 2012.

[2] EEI understands that on May 2, 2005, OMB approved, pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501, *et seq*., an extension of its prior approval for continued use by

In letters to EIA dated August 4 and 29, 2005, EEI provided detailed written comments on the June 30, 2005, proposed draft revision of "Form EIA-1605" based on DOE "Interim Final General Guidelines and draft Technical Guidelines issued on March 24, 2005," which among other things, urged "EIA to wait for DOE to finalize the guideline documents and then repurpose the Form and instructions based on the final documents," which, we are pleased to see, is the approach EIA chose. We welcome the opportunity to comment on the revisions now that the Guidelines have been finalized and issued by DOE. Nevertheless, since some of the detailed comments we made in 2005 appear to continue to be pertinent to the proposed draft 2006 revisions of the EIA Form and related Instructions, we herein incorporate those letters and their attachments by reference and request that they be made a part of the EIA docket for comments under this notice. We also will make reference to them in this attachment as appropriate.

II. General Comments

In an E-mail titled "Implementation of revised greenhouse gas (1605(b)) reporting guidelines," dated August 3, 2006, DOE requests stakeholders (such as EEI) "to identify any technical corrections" that they "feel are needed by sending an E-mail to 1605bguidelines@hq.doe.gov by no later than October 1, 2006." DOE also notes that it has received "a few requests for guidelines clarifications, interpretations and proposed changes." Although, the E-mail fails to explain the nature of these already "received" requests, it does state that "[s]uch requests may also be sent to the same E-mail address." DOE has not formerly indicated how it will address

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EIA of this long form and a companion short form EIA-1605EZ until March 31, 2007 (OMB No. 1905-0194). The March 2006 version is for "Data through 2005."

these matters, which are of great interest to EEI, although the above E-mail states a DOE "intent" to do so "before the end of 2006." Nevertheless, EEI will be responsive.

In 2004, as a result of aggressive reduction, avoidance and sequestration projects and other direct activities, EEI member companies and the entire power sector reported more than 282 million metric tons of GHG reductions, or 63 percent of all such reporting under the section 1605(b) Program. EEI would like to see this level of reporting continue and even grow with the adoption of the revised Program. However, we are concerned that may not materialize because the Guidelines themselves are rather daunting for current and potential **volunteers**. It is our hope that DOE, in administering them, will, through interpretation, technical corrections, and even amendments, make a serious effort to inject greater clarity and flexibility as a means of helping to achieve the goal of the President in calling for revisions of the Program.

We cannot over-emphasize the fact that this is a "voluntary" Program established as such by Congress and that, even though the Guidelines are designated as "Final Rules,"[3] "[e]ntities, in their sole discretion," including those who have reported under the 1994 guidelines, may decide" *not* "to report under" the "Program" and further "[t]hose who do decide to report may, again in

[3] Given that the revised Guidelines also include many "mandatory terms" (*e.g.*, §§ 300.1(b), 300.2, 300.5(d),(f) and (g), 300.9, and 300.10) that are applicable to entities choosing not to register their reductions but nevertheless provide "information" voluntarily to the Program, and given that there is nothing in section 1605(b) or in the final Guidelines that assigns "greater credibility" for choosing whether to register or not under the Program, we understand that the only difference in making such a choice recognized in the Guidelines is the notification by EIA in § 300.12(b) that an entity's "reductions meeting" the applicable "requirements" are "credited to the entity as 'registered reductions'" for potential future use. Nowhere in new "Part 300" are the words "greater credibility" used. That is a DOE characterization made only in the preamble to the "Final Rule". It is not a part of the revised final "Part 300."

their sole discretion, decide" *not* to "be associated with registering their reductions." The flexibility, clarity, and ease of reporting afforded by the EIA draft "Instructions" and by "Form EIA-1605" and the related Appendices and "tools" could very well be the deciding factor for an entity in making either decision or the decision not to participate at all. In this regard, we recognize that EIA must develop both the Instructions and Forms in a manner that faithfully and consistently implements the final Guidelines, and while the July 27, 2006, drafts of these documents provide some important improvements over the June 2005 version, **more effort must be made by EIA to inject greater flexibility and clarity and to make them less complex, more user-friendly and less demanding of resources and time on the part of volunteer entities**.

We see some significant improvements in the July 26, 2006, Draft revisions of the Instructions and the EIA Form over the version proposed by EIA on June 30, 2005. First, they are no longer based on an "interpretation" of the DOE Guidelines, but on the final Guidelines themselves. Second, Table I, titled "Summary of Reporting Requirements," in the Draft Instructions has been improved, although more can be done. Moreover, adding Figure 1 on the "Organization of Form EIA 1605" is useful. Third, there has been some effort to cross-reference the Guidelines, which is helpful, but as discussed below a greater effort is needed. Fourth, the number of "Schedules" has been reduced. These are some examples of improvements that we welcome and, as discussed below, we look forward to more. In short, such improvements can help meet the President's directive of improving the voluntary Program to "enhance measurement accuracy,

reliability, and verifiability" and at the same time possibly "encourage" greater, not lesser, voluntary participation in the Program.

III. Comments on Federal Register Issues

A. Reasons and Justification for Discontinuing the Availability of Form EIA-1605 EZ Lacking

The July 27, 2006, Federal Register notice (71 Fed. Reg. 42637) states that "in soliciting comments on a proposed three-year extension and revisions" of Form EIA-1605, the long form, "EIA also proposes to discontinue Form EI-1605 EZ (short form) and later states in the notice under the title "II. Current Actions" (supra p. 42638) that "EIA will be requesting OMB approval . . . for discontinuation of Form EIA-1605 EZ (short form)" (emphasis added).

While that is the total extent of any reference to this proposal in the notice, the notice includes a listing of a number of "issues" that are "provided to assist in the preparation of comments." However, as far as we can tell, none of these "issues" relate to this proposal (supra, p. 42639). In short, EIA provides no explanation or reasons to support or justify such discontinuance.

Section 300.3(a) of the DOE Guidelines provides that "[a] reporting entity must be composed of one or more businesses, public or private institutions or organizations, households, or other entities having operations that annually release emissions, at least in part, in the United States." There is no further definition of the above composition of an "entity." Thus, under this proposal, whether an entity chooses to be a volunteer registrant or a volunteer provider of GHG

information only, the only form available to that entity under the above Federal Register notice is the proposed revised long form.

