June 22, 2005

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

By e-mail: 1605bguidelines.comments@hq.doe.gov

Re: 10 CFR Part 300 Revised General Guidelines and Draft Technical Guidelines for the §1605(b) Voluntary Reporting of Greenhouse Gases Program. 70 FR 15164-15192 (March 24, 2005)

Dear Mr. Friedrichs

I am pleased to offer the following comments on behalf of the Clean Energy Group (CEG) on the Department of Energy's (DOE's) Interim Final General Guidelines and Draft Technical Guidelines for the Voluntary Reporting of Greenhouse Gases (GHG) under Section 1605(b) of the Energy Policy Act of 1992.

The Clean Energy Group

CEG is a coalition of electric generating and electric distribution companies that share a commitment to responsible environmental stewardship. Members include Calpine Corporation, Conectiv Energy, Consolidated Edison, Inc., Entergy Corporation, Exelon Corporation, KeySpan Corporation, New York Power Authority, NiSource, Inc., Public Service Enterprise Group, Inc., and Sempra Energy. With plants in operation or under development throughout the country, member companies have a generation mix of more than 125,000 MW that includes substantial coal-, oil-, and gas-fired generation, as well as nuclear, hydroelectric and renewable assets.

CEG member companies have reported GHG emissions and reductions under the Department of Energy's (DOE's) current 1605(b) program and plan to continue reporting in the future under the revised Guidelines. In addition, CEG companies have voluntarily undertaken other GHG initiatives including the reporting of GHG emissions and reductions under other international, federal, state and private programs; development of GHG action plans and the establishment of GHG emission reduction targets. Thus, CEG has a keen interest in the Department's proposed rulemaking with respect to the 1605(b) program General and Technical Guidelines.

General CEG Comments

In general, CEG would like to state its support for the focus on energy intensity in the revised 1605(b) program. Energy intensity metrics are extremely important in recognizing and encouraging the deployment of lower emissions and efficiency improvements as contributing elements to controlling the growth of GHG emissions in the US. Measuring improvements in this was is the best means of encouraging economy wide movement toward non-carbon and low carbon emitting technologies. We believe that this is one of the most important aspects of these proposed revisions to the voluntary reporting program.

Secondly, we believe that it is important to allow generators to get credit for their avoided emissions. This is also an important tool in encouraging the utilization lower emissions and higher efficiency technology in the power sector, one of the most important industry sectors in the control of GHG emissions.

Specific CEG Comments

In addition to the general comments noted above, CEG has identified several specific issues related to the proposed revisions to the guidelines on which we would like to comment.

1. <u>Ability to Register Only Post-2002 Emission Reductions</u>

CEG understands DOE's desire to focus the 1605(b) greenhouse gas (GHG) emissions reductions registration program on post-2002 reductions in order to track progress in achieving the President's goal of reducing the GHG emissions intensity of the U.S. economy by 18 percent between 2002 and 2012. However, CEG does not understand why, despite a majority of commenters opposing such an approach, DOE appears to be so adamantly locked into *restricting* the registration program to post-2002 emission. It seems to CEG that DOE can achieve *both* its primary objective of using the 1605(b) registration program as a means of measuring contributions towards the President's GHG intensity goal and other important policy goals that would be achieved by allowing bonafide GHG emissions reductions between 1990 and 2002 to be registered as well.

DOE indicates that even if the guidelines permitted entities to register reductions achieved prior to 2003, the Department believes it is unlikely that most entities would be technically capable of meeting all of the requirements of the revised guidelines for earlier years. CEG believes that DOE's viewpoint towards the integrity of pre-2003 emissions reductions is speculative and that entities should at least have the opportunity of demonstrating that GHG emissions reductions they achieved prior to 2003 meet the technical rigor reflected in the revised guidelines.

CEG believes that there are compelling policy reasons for providing full recognition of any emission reductions achieved after the statutory base year of 1990, as long as the reporting entity complies with the requirements of the revised guidelines. Many public and private entities have undergone significant effort and expense to report their GHG emissions and reductions since the inception of the 1605(b) program and the existing guidelines in 1994. It is counter-productive and, we suggest, poor policy, to now discount or disregard those significant efforts carte blanche. Moreover, allowing entities to register only post-2002 GHG reductions is tantamount to penalizing progressive, forward-thinking companies that have taken it upon themselves since 1990 to demonstrate environmental leadership by voluntarily reducing their GHG emissions. Since, in many cases, a significant amount of the GHG emission reduction potential of such companies has already been realized, establishment of a 2002 baseline could jeopardize compliance with any future mandatory programs, or at least make compliance much more onerous. Accordingly, DOE should recognize early voluntary efforts that have been undertaken under the revised guidelines and allow them to be registered as long as they can meet the new criteria for registration. Such recognition will encourage continued and new participation in voluntary GHG programs.

