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**May 25, 2012**

**Department of Energy  
U.S. Energy Information Administration  
Electric Power Division  
EI-23, Forrestal Building  
1000 Independence Avenue SW  
Washington, DC 20585  
Attn: Mr. Douglas Bonnar**

Dear Mr. Bonnar:

On March 26, 2012, a notice stating that the Energy Information Administration ("EIA") was soliciting comments on revisions to various forms was published in the Federal Register. Among other things, the notice provides that EIA is proposing to extend for three years Form EIA-851A "Domestic Uranium Production Report (Annual)", Form EIA-851Q "Domestic Uranium Production Report (Quarterly)", and Form EIA-858 "Uranium Marketing Annual Survey" and is proposing certain changes to these forms. Southern Nuclear Operating Company, Inc. ("Southern Nuclear"), Alabama Power Company and Georgia Power Company have a strong interest in the proposed changes to Form EIA-851A, Form EIA-851Q and Form EIA-858 because Alabama Power and Georgia Power own nuclear generating facilities and Southern Nuclear acts on behalf of those companies to perform a number of tasks including completion of Form EIA-858.

EIA collects uranium information in Forms EIA-851A, EIA-851Q and EIA-858 in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (Title 5 of Public Law 107-347) ("CIPSEA"). In Section 511(a)(2) of CIPSEA, Congress found that

Pledges of confidentiality by agencies provide assurances to the public that information about individuals or organizations or provided by individuals or organizations for exclusively statistical purposes will be held in confidence and will not be used against such individuals or organizations in any agency action.<sup>1</sup>

Further, the term "pledge" is defined to mean "a formal promise" and holding information in confidence connotes affirmative and intentional action.<sup>2</sup> Thus, Congress appears to require an agency to make an affirmative pledge that it protect and keep information confidential.

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<sup>1</sup> CONFIDENTIAL INFORMATION PROTECTIONS AND STATISTICAL EFFICIENCY ACT OF 2002 (Title 5 of Public Law 107-347).

<sup>2</sup> THE AMERICAN HERITAGE DICTIONARY. (4<sup>th</sup> Edition, 2001).

This understanding was confirmed in the CIPSEA Implementation Guidance, guidance that was developed in response to CIPSEA and after public review and comment.<sup>3</sup> The Office of Management and Budget stated that CIPSEA requires agencies to inform potential respondents about the uses of the information they provide. In particular, agencies are to explain the “nature and extent of confidentiality protection to be provided” and to “[p]ledge to keep the data or information confidential”.<sup>4</sup> The CIPSEA Implementation Guidance includes “examples of confidentiality pledges under CIPSEA [that] are sufficient to inform respondents of the protections afforded.”<sup>5</sup> In each example provided, the language provides that “responses will be kept confidential”.<sup>6</sup> In fact, this language is used in the current instructions for Form EIA-858.

However, EIA is proposing to delete this pledge of confidentiality (*i.e.* stating that the information will “be kept confidential”) and simply stating that the information will be “considered confidential”. This new language is inconsistent with CIPSEA and the CIPSEA Implementation Guide because it does not require the agency to pledge to keep the information confidential. Furthermore, it is undefined.

Therefore, in order to be consistent with CIPSEA, EIA must retain the current language (*i.e.*, “will be kept confidential”) because it is consistent with the CIPSEA required pledge of confidentiality and should ensure that the instructions for Form EIA-851A, Form EIA-851Q and Form EIA-858 are consistent with this requirement.

Southern Nuclear appreciates the opportunity to submit these comments and respectfully requests that EIA give careful consideration to these concerns. In the event you have any questions, please contact me.

Best regards,



Mr. Ronald G. Cocherell  
Nuclear Fuel Director

RGC/jbw

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<sup>3</sup> IMPLEMENTATION GUIDANCE FOR TITLE V OF THE E-GOVERNMENT ACT, CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY ACT OF 2002 (CIPSEA), 72 Fed. Reg. 33362 (June 15, 2007) (“CIPSEA Implementation Guidance”).

<sup>4</sup> CIPSEA IMPLEMENTATION GUIDANCE, 72 Fed. Reg. 33362, at 33369.

<sup>5</sup> *Id.* at 33370.

<sup>6</sup> *Id.* (emphasis added).