In our comments of August 4, 2005, which we have incorporated by reference, we said "[i]t is not wise to abandon" the short form and added (p. 10):

> The March 2003 "Instruction" to this form explains that it "provides an easy means for the voluntary reporting of reductions in greenhouse gas emissions and increases carbon sequestration" and states that a volunteer "can submit a report" if he or she is an "individual or organization that initiates controls or in some way participates in an activity that reduces such gases or sequesters carbon."

One of the "purposes" of the Paperwork Reduction Act of 1995, according to § 3501, is to "minimize the paperwork burden for individuals, small businesses, . . . state, local and tribal governments, and other persons resulting from the collection of information by . . . the Federal Government" (emphasis added). Continuing to maintain a short form, albeit with revisions, is one of the ways of achieving that purpose. Instead, EIA proposes that all large and small emitters, whether they propose to register or to only provide GHG information without registration, must use the same Instructions and long form with all their accompanying details and complexity. Such a result leads to the inclusion of what we view as confusing and puzzling instructions/options and conditions.

In questioning the lack of an explanation and justification by EIA for abandoning the short form concept and contending that such abandonment is inconsistent with the above purpose of the 1995 Act, we believe **the best and most logical approach is for EIA to reconstruct the so-called "short form" to serve entities, large and small, that choose to report voluntarily**

GHG information without meeting the "requirement" of registration. **That would leave the long form for entities, large and small, which choose to register reductions.**

B. The Accuracy of the Federal Register Notice Estimate of the Burden of the Collection of GHG Information Is Questionable

In our comments of August 29, 2005, EEI noted that "entities choosing to register will undertake significantly greater reporting burdens than those who report only" and "even those who opt to report only will have a greater burden than those currently reporting under the 1994 guidelines." With these and all other changes in "requirements" to the guidelines, we said in August 2005 that the June 30, 2005, "estimate" of 40 hours was "inaccurate" and "inconsistent" with the requirements of the 1995 Act (pp. 6-7).

According to the July 27, 2006, notice, the "reporting burden[4] for this collection is estimated to range between 32 hours to 64 hours per response, depending on the type of report and level of

[4] The July 27, 2006, notice refers to the "reporting burden", while the 1995 Act refers in § 3506(c) to the "collection of information" and defines that term in § 3502(3) as follows:

> (3) the term "collection of information"—
>
> (A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—
>
> (i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; or
>
> (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and
>
> (B) shall not include a collection of information described under section 3518(c)(1).

detail the respondent chooses to report at, or an average of 48 hours," which is the middle of the "range." The notice also asks what "additional actions could be taken," presumably by EIA, "to minimize the burden of this collection of information" (71 Fed. Reg. 42639) (emphasis added).

The word "additional" suggests that EIA has taken some actions to "minimize" the burden. However, the notice does not indicate how EIA developed this new estimate of the "burden" of the "collection of information," and since neither the notice nor the DOE Guidelines include any identification or explanation of any "actions" taken by EIA or DOE to "minimize" this collection burden for respondents to consider as to their effectiveness, any implication that either agency has taken such "actions" appears misleading.

Nevertheless, based on our consideration of the "requirements in the revised guidelines" and on our understanding of what it will take annually to "complete the collection," we do not believe that the EIA estimates of the "range" and "average" are "accurate."

In footnote 5 of our letter of August 29, 2005, we provided the following information about the 40 hour estimate (p. 4):

> One member company has estimated its annual reporting burden, including data collection and responding to EIA comments on its submitted long form, to be

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We note also that section 1605(b)(1) of the Energy Policy Act of 1992 provides for the issuance of "guidelines for the voluntary collection and reporting of information on sources" of GHGs and that section 1605(b)(2) requires that EIA "will develop forms for voluntary reporting under the guidelines" (emphasis added). In light of the 1995 Act definition, its later enactment, and its specificity, the proper reference is to "collection of information" for purposes of reporting.

> 160-200 hours. Another member company has estimated its annual reporting burden to be 120 hours, 80 hours at the corporate level and 40 hours at the facility level.

We consider that estimate still to be valid, particularly since the notice fails to explain what EIA did to develop this latest "estimate" of the burden. As can be seen, both estimates are at great variance with those of EIA for 2005 and 2006. Even the beginning of the range, in one case, is nearly three times greater than the EIA's estimate and in the other, it is nearly double. Those differences are substantial.

In the use of costs, the notice makes no estimate for consideration. Without such an estimate, we do not see any basis for EIA's contention that the "only cost" to respondent EEI members would be the "time to complete the collection." Moreover, we do not know what EIA intends to encompass by the word "complete" in terms of the collection "requirements." Again, in the above-referenced footnote of August 2005, we said that one "company anticipates the need for the equivalent of an additional employee to implement all of its climate programs for the first year under the new 1605(b) guidelines; part of that additional resource need will be related to the reporting burden."

We emphasize that, unlike the 1994 guidelines, the revised Guidelines are not focused on encouraging widespread voluntary participation through use of flexible collection provisions that can apply to the revised long form. Rather, they stress the use of multiple "requirements." Moreover, the revised Guidelines impose different requirements for large and small entity emitters and, based on their choice, for collection/registration and non-registration

collection/reporting, all of which are reflected in the revised long form. Further, as outlined herein, the overall collection of DOE and EIA documents that a participating volunteer must utilize for 2006 and later data – whether a large or small entity emitter or whether choosing to register or not – are far more extensive for the volunteer to analyze, comprehend and apply than in 1994.

We urge EIA to reconsider the accuracy of its estimates of the "burden" of the "collection of information" and reporting thereof in preparing its submission to OMB for approval under the 1995 Act and revise those estimates, taking into account these comments.