Again, CEG agrees that emissions reductions currently contained in the 1605(b) database (from 2002 and prior reporting years) would need to be recast to meet the criteria established through this revision process. Many of the CEG companies have reported emission reduction projects to the 1605(b) database that provide a track record of real GHG emission reductions achieved to date. CEG companies have reported on emission reduction projects ranging from carbon sequestration and fuel switching to renewable energy and energy efficiency. While re-evaluating the projects under the revised Guidelines will likely be challenging, this approach provides an opportunity for entities to reaffirm high quality projects and to create a public record of their past actions that will have more credibility. Furthermore, by demonstrating DOE's commitment to recognize emission reductions that are achieved under DOE guidelines, and by finding a way to continue recognizing such reductions even after such guidelines change, DOE will enhance the integrity of the 1605(b) program in the eyes of many stakeholders.

In summary, then, CEG suggests that if a company was proactive in taking voluntary actions to reduce and sequester GHG emissions and reported its emissions, emissions reductions and sequestration activities under the current 1605(b) program relative to a base-year of 1990, then it should be allowed to recast its earlier reports for evaluation under the new 1605(b) Registry. The revised 1605(b) GHG Registry should allow for registration of all post-1990 GHG emission reductions and offsets as long as the reductions/offsets are real and verifiable under the updated 1605(b) Guidelines.

To satisfy the Department's objective of addressing the President's goal of reducing U.S. GHG emissions intensity by 18 percent between 2002 and 2012, it would be appropriate to count only those reductions achieved after 2002 towards the achievement of that goal. However, this is not a good reason for disallowing legitimate GHG emissions reductions achieved after 1990 that satisfy the proposed criteria from being registered under the new program.

Furthermore, both EPA's Climate Leaders program and DOE's Climate VISION program allow more flexibility than the 1605(b) program in terms of baseline period establishment and program start date for tracking progress towards achieving voluntary emission reduction commitments. Climate Vision consists of a variety of industry association commitments to reduce GHG emissions (from energy efficiency improvements to absolute GHG emission reductions) in support of the President's GHG intensity goal from differing baselines – some 1990 and others 2000. Climate Leaders is an entity-specific voluntary program that is also much more flexible with respect to choosing a base year – allowing the participating entity to determine which year to identify as its start year. However, under 1605(b), the start year has to be 2002 or later. Therefore, CEG is concerned that these programs will not reconcile with the 1605(b) revised guidelines as proposed.

2. <u>Consistency Between 1605(b) Guidelines and Existing Requirements of Other Voluntary Programs</u>

DOE indicates in the interim final guidelines that once the revised General and Technical Guidelines take effect, the 1605(b) program will serve as the primary public emission and emission reduction reporting mechanism for participants in federal voluntary programs (i.e., EPA's Climate Leaders program, Natural Gas STAR, SF6 Emission Reduction Partnership, EPA's Landfill Methane Outreach Program, DOE's Climate VISION program, etc.).

It is DOE's stated intent to encourage participation in both the 1605(b) voluntary GHG reporting program and Climate Leaders, to enable entities that want to participate in both programs to file single inventory reports and possibly other combined data reports, and to ensure that there are no direct conflicts between program quantification protocols or other requirements.

CEG supports the establishment of consistent reporting rules for all Federal GHG reporting programs. CEG believes consistency is important for numerous elements including but not limited to the following:

1. Reporting period (as advocated for in our previous comment);
2. GHGs required to be reported (i.e., all GHGs or specific GHGs only);
3. Requiring an entity wide inventory (direct and indirect emissions) to "register" emission reductions;
4. Verification options and approaches including requirements for 3rd party verification;
5. Acceptable emission inventory and reduction quantification protocols.

3. <u>Presumptive Right to Report and Register Emissions Reductions</u>

In the interim final General Guidelines, DOE indicates that the entity that it will presume to be responsible for emission reductions, avoided emissions or sequestered carbon is the entity with *financial control* of the facility, land or vehicle which generated the reported emissions, generated the energy that was sold so as to avoid other emissions, or was the place where the sequestration action occurred. If control is shared, reporting of the associated emission reductions must be determined by agreement or contract between the entities involved so as to avoid double-counting; this agreement must be reflected in the entity statement and in any report of emission reductions. DOE will presume that an entity is not responsible for any emission reductions associated with a facility, property or vehicle excluded from its entity statement.