C. EIA Needs to Seek OMB Approval of the Collection of Information for the 1605(b) Voluntary Reporting of GHGs Program after the Instructions and Forms Are Complete

EEI understands that informally EIA has indicated that the OMB approval process for the collection of information for the 1605(b) Voluntary Reporting of GHGs Program could begin as early as October 2006 with the issuance by OMB under § 3507(b) of a notice of at least 30 days for public comment, which would precede OMB's action, with the overall objective of achieving final OMB approval of the Forms and Instructions in December 2006. While EEI recognizes that it will have another opportunity to comment on the draft revision of the Forms and Instructions that will also include changes that address these comments, and while we generally support EIA's efforts to finalize the forms and instructions as soon as possible, we hesitate to support such an ambitious timetable at this time. In addition to the issues and concerns that we identify herein with the forms and instructions, we are concerned about the missing Appendices

and the Calculation Tools that were referred to earlier in these comments, as well as the lack of software until August 2007 or later. **It is important that an informal opportunity be provided to review and comment on the Appendices and Tools before EIA seeks such OMB approval.** We understand that is EIA's intention.

IV. Comments on Introduction and General Instructions of Draft Revised Instructions

A. The Revised Instructions Are Neither Clear Nor Sufficient

The July 26, 2006, Federal Register notice asks – as did the June 30, 2005, notice – whether "the instructions and definitions" are "clear and sufficient" and, if not, which "need clarification" (supra, p. 42639) (emphasis added). In our August 29, 2006, letter, we said that the 2005 version of the instructions "are not clear and sufficient." While there are some improvements in the 2006 draft, we continue to believe the instructions are not "clear and sufficient."

First, as to the "Introduction" and the "General Instructions," there are no definitions in the draft revision, unlike the "Instructions" for the current Form EIA-1605 (dated March 2006). In addition, there is very little reference therein to the General Guidelines and no apparent reference to the Technical Guidelines or to the fact that the Technical Guidelines are "incorporated by reference" in the General Guidelines. The "Introduction" briefly indicates under the question "**What is the Purpose of Form EIA-1605?"** (p. 1) that the draft revised Form EIA-1605 and these "instructions" "provides the means for the voluntary reporting" of GHGs, etc. under section 1605(b) and "are designed to help the reporter participate fully" in the Voluntary

Program "outlined in the revised guidelines issued on April 21, 2006" by DOE (emphasis added).

These instructions are more than just "help". They are, in fact, the sole means of participation in the Program, as specified in section 1605(b)(2) of the 1992 Act and in 10 C.F.R. Part 300. Moreover, the "purpose" of the Instructions and Form is to implement the Guidelines and, as stated in § 300.1(a), "to encourage corporations, government agencies, non-profit organizations, households and other private and public entities to submit annual reports of their" GHG emissions, emission reductions, and sequestration activities that are "complete, reliable and consistent" and to "provide a reliable record of the contributions reporting entities have made toward reducing their" GHGs under section 1605(b). In our view, the "purpose" is better stated in the DOE Guidelines than in the draft Instructions. We urge adoption in the Instructions of the above Guidelines version and a more extensive explanation of the applicability of the General and Technical Guidelines.

Second, while there are some specific references in the "General Instructions" and the "Instructions for the Schedules" to the specific provisions of the General Guidelines, the practice is not uniform or sufficient. For example, under the questions "**Can You Report Foreign Activities?**" and "**Who Must Certify Your Report?**" (p. 6), the response, as to both, fails to refer the applicable entity to the relevant section or sections of the General Guidelines. Indeed, in the case of the first three questions under "General Instructions" – "**Who Can Report?**",

"**How Must Your Entity Be Defined?**" and "**How Must Your Entity Be Named?**" (p. 3)[5] – there is no reference, for example, to the definition in the Guidelines of the term "Entity," or to the applicable provisions of § 300.3 of Part 300, titled "**Guidelines for Defining and Naming the Reporting Entity**". Similarly, there are questions on, for example, "**What Are The Requirements for Requesting Reductions**?" and "**What Is the Start Year?**" (p. 4), "**What Are Sub-entities?**" and "**What Gases Can You Report?**" (p. 5), and "**Can You Report Foreign Activities?**" and "**Who Must Certify Your Report?,**" (p. 6), where there also is no such reference. Yet there are questions on pages 3 and 5, for example, where there are specific references to relevant provisions of the Guidelines.

The problem is not unique to the "Introduction" and "General Instructions." The "Instructions" for the "Schedules", except in the case of "Schedule IV", are also lacking references to the applicable provisions of the Guidelines (*e.g.*, "Section 1. Entity Statement" makes no reference to the Guideline that defines an "entity", on submission of such a statement, on selecting organizational boundaries, or on defining and naming the entity). If such references can be made in the case of one Schedule, they surely can be made for all Schedules and their detailed parts.

[5] We note that, in the case of these questions and the responses thereto and elsewhere in the Draft revised Instructions, just as in the March 2006 Instructions under the 1994 Guidelines, the first person is often used, namely "you" or "your." However, the final revised Guidelines address and use the terms "entity", "entities", "larger emitter" and "small emitter" (which refers to the term "entity" in the definitions of those terms), and "reporting entity" rather than the first person. Clearly, the definition of the term "entity" makes no reference to the first person, even in the case of a "household", and § 300.3(a) states that entities "may be defined by" one or more legal instruments, not with reference to an individual. For consistency with the Guidelines, the proper reference is to the "entity", etc., not the first person.

We strongly believe that such references are needed to help make the revised Instructions "clear and sufficient."

Third, one very significant problem of clarity and sufficiency with the Instructions is the terminology used therein to distinguish between an entity that adopts the criterion of "registration" as opposed to an entity choosing the criterion of not registering, but "reporting only".[6] It is not always accurate or consistent, nor does it always adequately distinguish between the two reporting criteria.

The sole purpose of the draft revised Instructions and Form EIA-1605 is to provide "for the voluntary collection and reporting of information on sources" of GHGs. Whichever criterion an entity selects under the Guidelines, the result is a "report" to EIA for its review and acceptance pursuant to § 300.12 of Part 300. To register is to "report," as is "reporting only". There is no distinction or difference, yet the very first paragraph of the "Introduction" to the Instructions states (p. 1): "That this form allows you to 'register' or 'report' reductions in emissions . . ." which suggests that to "register" is somehow different than "reporting." As just noted, it is not. Similarly, throughout the draft revised Instructions for the Addendum, the term used is

[6] The Guidelines define the term "Registration" differently in § 300.2 of Part 300 and in the Glossary to the Technical Guidelines at pp. 308-09. (We presume that will be corrected when DOE makes technical corrections to the Glossary.) However, there is no definition therein of the often used term "reporting only." The term "reporting" is listed in the Glossary to the Technical Guidelines (p. 309). It, however, is not really a definition of that term. It merely states that if an entity "does not choose to report emissions in a manner that conforms to the registration requirements. . . then the entity may choose to report on any emissions or any emissions reduction by complying with the other requirements of "Part § 300" (emphasis added). In the case of registration, it cites some of those requirements, but gives no citation to the "other" non-registration requirements.

"registered or reported" (*e.g.*, pp. 51, 57, 59, and 75, or "registering or reporting" (*e.g.*, p. 55). Again, both involve the submission of a "report" to EIA. Indeed, we point out that much of the Technical Guidelines refers to entities as either "reporters" or "entities."

In some cases, the term "reporting entity" (defined in Part 300) is used (*e.g.*, pp. 3 and 6). However, it is defined to mean an entity that "has submitted a report" under the Program "that has been accepted" by the EIA (emphasis added). Thus, the term would not appear to apply to a report that is being prepared for such a submission and has not yet been accepted by the EIA.

In short, the Instructions are not "clear and sufficient" in distinguishing between "registration" and "reporting only" because both involve the preparation of a "report" (*i.e.*, Form EIA-1605) and submitting it to EIA. The difference is in the content of each. We note also that both can include the reporting of "reductions," although not the registration of reductions.

The Instructions could be made clearer or less confusing by distinguishing between "reports" that register reductions and those that do not. Both are about the "collection of information" for purposes of voluntarily "reporting" to the "Program." In this regard, it might help if EIA repeated in the Instructions some of the relevant provisions of Part 300 in an italicized format just as DOE has done in the Technical Guidelines (*e.g.*, see section 2.2.1, which restates § 300.8,

p. 250). We suggest repeating § 300.1(b), titled "*Reporting Under the Program*,"[7] and possibly § 300.1(c), titled "*Registration Requirements*."

B. Table I, Summary of Reporting Requirements, Needs Further Clarification

In comparing Table I, titled "Summary of Reporting Requirements", in the June 30, 2005, draft revised Instructions that we made comments on in our August 29, 2005, letter, with Table 1 in the July 27, 2006, version, we note some improvements. However, more changes are necessary. Some are as follows:

- We believe that the title of the table "Summary of Reporting Requirements" leads one to believe it to be an exhaustive summary of the collection of information and report preparation requirements. EIA should make it clear that it is a summary of the "Significant" or "Principal" "Requirements" for the "collection of information" and "reporting to EIA." Clearly, the table does not summarize **all** requirements or other provisions.

- There should be a footnote reference that entities should consult the General Guidelines for more specifics.

- Under the title "Type of Reporter," the 4th column should be headed "Any Entity Not Registering Reductions." In the 1st column, the word "Requirement" should not be on the same line as the three "types" of entities. The referenced "types" are not requirements. There should also be a footnote referring to the definition of a "Large" and "Small Emitter" in the Guidelines. Since the 4th column uses the term "entity", the terms "Large Emitter" and "Small Emitter" should be changed to "Large Emitting Entity" and "Small Emitting Entity."

- In the 1st column under "All Reports" and "Requirements," "Emissions Inventory" should be changed to "Entity-Wide Inventory." The 2d column should be changed to "Required." As to the 3d column, the words are too

[7] The words "register emissions" in the chapeau of § 300.1(b)(1) should be "register reductions" in light of the reference therein to "paragraph (c)", which relates to entities seeking to "register reductions."

cryptic and appear to be inconsistent with § 300.6(a) in the case of Small Emitting Entities, which states:

> Entities that have average annual emission of less than or equal to 10,000 metric tons of CO_2 equivalent are eligible to register emission reductions associated with specific activities without also reporting an inventory of the total emissions, but such entities should inventory and report the emissions associated with the specific activity(ies) they do cover in their reports (71 Fed. Reg. 20810).

(emphasis added.)

In essence, they are not required to report an entity-wide emissions inventory. Thus, this column should read, together with our suggested change in the 1st column, "Not Required, except may register emission reductions for activities reported." The 4th column with our suggested change in the heading thereof and in the 1st column is now accurate and, most importantly, clearer.

- In regards to the "Documentation" requirement in the 1st column under "All Reports", we question whether the 4th column is consistent with the Paperwork Reduction Act of 1995. In the case of the 1995 Act, § 3506(c)(3)(F) provides that EIA "shall" with respect to the "collection of information" certify that such collection request "submitted" to OMB for "review . . . indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified." § 300.1(b)(1)(iii) provides that "[e]ach reporting entity, whether or not it intends to register emissions [probably should be "reductions", as noted above] as described in paragraph (c) of this section, must . . . [c]omply with the recordkeeping requirements in § 300.9 of this part" and § 300.9(d) states (71 Fed. Reg. 20815):

  > (d) *Recordkeeping*. Entities intending to register reductions must maintain adequate supporting records of base period data for the duration of their participation in the 1605(b) program. Supporting records for all reporting year data must be maintained for at least three years subsequent to the relevant reporting year to enable verification of all information reported.

  (emphasis added)

While the first sentence applies only to the registering entities, and only to "supporting records of base period data," the second sentence does not refer to such entities and its coverage is broader and appears more consistent with the above § 300.1(b)(1)(iii). Moreover, such a requirement would be consistent with the above 1995 Act requirement that the recordkeeping requirement be indicated.

Possibly, EIA relies on § 300.10(c)(5), which establishes "[a]dditional "certification requirements for registering" and specifies that a registering entity must maintain records "in accordance with § 300.9(d) of this part." However, as noted above, the second sentence of that section does not appear to be limited to registering entities only, particularly in light of § 300.1(b)(1)(iii). The matter should be clarified, possibly through a clarification of the Guidelines. Presumably, entities not requesting registration of their reported collection of information would welcome the EIA interpretation. If that is viewed as consistent with Guidelines, the Instructions should also be clarified, and reliance should not solely be placed on the Table.

- We urge that the Table refer to the specific provisions of the General Guidelines and, where appropriate, the Technical Guidelines.