CEG believes that the issue of which entity has the right to report and register reductions under various circumstances is an important one that must be governed by clear and equitable rules in the guidelines. *In general, CEG supports DOE's presumptive approach of assigning the rights to report and register emission reductions and sequestration to the entity with financial control of the facility, land or vehicle that generated the emission reductions/sequestration.* In the case of electric generating facilities, the proposed guidelines should generally reward and encourage those companies that incur the higher costs and risks involved in investing in low-emitting or zero-emitting energy technologies. Without these investments, it will not be possible to diversify the nation's energy portfolio, with all of the attendant climate mitigation benefits. Moreover, it is CEG's view that an approach that recognizes registration rights to the generator of the emission reductions/sequestrations will be far easier to administer.

However, while generally supporting DOE's presumptive approach of assigning the rights to report and register emission reductions and sequestration to the owner of the facility, land or vehicle that generated the emission reductions/sequestration offsets, CEG is concerned that the interim final General Guidelines do not provide a practical, workable approach for electric utility companies to register avoided emissions associated with certain 1) power purchase agreements and renewable energy credits, 2) investments in demand-side management and 3) coal ash utilization programs. CEG is also concerned that the interim final General Guidelines do not provide a reasonable approach for electric utility companies to register GHG emission offsets resulting from investments in a variety of carbon sequestration activities. In their current form, CEG strongly believes that the guidelines will not only discourage the reporting and registration of GHG reductions associated with these beneficial activities but will discourage companies from undertaking these activities in the future.

As part of their overall strategy to voluntarily reduce GHGs, a number of electric utility companies, including members of the CEG, purchase low CO2-emitting or zero-emitting power such as wind, hydro and nuclear from other entities. Power purchases of this nature displace generation from CO2–emitting sources of generation (i.e., fossil fuel-fired electric generating facilities), thereby "avoiding" CO2 emissions from these facilities.

In other cases, companies make substantial investments in demand side management programs, which have the effect of reducing the demand for energy and, again, avoiding emissions that would otherwise occur from fossil fuel-fired electric generating facilities.

Demand side management programs are one of only a few strategies that electric utility companies have to reduce GHG emissions. Furthermore, demand side management programs are also one of (if not the most) cost effective strategies available to electric utility companies for “avoiding” CO_2 emissions.

Similarly, a relatively large number of coal-fired power plants invest in coal ash utilization programs in as a pollution prevention measure. Approximately one-third of the coal-ash generated by coal-fired power plants in the U.S. is used as a filler in concrete products and for other beneficial purposes, as opposed to being landfilled. Using flyash as a filler in concrete reduces the amount of cement required and reduces the amount of energy required in the production of concrete, thereby avoiding emissions from coal-fired power plants.

Finally, one of the potentially most cost-effective methods for addressing climate change is sequestering carbon. For example, a number of electric utilities and independent power producers, including CEG member companies, have made substantial investments in afforestation, reforestation and other forest management projects around the world to effectively sequester carbon as part of their climate change management portfolios.

Under the current guidelines, companies wishing to register avoided emissions reductions associated with power purchase contracts, DSM programs and coal ash utilization programs would be treated as “aggregators” and be required to supply all of the information necessary for DOE to certify its reductions from its large and small emitter third party purchased power suppliers, retail electric customers and coal ash utilization customers. A similar procedure would be required to register GHG emission “offsets” associated with sequestration projects at sites owned by third parties. A reporting entity would have to supply DOE with an Entity Statement, Certification Statement and an Annual Emission Inventory across all operational boundaries for each third party, not just the operational portion of the third party directly associated with the purchased power, DSM, coal ash utilization and sequestration projects that the reporting entity is claiming CO_2 emissions reductions/offsets for. In addition, annual reductions can be aggregated and registered to a reporting entity from large emitter suppliers only if these third parties do not participate in 1605(b) themselves and there is a net reduction of emissions across the entire third party entity each particular reporting year. Effectively, a reporting entity that wants to register emissions reductions associated with third-party emissions reductions/offsets must provide DOE with its own complete Entity Statement and Annual Emissions Inventory Report as well as an Entity Statement and Annual Emissions Inventory Reports for all of its third parties. This is an enormous burden, at best, virtually impossible to accomplish, at worst, and would have the effect of greatly discouraging or preventing companies from participating in the program.