C. The Various EIA Questions and Proposed Responses in the Instructions Should Not Be Largely a Repeat of the Questions and Responses for Less Demanding Guidelines and Instructions Applicable to Form EIA-1605 of March 2006 and Earlier

In our comments of August 29, 2005, on the June 30, 2005, version of the draft revised Instructions for Form EIA-1605, we pointed out that often the EIA-proposed questions and responses in that document merely mimicked the questions and responses of the Instructions for that form as developed under the 1994 guidelines. In the case of the latest draft version of July 27, 2006, that criticism is still valid. For example, the draft revised 2006 Instructions lists the following three questions (p. 2)**,** together with responses to each: "**What are Greenhouse Gases?"**, **"What are Emissions, Reductions, and Sequestration?"** and **"How Is this Reporting Package Organized?"**

We note that the identical questions and responses appear at page 2 of the Instructions for the same Form EIA-1605, dated March 2006, for "Data through 2005" under the 1994 guidelines. Yet as to the first question, it states that "the reporting program focuses on" the GHGs "most affected by human activity" and then lists only four gases. However, § 300.2 defines GHGs as "the gases that may be reported to the Department of Energy under this program"[8] and then names eight categories of gases (see also § 300.6(a), which states that the "objective of an emissions inventory is to provide a full accounting of an entity's emissions for a particular year, including direct emissions of the first six categories defined in §300.2, indirect emissions specified in §300.6(e), and "all sequestration or other changes in carbon stock"). In regards to the second question, we note that § 300.2 definitions of the terms "Emissions" and "Sequestration" differ from the draft response to this question, and there is no definition of the term "reduction" in the Part 300 or in the Glossary. We also note that the question and reply fails to discuss "avoided emissions." Finally, we point out that the so-called "three main parts" listed as comprising the organization of the **"Reporting Package"** (p. 2), drafted as of July 2006, is inaccurate (*e.g.*, see Table of Contents, which, for example, does not list Appendices, but does list Addenda). Further, it makes no reference to the Calculations Tools or SEIT. The above examples are not unique. Other questions and responses have the same repetition problem that should be eliminated.

In the case of the question **"Why Report?"** (p. 1), three of the four sentences are repeats. However, there is one new sentence, which is as follows:

[8] The reference to DOE is inconsistent with §§ 300.9 and 300.12, which provide for reporting to EIA, not DOE.

> In addition, the registration of emissions reductions may provide special recognition to those entities willing to meet additional requirements.
>
> (emphasis added)

A similarly worded sentence appears in the reply to the question **"What are Registered Reductions?"** (p. 3). It states: "Registration is intended to provide special recognition to three entities willing to meet additional requirements" (emphasis added).

Note that the first sentence states that such recognition may "be provided," while the second states such recognition "is intended." First, it is our understanding that the final Guidelines no longer use the words "special recognition." That is a relic of past guideline iterations. Second, while § 300.12(b) provides that EIA "will notify" registering entities that their reductions "have been credited to the entity as 'registered reductions'", there is nothing in that provision suggesting that special recognition "may" be provided or is "intended" to be provided. Both sentences should be deleted, as there is no support in the final Guidelines for them.

In regards to the further reply to the above question on "Registered Reductions," the last-sentence reference therein to a § 300.7 requirement is inadequate in light of § 300.1(c), which lists a number of requirements, some of which differ depending on whether the entity is a small or large emitting entity.

In short, many of these questions and responses are out-of-date and do not reflect the revised Guidelines.

D. The "Introduction" and "General Instructions" for the Form EIA-1605, the "Instructions for Schedule I" and Schedule I of the Form Appear to Be Inconsistent with the Public Access Provisions of the Guidelines and Are Confusing Regarding the Means for Asserting Confidentiality of the Collection of Information

Both section 1605(b) of the Energy Policy Act of 1992 and § 300.9(e) of Part § 300 provide for the protection of trade secrets and commercial information or financial information "as provided" in 5 U.S.C. § 552(b)(4). In this regard, it is our understanding of the provisions for confidentiality that an entity may request confidentiality protection for the information included in a 1605(b) submitted report that meets one or more of the tests as a trade secret, commercial information, or financial information. While it is possible that an entity may show that the entire report deserves such protection, the most likely scenario would be that the entity would request that some, but not necessarily all, of the collected information in its submitted 1605(b) report should be protected. In the latter scenario, we would expect that the rest of the report would be subject to § 300.12(d). However, the draft Instructions and Form do not appear consistent with our understanding. In fact, we see several problems.

First, the response to the question "**How Will Your Report Be Used?**" (p. 1) initially states that: "All information reported under this voluntary program will be publicly available . . ., except confidential information." It then states: "If there is information in your report that, if released to the public, would cause substantial harm to your organization's competitive position, you may request confidentiality by checking the box in Schedule I of Form EIA-1605 for 'This report contains confidential information.'" Except for the reference to a test of "substantial harm" without a reference to such a test

in the statute and the guidelines as to the cause of such harm, on its face this portion of the response to the above question is consistent with our understanding. However, box 13 of Schedule 1 of the above draft form (p. 5) on the one hand properly states, "This report contains confidential information," but then adds a parenthetical that states by "checking the box" it "will classify the entire report as confidential and that all reported data will be withheld" (emphasis added). Similarly, the Instructions for box 13 (p. 12) states that by "[c]hecking this box" the entity "will alert EIA that you are seeking to have your entire report classified as confidential and not be made publicly available" (emphasis added).

As we noted previously, while there may be situations whereby the confidentiality request may apply to the "entire report," that will not likely be the norm for our members at least. The parenthetical is inconsistent with the statute and the guidelines and is not necessary.

In regards to the process for addressing confidentiality requests, there is confusion in the draft Instructions. Under the above-referenced question (supra, p. 1), the draft states that in addition to making a confidentiality request "you may submit a letter accompanying your report that details, on an element-by-element basis, the information you deem confidential and the reasons why disclosure would be damaging to your organization's competitive position," although "[a] letter is not required at this time. However, at a later

date, if someone requests your report, you may be asked to submit a letter" (emphasis added).