To aggregate emission reductions from *small* third party emitters, a reporting entity would have to supply DOE with an Entity Statement and Certification Statement for each small third party emitter. While the burden is lessened for small emitters in that a reporting entity would not have to demonstrate third party net entity-wide reductions, the reporting entity would still have to provide DOE with individual certifications that the reductions were “not caused by actions likely to cause increases in emissions elsewhere within” each third party emitter. CEG believes that this burden will make it highly unlikely for entities to pursue registration rights associated with emissions reductions from small third party emitters as well.

As an example of the impracticality of these requirements, Entergy, a CEG member, the Trust for Public Land, and the U.S. Fish & Wildlife Service (USFWS) have partnered to add more than 2,900 acres to Tensas River National Wildlife Refuge located in Louisiana. Entergy has invested $1.5 million to fund acquisition of the land, to reforest and to manage the property. This is part of a four-year, $15.7 million Chicago Mill Lumber Company project sponsored by the Trust for Public Land and USFWS, which will add 11,000 acres to the refuge and reforest more than 8,600 acres.

Public-private partnerships of this nature sequester carbon, creating a climate change benefit, and restore critical habitats, improving biodiversity. USFWS wanted this property but didn't have enough funds in its budget to acquire it. In exchange for having Entergy help purchase and restore the property, it was agreed among the parties that Entergy would assume the rights to the carbon sequestration credits from the project.

Under the interim final 1605b General Guidelines:

- The entity owning the land where the sequestration occurred (i.e., USFWS) is the entity that has the presumptive right to report and register the emissions reduction credits;
- In order to register the carbon sequestration credit, an entity wide inventory of [USFWS’s] GHG emissions and sinks would have to be filed; and
- Emission reduction credits can be transferred or assigned only to entities that also have completed an entity wide inventory.

It is highly unlikely that USFWS would consider undertaking the enormous burden of conducting an entity wide GHG inventory of all the properties under its purview in order to facilitate the transfer of carbon credits to Entergy for this project. Therefore, Entergy will not be able to register the GHG sequestration credit from this important undertaking that it has voluntarily committed to and has invested a substantial amount of money in. If the 1605(b) process hinders or blocks the assignment of carbon credits to rightful entities, CEG believes that it will discourage the development of highly valued, voluntary public-private partnerships of this nature in the future.

With respect to DSM and coal ash utilization programs, it is unclear under the guidelines what, if any, avoided emissions resulting from these initiatives can be registered and, if they can be registered, whether a reporting entity would be forced to do so as an Aggregator on behalf of all its large- and small-emitter DSM and coal ash utilization participating customers. Even if aggregation is an option, it would be extremely impractical, if not impossible, for a reporting entity to achieve adequate 1605(b) registration recognition for these efforts, particularly in the case of DSM programs where a reporting entity would have to provide third-party documentation for literally tens of thousands of retail customers.

To allow for, and to promote, the registration of GHG emissions reductions/offsets from such strategies as the purchase of low and zero emitting power, investments in DSM and coal ash unitization programs and investments in carbon sequestration, CEG believes that DOE needs to carve out some narrow exceptions to the general rule reflected in the 1605(b) guidelines that the entity that will be presumed to be responsible for emission reductions, avoided emissions or sequestered carbon is the entity with financial control of the facility, land or vehicle which generated the reported emissions, generated the energy that was sold so as to avoid other emissions, or was the place where the sequestration action occurred. CEG requests that the Department consider incorporating the following exceptions to the presumptive emissions reductions/offsets ownership rule:

- *In cases where a contractual agreement exists assigning rights to avoided CO2 emissions to an entity purchasing power and renewable energy credits,* the guidelines should allow the entity with the contractually assigned rights to include the purchased power and renewable energy credits as part of its own entity-wide reporting. In this case, the reporting entity should not have to provide an Entity Statement, Certification Statement or Annual Emission Inventory for the third party but merely identify the third party so that potential double-counting issues can be identified in EIA's database of entity reports. *Where no contractual agreement exists between a non-emitting or low-emitting generating facility and a purchaser of that power, the right to report and register avoided emissions would be presumed to be with the owner/operator of the generating facility.*

- *In cases where an entity acquires contractual rights to GHG offsets associated with a carbon sequestration projects,* that entity should be presumed to have the right to report and register those offsets regardless of whether or not the entity owns the property where the sequestration occurred. In cases where the entity with contractual rights to the GHG emission offsets does not own the property where the sequestration occurred, the reporting entity should not have to provide an Entity Statement, Certification Statement or Annual Emission Inventory for the third party owner of the property but merely identify the third party so that potential double-counting issues can be identified in EIA's database of entity reports.