Later in the draft, under the question "**Can the Information You Report Be Kept Confidential?,**" the response states (p. 9) that when DOE receives a confidentiality request, "DOE shall make a final determination . . . in accordance with the procedures and criteria provided in the regulations" and that "a letter accompanying the submission…would aid in this determination." This latter response appears inconsistent with the page 1 statement above that suggests the request for confidentiality will not be addressed until "someone requests" the entity's report and that a letter is not needed until then.

The page 1 response is the most appropriate because it assures a decision on the confidentiality request more or less contemporaneously with that request rather than possibly months or years later. In any event, the question of when an entity must or should submit an "element-by-element" letter needs clarification. It should accompany the request.

V. Comments on Instructions for Schedules and Addenda of Draft Revised Instructions and Form EIA-1605[9]

A. Comments regarding Schedule I of Draft Instructions and Form

1. Completion of Schedule 1

The draft revised Instructions (p. 10) states, "All reporters must complete this schedule." However, the above statement is overly broad. Even for an entity that is planning to register reductions, there are portions of the schedule that may not be applicable, and for small emitting entities "intending to register" reductions, there are exceptions. Further, the first paragraph under Part B (p. 15) concludes: "An entity submitting a report for 'reported' reductions can complete Part B although it is not required to do so." Possibly, the above statement should apply only to "Section 1" of Schedule 1. However, even in that case, we note that § 300.5(a) provides that "[t]he entity statement requirements vary by type of reporting entity." The best course would appear to be to delete this statement.

2. Report Characteristics

Section 1 of the draft Instructions for entity statements, under the heading "**3. Enter Report Characteristics**" (p. 10), lists four such characteristics to be checked in the applicable boxes on the draft Form (p. 1), including a box for "b. Entity Type" (*i.e.*, indicating whether the entity is a large or small emitting entity) and a box for "c. Registered Reductions" (*i.e.*, indicating "whether or not the report includes registered reductions").

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[9] Draft Form EIA-1605 begins (p. 1) with a "**Note**" in a box regarding 18 U.S.C. § 1001. We reiterate our comment in footnote 13 of our August 29, 2005, letter that the word "willingly" should be "willfully", consistent with the words of 18 U.S.C. § 1001 (a) which are "knowingly and willfully".

As noted above, Schedule 1 begins with the statement that "[a]ll reporters" must complete this schedule." However, it is unclear why it is apparently necessary for "emitters that intend to report, but not register emission reductions" to check either "Entity Type" box, particularly in light of the provisions of § 300.9(a)(1)-(3) and (c), which state that "for purposes of these guidelines, there are three types of entities," namely, large and small emitters and emitters that do not "intend" to register and that provide for determining large and small emitters "reporting status" for those that "intend" to register. As to an entity that wants to register reductions, § 300.6(g), regarding the treatment of "*de minimis emissions*," would apply. That section states that the "results of this estimate of the entity's total excluded annual emissions must be reported to DOE together with the entity's initial entity statement"[10] (emphasis added). However, there does not appear to be any provision in section 1 of the draft Form regarding entity statements for such reporting or an explanation in section 1 of the draft Instructions as to how and where such "results" are to be reported. Apparently, that is to be reported under section 2 of Schedule I, titled "**Entity Emissions Inventory**", under paragraph 5 of the "Specific Instructions" for Part B (p. 32). A cross-reference is needed here.

In regards to the "Registered Reductions" characteristic, it appears to be the only item in Schedule I or, for that matter, in the entire draft Form for an entity to indicate that it is choosing to collect and submit information to EIA solely for the purpose of reporting, but even here such indication is only inferred by way of negatively responding that the entity's report will not

[10] As said previously in footnote 14 of our August 29, 2005, comments, the reference in § 300.6(g)(1) to "DOE" should be to "EIA".

include "registered reductions." The apparently intended, but subtle, inference is that the entity will "report only". Moreover, there is also no added statement in the draft Instructions or Form telling the entity that chooses not to register what sections of Schedule I and what other Schedules or parts thereof apply to "reporting only". **At a minimum, the Form should provide, consistent with the Guidelines, an opportunity for an entity to state in the positive that it either chooses to report registered reductions or that it will "report only."** That is the choice provided by the Guidelines to any entity. The draft Form should reflect the opportunity to make this choice.

3. SEIT

In regards to the above reference to § 300.6(g) on the "Treatment of *de minimis emissions*", this provision provides for the use of the draft SEIT. As we understand the final Guidelines, an entity, in determining whether its emissions "represent less than or equal to 3 percent of the total annual CO_2 equivalent emissions," must include all GHG emissions, including, for example, hydrofluorocarbon emissions from mobile sources. However, our review of the draft SEIT indicates that, at least in regards to stationary sources in the electricity sector, the SEIT only includes CO_2 not methane. It also needs to explicitly cover CH_4 and N_2O.

4. Organizational Boundaries

Paragraph 8.a. of the draft Instructions, titled "Method for Determining Organizational Boundaries," (p. 10), directs an entity to "[c]heck a box to indicate your method for defining the organizational boundaries of your entity" and then state that "[a]s discussed in the General

Guidelines, the primary basis" for defining the boundaries "should be financial control," although an entity may also "use other approaches, such as equity share or operational control if necessary." However, if the entity chooses some "other method", the entity must check "other" and "describe how the use of this other approach results in organizational boundaries that differ from those resulting from using" financial control. Lastly, the draft Instructions state (pp. 10-11): "Definitions for these Organizational Boundary terms can be found in the Glossary to the Technical Guidelines." The draft Form (p. 4) provides for the checking of three specified "methods" (*i.e.*, Financial control, Operational control, and Equity share) and then includes a box for "Other", plus the provision for disclosing the above-referenced description of how that approach has results different from use of "Financial control".

However, it is our understanding of § 300.4(a)(2) of Part 300 that an entity that chooses any approach "other than financial control," including equity share, operational control or "other," "must disclose how the use of these other approaches results in organizational boundaries that differ from those resulting from using the financial control approach" (emphasis added). In short, the disclosure requirement is not limited to just "Other" approaches, but it also applies to the above-named alternatives. Both the draft Instructions and Form need further revision to reflect the above Guidelines section.[11]

[11] We note that § 300.8(k), titled "*Determining the entity responsible for emission reductions*," states that EIA "will presume" that the entity "to be responsible for emission reduction, avoided emission or sequestered carbon is the entity with financial control of the facility," etc. "which generated the reported emissions," etc. While the section does not refer to these alternate "approaches," we assume that if an entity adopts one of the other approaches, EIA will apply the same presumption to it, based on the entity statement, in accepting the entity's report. If EIA

Regarding the Glossary, the definition of "financial control" (p. 305) is inconsistent with the definition of that term in the first sentence of § 300.4(a)(1). The definition of "financial control" in Part 300 is controlling and the glossary needs to conform to the Part. The definitions of "equity share" (p. 304) and "operational control" (p. 307) do not appear to be similarly defined in Part 300.

We also note that the glossary contains the term "organizational boundary", which is an explanation and not really a definition. Moreover, that explanation is not entirely consistent with the second sentence of § 300.4(a)(1), which states that the financial control "approach should ensure that all sources . . . that are wholly or largely owned by the entity are covered by its reports" and that sources "under long-term lease of the entity may, depending on the provisions of such lease, also be considered to be under the entity's financial control" (emphasis added). The glossary explanation speaks of "management control" of the "entity or sources" that are wholly or majority owned or under long-term lease "by the entity," while the above Part 300 refers to ownership, not management. Moreover, the above Part 300 provision applies to financial control, while the glossary term appears more generic. It would appear that, at least as to financial control, the glossary explanation of such boundaries is not relevant and that the draft Instructions need to so indicate.

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disagrees with this assumption, this section of the Guidelines and the draft Instructions need clarification.

5. Entity Emissions Inventory

Section 300.6(a) of the DOE Guidelines states that an inventory "must be prepared in accordance with Chapter 1 of the Technical Guidelines" and that "[e]ntity-wide inventories are a prerequisite for the registration" of reductions by large emitting entities. In addition, the section provides that small emitting entities "are eligible to register" reductions associated with specific activities without also reporting an inventory of total emissions, but such entities should inventory and report the emissions with such specific activities.

However, section 2 of Schedule I of the draft Instructions (titled "**Entity Emissions Inventory**") (p. 13) does not refer to either the Technical Guidelines or Chapter 1 thereof. It should.

It is unclear what the word "comprehensive" adds to the words "entity-wide" regarding large and small emitting entities or what it means or entails beyond "entity wide." It does not appear to stem from the Guidelines. Since it is presumably something less than "entity-wide," some explanation is needed if there is a basis for its use. However, we question the basis in the Guidelines for including this word.

The requirement that small emitting entities "must" submit a comprehensive inventory is inconsistent with § 300.6(a), which states that such small emitting entities "should inventory." The word "should" does not convey a mandate, such as the word "must", which is used in the second sentence of § 300.6(a), so clearly DOE intends a difference. It amounts to a suggestion, but not a requirement.

In addition, each of the sentences of the paragraph on page 13 addressing these issues should refer to the applicable provisions of the Guidelines. The draft form also needs to clearly explain where and how in the Schedule the collection of information should be reported for such entities.

6. Inventory of Emissions

In the case of the first paragraph of Section 2 of Schedule I of the draft Instructions, Part B, titled "**Inventory of Emissions and Carbon Flux**" (p. 15), the last sentence thereof should be revised to read as follows: "An entity submitting a report only that includes reductions of emissions that are not registered has the option not to complete Part B."

The second paragraph of the above-referenced Part B (p. 15) refers to "Questions 1 through 3", presumably referring to the draft Form. There is a similar reference to "questions" elsewhere in the draft Instructions, such as to "Question 5" of Part B (p. 19), to "Question1c" (p. 20), and to "Question 4a" (p. 27). Our review of the draft form indicates that it is not in a question format. Moreover, the draft Instructions only refer to "questions" on occasion, not consistently. The reference instead should be to "Item" 1, 5, 8, etc. rather than to questions.

7. Certification

The draft Instructions for Section 3, Part D of Schedule I provide (p. 34) that "[e]ntities that certify their use of only A or B estimations methods are not required to complete Part D" and checking the "certification box to the opening certification questions allows entities to skip Part

D." However, our review of the comparable provisions of the draft Form (p. 21) fails to show a "certification box "or a "certification question." There is only one box which is followed by this sentence: "All the methods used to estimate reductions were rated B or higher", which, while not in the form of a certification or certification question, seems appropriate. We suggest that above provisions of the instructions be revised to reflect the Form language. However, in the case of the Form, we note that the next sentence contains a double negative, which seems to be contrary to the above Instruction, namely, "If not, do not complete the remainder of" Part D. The first "not" should be "yes".

8. Emissions Inventory and Reporting

The third paragraph of Section 3, Part D of the draft Instructions (p. 34) begins, "For large or small emitters intending to only report reductions" and presumably not register them, "the submission of inventories is not required." **This sentence should appear at the beginning of the Instructions in section 2 concerning an entity's emission inventory and not be buried in section 3, Part D.**

9. Emissions Offsets

The terms "other reporters" and "non-reporters" used in the beginning paragraph (p. 36) of Section 3 (titled "**Emission Offsets**") of Schedule 1 of the draft Instructions are not the terms defined or used in the above-referenced Guidelines provisions of § 300.7, although the term "reporting entity" is, as noted earlier in these comments, and is a defined term of Part 300. The Guidelines terms are "other entities," or in the case of the first sentence of § 300.7(d), "entities

that choose not to report under the section 1605(b) program." The draft Instructions and Form should conform to terms used in the applicable sections of Part 300.

In addition, the draft Instruction assert (p. 36) that by reporting or requesting offsets in Part A of the Form (p. 23), "you are certifying the existence of an agreement between your entity and the entity providing the emissions offsets to permit the inclusion of the emissions offsets in your reports." The draft Form, Part A (p. 23) contains a parenthetical to that effect. This requirement seems to have the effect of a double certification, since § 300.10(a) provides that all reports "must include a certification statement … signed by a certifying official of the reporting entity" and § 300.10(c)(2)(ii) provides that such statement "must also certify that… [a]ny emission reductions reported or registered by the entity that were achieved by another entity … are included in the entity's report only if … [t]here exists a written agreement with each other entity", including one that chooses not to report to the Program, "providing that the reporting entity is the entity entitled to report or register these emission reductions" etc. Such a double certification is inappropriate and is not in accord with the Guidelines. Moreover, this so-called certification is not "signed by a certifying official" as required by § 300.10(a).