- The entity that makes the investment in a DSM program or coal ash utilization program, not the recipient or participant in the program, should be presumed to be responsible for the avoided emissions associated with the program unless the end-user affirmatively submits information to DOE to the contrary. Sponsors of DSM programs should be required to demonstrate an overall net reduction in customer electricity demand attributed to the DSM program. In addition, the DSM program sponsor should be required to explicitly and clearly identify any potential double-counting issues in its filing to DOE. Similar to the case with DSM, the sponsor of a coal ash utilization program should be required to demonstrate an overall net energy savings attributed to the ash utilization program. In addition, to avoid the potential for double-counting, the sponsor of the ash utilization program should be required to identify all of its end-use customers (but not be required to provide an Entity Statement, Certification Statement or Annual Emission Inventory for these third parties)

4. Certification of Information from Jointly Owned/Operated Facilities

In an attempt to address the issue of "double-counting," Section 300.5(d)(9) of the interim final General Guidelines requires a reporting entity to provide DOE "the names of other entities that substantially share the ownership or operational control of sources that represent a significant part of the reporting entity's emission inventories, and a certification that, to the best of the certifier's knowledge, the direct greenhouse gas emissions and sequestration in the entity's report are not included in reports filed by any of these other entities to the 1605(b) program;

As CEG indicated in its comments on the December 2003 proposed revisions to the General Guidelines, the issue of ownership and operational control of a particular facility can be a simple one, in the case of a facility owned and operated by one entity, or it may be a more complex situation, in the case of a facility with multiple owners that is operationally controlled by one or more entities. While CEG is sensitive to the Department's concern about the potential for double-counting of a facility's GHG emissions and reductions by multiple entities, it simply is not practical, or even feasible, to require a reporting entity to *certify* that the direct GHG emissions and sequestrations in the entity's report are not included in the 1605(b) report of other entities that share ownership or operational control of a particular facility since there are no hard and fast rules governing which party or parties should be reporting exactly what direct emissions in complex ownership/operational control situations. Furthermore, there is no legal obligation that would compel a joint owner/operator to provide such information at the request of a reporting entity.

Take, for example, the following situation: Entity "A" and Entity "B" both own a 50% share of facility "X". Entity "B" operates the facility. Entity "A" decides to report emissions on an ownership (equity share) basis and therefore reports 50% of the emissions from facility "X". Entity "B" decides to report on an operational control basis and therefore reports 100% of the emissions from facility "X". In this case, neither facility can meet the certification requirement of 300.5(6).

CEG concurs that each reporting entity should be required to identify co-owners and operators of shared facilities, including information on ownership percentages and contractual agreements governing operational control of a jointly-owned facility. Moreover, it may be appropriate to *encourage* entities to coordinate their reporting of direct GHG emissions and sequestrations from jointly-owned facilities in order to avoid double-counting. However, CEG believes that it is inappropriate to require any reporting entity to certify information reported by other parties with respect to a jointly owned/operated facility.

5. Requirement for Large Emitters to Report Both Direct and Indirect Emissions of All Six GHGs from the Outset of the Program

Under the revised 1605(b) guidelines, large emitters (>10,000 mt CO2e) that intend to register emission reductions are required to report direct and indirect emissions of all six GHGs from the outset of the program. CEG suggests that the requirement to report emissions of all six GHGs from the outset of the program is unnecessarily burdensome and may deter voluntary participation in the program. CEG suggests that DOE consider something along the lines of the phased approach adopted by the California Climate Action Registry which is to require that only CO2 emissions be reported initially and that the other five GHGs (CH_4, N_2O, HFCs, PFCs and SF_6) not be required to be reported until after three years of reporting under the revised program. Initially having to report only CO_2 emissions, the most prolific GHG, would provide participants the opportunity to become familiar with the inventory, reductions analysis and reporting protocols under the revised guidelines without being overwhelmed by an obligation to account for all six GHG gases. After three years of experience reporting CO2 emissions under the revised 1605(b) program, participants will likely feel more comfortable with the process and less deterred by a requirement to report on all six GHGs.

CEG thanks you for the opportunity to comment on the Department's Interim Final 1605(b) General Guidelines and Draft Technical Guidelines.

Sincerely,

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