10. Offsets Obtained From Non-Reporters

Part B of the draft Instructions (p. 36) and Form (p. 24), titled "Offsets Obtained By Agreement with a Non-Reporter," requires that the reporting entity complete the table. In addition, "you must attach Schedules I, II (if applicable), III, and IV completed by, or on behalf of, the non-reporter."

In regards to the above requirement for the attachment of Schedule IV, which is to be "completed by, or on behalf of, the non-reporter," our review of Schedule IV, Section 1 ("Independent Verification"), paragraph 4 (p. 37 of draft Form), indicates that the wording and format thereof is for an entity that is a "reporting entity," not for a "non-reporter." For example, the last bulleted subparagraph provides that the "reporting entity" will maintain records. We question whether the auditor could certify that the reporting entity is going to maintain the records of a non-reporter. Also, the four bracketed inserts for the blanks refer only to the "reporting entity." There are no bracketed inserts for "non-reporters." Additionally, the relevant draft Instructions for paragraph 4 (p. 48) call for the "name of the reporting entity," which is a defined term. There is no mention of non-reporters. Moreover, the provisions of §300.11 are also aimed solely at the "reporting entity" (e.g., §300.11(e)(10) and (f) regarding issues of the relationship of the verifier to the "reporting entity"). There is no reference to non-reporters.

Similarly, Section 2 (p. 38 of the Form) is titled "Reporter Self-Certification." Indeed, §300.10 provides that "[a]ll reports" submitted to EIA must be "signed by a certifying official of the reporting entity" regarding that entity's report. The remainder of the section references actions by the reporting entity for its reports to EIA. There is no provision in the section for certification by the reporting entity "on behalf" of a non-reporter or, for that matter, by a "non-reporter." The requirements of the section apply only to reporting entities. It is silent on "non-reporters." Also, there is, in fact, nothing in the Schedule IV draft Form to indicate that, in regards to sections 1

and 2, the required information is being completed on behalf of a non-reporter or by a non-reporter.

C. Comments on Schedule III Draft Instructions and Form

Section 1 of the Schedule III draft Instructions and Form, titled "Registered Emission Reductions," provides for a summary of the domestic Part A and foreign Part B registered reductions "entered" previously in either Schedule I or II, together with their "associated emission reduction addenda." Section 2 of the Schedule is titled "Reported Emission Reductions" and similarly requires a summary of such reductions. However, as we have previously stated, the term "Reported" applies to both registered reductions and "reported only" reductions and thus is confusing and misleading. It is not a distinguishing term.

D. Comments on Schedule II Draft Instructions and Form

We suggest adding a box for "other" in Section 1, Item 2 (p. 26) of the form and the associated explanation (p. 39 of the instructions).

E. Comments on Schedule IV of Draft Instructions and Form

1. General Comment

In our comments of August 29, 2005, EEI questioned combining into one Schedule the provisions of the Guidelines implementing § 300.11 that encourage, but do not mandate or require, review of "Annual Reports" to be "performed by professional verifiers" and result in what "DOE envisions" as an "independent verification" of the report, and the provisions of the

Guidelines implementing § 300.10 that require all reports "submitted to EIA . . . include a certification statement . . . signed by a certifying official of the reporting entity." We also questioned the absence of any reference to the relevant sections of the Guidelines and the absence in section 1 of the Schedule to the § 300.11 statement that entities "are encouraged" to use such verifiers.

While we welcome the inclusion of references to the applicable Guideline sections, we continue to believe that combining in the same Schedule so-called optional independent verification provisions with mandatory certification provisions is inappropriate because they are separate and unrelated matters under the guidelines and may lead to confusion or mis-reporting by the user. We again urge that they be in separate schedules.

2. Specific Comments on Section 1 of Schedule IV

It is our understanding of § 300.11 that a "qualified verifier" **must complete** all of Section 1 of Schedule IV. There is no discretion. However, the first paragraph of section 1 of the draft Form (p. 36) states that if "your report has been independently verified by a qualified verifier in accord with Section 300.11," the auditor "should complete Schedule IV, Section 1" (emphasis added). It then adds, "Otherwise, please skip to Section 2 of Schedule IV, Reporter Self Certification" (emphasis added). Thus, the word "should" is not consistent with § 300.11. It should be changed to "must".

Furthermore, the implication of the above second sentence is that if an entity utilizes an independent verifier, that entity does not have to self-certify pursuant to § 300.10. If that is the intent of the sentence, we contend that it is contrary to § 300.10, which states that all reports "submitted to EIA must include a certification statement." There is no exception for reports that are verified pursuant to § 300.11. The above sentence should be deleted.

We also note the following issues regarding section 4 of the draft Instructions (p. 48) and section 4 of the draft Form (p. 37). First, the second sentence under section 4 of the draft Instructions states that the lead certifier and corporate officer must sign the Form (*i.e.*, verification statement) "certifying that to the best of their knowledge and belief," each of the listed conditions has been achieved. However, the above words are not repeated in the draft Form under section 4. They should be added. Second, as to the "conditions," it appears that the verification statement does not cover § 300.11(e)(1) or the second sentence of (9). As to the words "has taken reasonable steps" in the fourth bulleted paragraph, we note that § 300.11(e)(5) uses the words "due diligence." The fifth bulleted paragraph should better conform with § 300.11(6). Regarding paragraph six, the words "other entities or" should be inserted before "non-reporting."

3. Specific Comments on Section 2 of Schedule IV

In regards to the draft Form (p. 38), the third bulleted paragraph provides that the information reported "is consistent with information submitted in prior years, if any," etc. We suggest that the words "prior years" are overly broad and could encompass reports made under the 1994

guidelines. This is not intended, and we suggest that there be some indication that such "years" refers to reporting under the revised guidelines only.

In the case of the first bulleted paragraph under the second box in the draft Form, it would appear, consistent with § 300.10(e)(1), that the words "neither double counted nor" should be substituted for the word "not."

In addition, consistent with §§ 300.10(c)(2)(i)-(iii), we suggest that the second bulleted paragraph should be revised to more closely conform to subparagraphs (i)-(iii).